

DEPARTMENT OF EDUCATION**34 CFR Part 668**

RIN 1845-AA07

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: We amend the regulations governing student eligibility for the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs). These programs include the Federal Pell Grant Program, the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) Programs), the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, and the Leveraging Educational Assistance Partnership (LEAP) Program (formerly called the State Student Incentive Grant (SSIG) Program). The regulations implement changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998 (Public Law 105-244, enacted October 7, 1998) (1998 Amendments).

DATES: These regulations are effective July 1, 2000.

Implementation Date: The changes to §§ 668.32 and 668.38 reflect statutory provisions that already are in effect. Institutions may use these regulations prior to July 1, 2000 as guidance in complying with those statutory provisions.

FOR FURTHER INFORMATION CONTACT: Lloyd Horwich, U.S. Department of Education, 400 Maryland Avenue, S.W., ROB-3, Room 3045, Washington, D.C. 20202-5344. Telephone (202) 708-8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

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SUPPLEMENTARY INFORMATION: On July 16, 1999, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (64 FR 38504) proposing to amend the regulations governing student eligibility for the title IV, HEA programs. In the preamble to the NPRM, we discussed the following proposed changes:

- Amending § 668.32(e) to allow a student who completes a secondary

school education in a home school that is treated as a home school or private school under State law to be eligible to receive title IV, HEA program funds.

- Amending § 668.32(h) to provide that a student file his or her Statement of Educational Purpose with the Department.
- Amending § 668.32(k)(7) to reflect the name-change of the SSIG program to the LEAP program.
- Amending § 668.32 by adding as § 668.32(l) a cross-reference to the student eligibility criteria concerning drug convictions described in proposed § 668.40.
- Amending § 668.38 to provide the conditions under which a student enrolled in telecommunications courses will not be considered enrolled in correspondence courses.
- Adding § 668.40 to provide the conditions under which a student who has been convicted under Federal or State law of possession or sale of illegal drugs will be ineligible to receive title IV, HEA program funds.

There are no significant differences between the NPRM and these final regulations, except that these final regulations clarify the status under § 668.40 of determinations or adjudications for possession or sale of illegal drugs arising out of a juvenile proceeding.

Discussion of Student Financial Assistance Regulations Development Process

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, we obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, we must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless we reopen that process or explain any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on July 16, 1999 in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. We invited comments on the proposed regulations by September 14, 1999, and 18 comments were received. An analysis of the

comments and of the changes in the proposed regulations follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes and suggested changes the law does not authorize us to make.

Analysis of Comments and Changes*Section 668.32 Student Eligibility-General*

Home-schooled students

Comments: A number of commenters specifically supported our statement in the NPRM that a student who completes a secondary school education in a home school setting that is treated as a home school or private school under State law simply must satisfy the home-school completion requirements of the State in which the student was home schooled to be eligible for title IV, HEA program funds.

Changes: None.

Comments: A number of commenters specifically supported our statement in the NPRM that the Secretary will allow a home-schooled student to self-certify his or her eligibility in the same way a high school graduate or General Equivalency Degree (GED) recipient may.

Changes: None.

Comments: The Department should clarify the meaning of "exemption from compulsory attendance requirements under State law" in proposed § 668.32(e)(4)(ii).

Discussion: "Exemption from compulsory attendance requirements under State law," means that the State does not consider a home-schooled student to be in violation of the State's truancy laws.

Changes: None.

Comments: The Department should clarify whether home-schooled students must take an ability-to-benefit test to be eligible to receive Title IV, HEA program funds under proposed § 668.32(e).

Discussion: Home-schooled students who satisfy the requirements of § 668.32(e)(4) are eligible to receive title IV, HEA program funds. They are not required to take an ability-to-benefit test.

Changes: None.

Section 668.38 Enrollment in Telecommunications and Correspondence Courses

Comments: The Department should clarify the status under proposed § 668.38 of students enrolled in telecommunications courses at institutions described in section

521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act.

Discussion: Students enrolled in telecommunications courses at institutions described in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act are considered to be enrolled in correspondence courses.

Changes: None.

Section 668.40 Suspension of eligibility for drug-related offenses

Comments: The Department should clarify that the provisions of § 668.40 apply only to a student's eligibility for title IV, HEA program funds for award years beginning on or after July 1, 2000.

Discussion: The provisions of § 668.40 apply only to a student's eligibility for title IV, HEA program funds for award years beginning on or after July 1, 2000. However, convictions that occur before July 1, 2000 may affect a student's eligibility for title IV, HEA program funds as of July 1, 2000. For example, a student convicted for the first time for possession of a controlled substance on February 1, 2000 will be ineligible from July 1, 2000 (the effective date of the regulations) until February 1, 2001 (one year from the date of conviction).

Changes: None.

Comments: Clarify whether a conviction for multiple counts of possession or multiple counts of sale is considered a single conviction.

Discussion: A conviction for multiple counts of possession or multiple counts of sale is considered a single conviction. Also, a determination or adjudication arising out of a juvenile proceeding is not a conviction for purposes of this regulation.

Changes: Section 668.40(a)(2) is changed to reflect the above clarification concerning juvenile violations.

Comments: The Department should clarify the meaning of "indefinite" under §§ 668.40(b)(1)(iii) and (b)(2)(ii), concerning the ineligibility period of a student convicted three or more times for possession of illegal drugs or two or more times for sale of illegal drugs.

Discussion: For purposes of this regulation, "indefinite" means permanent, unless (1) the student completes an approved drug rehabilitation program described in § 668.40(d) or (2) convictions are reversed, set aside, or removed from the student's record so that the student has fewer than three convictions for possession and fewer than two convictions for sale remaining on his or her record, in which case the student's ineligibility period would be

determined by the number and type of remaining convictions.

Changes: None.

Comments: An institution should not be required to be involved in determining a student's eligibility for title IV, HEA program funds under this regulation.

Discussion: We will not require institutions to question their applicants for title IV, HEA program funds about drug convictions. We intend to use the aid application process—the Free Application for Federal Student Aid (FAFSA) and the Student Aid Report (SAR)—to collect the necessary information from applicants. However, we will encourage students to notify their financial aid office if their eligibility status changes.

Changes: None.

Comments: An institution should not be liable for funds disbursed to a student when the student is ineligible under this regulation and the institution is not aware the student is ineligible.

Discussion: An institution will not be liable for funds disbursed to a student who is ineligible under this regulation if the institution is unaware at the time of disbursement that the student is ineligible.

Changes: None.

Comments: Students who regain their eligibility under this regulation during a payment or enrollment period should be eligible for aid for the entire payment period (in the case of Pell Grants, FSEOG, FWS, or Perkins Loans) or the entire enrollment period (in the case of Direct or FFEL Loans). Similarly, students who lose their eligibility during a payment or enrollment period should not forego funds until the beginning of the next payment or enrollment period.

Discussion: Students who regain eligibility under this regulation during a payment period will be eligible to receive Pell Grants, FSEOG, FWS, or Perkins Loans for the entire payment period, and will be eligible to receive Direct or FFEL Loans for the entire enrollment period.

However, students who lose eligibility during a payment period will be immediately ineligible to receive subsequent disbursements of any title IV, HEA program funds, and will be required to repay any title IV, HEA program funds that they receive after losing their eligibility. Those students will not be considered to have been ineligible for funds disbursed to them prior to their loss of eligibility. Institutions will not have to recalculate students' awards on a pro-rata basis.

Changes: None.

Comments: Students should be allowed to self-certify both their eligibility under this regulation for title IV, HEA program funds and the renewal of their eligibility during a payment period.

Discussion: We will allow students to self-certify their eligibility for title IV, HEA program funds on the FAFSA or SAR. We also will allow institutions to disburse funds to students who regain eligibility during a payment period or enrollment period, based on students' self-certification to the institution. Students may not self-certify their eligibility based on projected eligibility dates (i.e., students who will regain eligibility during a payment period may not self-certify at the beginning of the payment period that they are eligible, even though as discussed above, students who regain eligibility during a payment period will be eligible to receive funds for the entire payment period or enrollment period, as appropriate), nor may institutions disburse funds based on projected eligibility dates, but institutions will not be responsible for verifying the accuracy of students' self-certifications.

Changes: None.

Comments: The regulation should not be overly restrictive in defining what is an acceptable drug rehabilitation program.

Discussion: We agree, and believe that § 668.40(d) addresses this concern.

Changes: None.

Comments: The Department should provide individualized advice to students on the meaning of this regulation.

Discussion: We will provide guidance to students and institutions over the coming months concerning this regulation.

Changes: None.

Executive Order 12866

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined are necessary to administer this program effectively and efficiently.

In assessing the potential costs and benefits of this regulatory action—both quantitative and qualitative—we have determined that the benefits justify the costs. We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of this regulatory action in the preamble to the NPRM.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available. Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; and 84.268 William D. Ford Federal Direct Loan Programs)

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Student aid, Reporting and recordkeeping requirements.

Dated: October 18, 1999.

Richard W. Riley,
Secretary of Education.

The Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 is amended to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c-1, unless otherwise noted.

2. Section 668.32 is amended as follows:

A. In paragraph (e)(2), by removing “or”;

B. In paragraph (e)(3), by adding “or” after the semi-colon;

C. By adding a new paragraph (e)(4) to read as follows;

D. In paragraph (h), by removing “, or in the case of a loan made under the FFEL Program, with the lender”;

E. In paragraph (j), by removing the “and” after the semi-colon;

F. In paragraph (k)(7), by removing “SSIG” and adding in its place, “LEAP,” by removing the period at the end of the paragraph and adding in its place a semi-colon, and adding “and” after the semi-colon; and

G. By adding paragraph (l) to read as follows.

§ 668.32 Student eligibility—general.

* * * * *

(e) * * *

(4) Was home-schooled, and either—

(i) Obtained a secondary school completion credential for home school (other than a high school diploma or its recognized equivalent) provided for under State law; or

(ii) If State law does not require a home-schooled student to obtain the credential described in paragraph (e)(4)(i) of this section, has completed a secondary school education in a home school setting that qualifies as an exemption from compulsory attendance requirements under State law;

* * * * *

(1) Is not ineligible under § 668.40.

* * * * *

3. Section 668.38 is amended by revising paragraph (b) to read as follows:

§ 668.38 Enrollment in telecommunications and correspondence courses.

* * * * *

(b)(1) For purposes of this section, a student enrolled in a telecommunications course at an institution of higher education is not enrolled in a correspondence course, if—

(i) The student is enrolled in a program that leads to a certificate for a program of study of 1 year or longer, or an associate, bachelor, or graduate degree; and

(ii) The number of telecommunications and correspondence courses the institution offered during its latest completed award year was fewer than 50 percent of all the courses the institution offered during that same year.

(2) For purposes of paragraph (b)(1) of this section, an institution of higher education is one—

(i) That is not an institute or school described in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Act; and

(ii) At which at least 50 percent of the programs of study offered by the institution during its latest completed award year led to an associate, bachelor, or graduate degree.

(3) For purposes of paragraph (b)(1)(ii) of this section, the institution must calculate the number of courses using the provisions contained in 34 CFR 600.7(b)(2).

4. Section 668.40 is added to read as follows:

§ 668.40 Conviction for possession or sale of illegal drugs.

(a)(1) A student is ineligible to receive title IV, HEA program funds if the student has been convicted of an offense involving the possession or sale of illegal drugs for the period described in paragraph (b) of this section. However, the student may regain eligibility before that period expires under the conditions described in paragraph (c) of this section.

(2) For purposes of this section, a conviction means only a conviction that is on a student's record. A conviction that was reversed, set aside, or removed from the student's record is not relevant for purposes of this section, nor is a determination or adjudication arising out of a juvenile proceeding.

(3) For purposes of this section, an illegal drug is a controlled substance as defined by section 102(6) of the Controlled Substances Act (21 U.S.C. 801(6)), and does not include alcohol or tobacco.

(b)(1) *Possession.* Except as provided in paragraph (c) of this section, if a student has been convicted—

(i) Only one time for possession of illegal drugs, the student is ineligible to receive title IV, HEA program funds for one year after the date of conviction;

(ii) Two times for possession of illegal drugs, the student is ineligible to receive title IV, HEA program funds for two years after the date of the second conviction; or

(iii) Three or more times for possession of illegal drugs, the student is ineligible to receive title IV, HEA program funds for an indefinite period after the date of the third conviction.

(2) *Sale.* Except as provided in paragraph (c) of this section, if a student has been convicted—

(i) Only one time for sale of illegal drugs, the student is ineligible to receive title IV, HEA program funds for two years after the date of conviction; or

(ii) Two or more times for sale of illegal drugs, the student is ineligible to receive Title IV, HEA program funds for

an indefinite period after the date of the second conviction.

(c) If a student successfully completes a drug rehabilitation program described in paragraph (d) of this section after the student's most recent drug conviction, the student regains eligibility on the date the student successfully completes the program.

(d) A drug rehabilitation program referred to in paragraph (c) of this section is one which—

(1) Includes at least two unannounced drug tests; and

(2)(i) Has received or is qualified to receive funds directly or indirectly

under a Federal, State, or local government program;

(ii) Is administered or recognized by a Federal, State, or local government agency or court;

(iii) Has received or is qualified to receive payment directly or indirectly from a Federally- or State-licensed insurance company; or

(iv) Is administered or recognized by a Federally- or State-licensed hospital, health clinic or medical doctor.

(Authority: 20 U.S.C. 1091(r))

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