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DAVID S. SPENCE  
EXECUTIVE VICE CHANCELLOR  
CHIEF ACADEMIC OFFICER

Code: AA-2004-14  
April 30, 2004

**To:** CSU Presidents

**From:** David S. Spence 

**Subject:** **Federal Pell Grants to Students Enrolled in Postbaccalaureate Teaching Credential Programs**

The 1998 amendments to the Higher Education Act (HEA) of 1965 included a provision (20 U.S.C. 1070a) that the Secretary of Education could allow, on a case-by-case basis, a student to receive a Federal Pell Grant beyond the period required to complete the first baccalaureate course of study if the student is enrolled at least half time in courses required to obtain a teaching credential. Information on this provision was initially communicated to you in my memoranda dated January 5, 1999 and January 12, 1999. Subsequent policy guidance has been provided in the form of federal regulations (34 C.F.R. Sections 668.8, 668.32, and 690.6) published in the *Federal Register* on August 3, 1999 and on October 28, 1999. The provisions are also referenced in the Department of Education's *Federal Student Aid Handbook*, distributed annually to institutions participating in the federal Title IV student financial aid programs.

During the Office of University Auditor's review of the financial aid program administration during 2002, audit staff concluded that at seven of the ten campuses reviewed there were not adequate procedures and controls in place to ensure that postbaccalaureate teaching credential students received the proper Federal Pell Grant disbursements based on their enrollment. The systemwide report (Audit Report Number 02-22) includes a recommendation that "the chancellor's office require each of the campuses to establish and implement procedures for postbaccalaureate Pell Grant recipients to ensure that Pell Grants are only awarded for qualifying courses."

The *Program Participation Agreement (PPA)* that each President has executed with the Secretary of Education conditions the institution's eligibility to participate in federal Title IV student financial aid programs upon compliance with various requirements that include the following:

- using funds received for any program, and any interest or other earnings thereon, solely for the purpose specified in and in accordance with the provisions of that program [20 U.S.C. 1094(a)1]; and
- establishing and maintaining such administrative and fiscal procedures and records as may be necessary to ensure proper and efficient administration of funds received from the Secretary [20 U.S.C. 1094(a)(3)].

Attachment A to this memorandum includes the statutory language found in the Higher Education Amendments of 1998, P.L. 105-244, Section 401(e), and subsequently incorporated in 20 U.S.C. 1070a, that provides for the awarding of Federal Pell Grants to students enrolled in postbaccalaureate teaching credential programs.

Attachments B and C respectively include excerpts from the *Federal Register* editions of August 3, 1999 and October 28, 1999 that reflect proposed and final regulations for 34 C.F.R., Sections 668.8, 668.32, and 690.6, that incorporate the provision for Pell Grants to postbaccalaureate teaching credential students. Comments in the *Federal Register* provide interpretive information relative to the statutory provision and the resultant regulations. Your particular attention is called to page 42213 in Attachment B.

The *Program Participation Agreement* and the statutory and regulatory provisions that govern the awarding of Pell Grants to postbaccalaureate teaching credential students require campuses “to establish and implement procedures for postbaccalaureate Pell Grant recipients to ensure that Pell Grants are only awarded for qualifying courses.” However, based on the recommendation in the University Auditor’s report, we are reminding campuses of the need to establish and adhere to administrative procedures that ensure that Federal Pell Grant funds are disbursed to eligible postbaccalaureate students solely for those courses required to obtain their initial teaching credential.

CSU Executive Orders No. 758 and 896 establish standards for entrance to and continuation in teacher education basic credential programs. The financial aid office is responsible for ensuring that only those postbaccalaureate students who are enrolled in an eligible teaching credential program, and classified appropriately in institutional records, are awarded Federal Pell Grant funds. Caution must be taken to ensure that only students who are enrolled in a program to obtain their initial teaching credential are awarded Federal Pell Grants.

It is incumbent on CSU campuses that offer postbaccalaureate teaching credential programs to carefully review the documents that are attached to and referenced in this memorandum and evaluate their policies and procedures to ensure that Pell Grant funds are being disbursed only to eligible postbaccalaureate teaching credential students for eligible coursework. This review should be undertaken cooperatively by administrative offices responsible for and representing the financial aid office and the school or college of education. In order to ensure that Federal Pell Grant funds are disbursed to postbaccalaureate teaching credential students only for eligible coursework, the financial

aid office and the school of education will need to collaborate to ensure that appropriate procedures have been developed and implemented to identify the coursework required for each teaching credential in order to determine the student's enrollment status for purposes of scheduling the appropriate Federal Pell Grant payments for each award period. Depending on the administrative systems that provide for exchange information on student classifications and enrollment information between and among these functional areas, additional offices (e.g., admissions, registrar) may need to be involved in the review.

Campuses are reminded of the advice provided in AAES 88-64, dated July 22, 1988, that the permanent record of students enrolled in credential programs include notation of completion of the credential program. Consistent with the comment reflected on page 42213 of the *Federal Register* of August 3, 1999 (Attachment B to this memorandum), campuses are further advised that the official transcript and permanent record of students who are admitted to and enroll in a teaching credential program must reflect that enrollment status.

Questions about this memorandum may be directed to Ms. Mary L. Robinson, Associate Director for Student Financial Aid, Academic Affairs, Student Academic Support, at (562) 951-4737 or [mrobinson@calstate.edu](mailto:mrobinson@calstate.edu).

DSS/mlr

Attachments (3)

cc: CSU Provosts/Vice Presidents of Academic Affairs  
CSU Vice Presidents of Administration  
CSU Vice Presidents of Student Affairs  
CSU Deans of Education  
CSU Deans/Directors of Enrollment Management  
CSU Directors of Financial Aid  
CSU Financial Aid Business Officers  
CSU Registrars  
Mr. Allison G. Jones  
Dr. Helene Mandel  
Mr. Larry Mandel  
Chancellor Charles B. Reed  
Mr. Richard P. West  
Dr. Beverly L. Young

**TITLE IV—STUDENT ASSISTANCE**

**PART A—GRANTS TO STUDENTS IN ATTENDANCE AT INSTITUTIONS OF HIGHER EDUCATION**

**SEC. 400. [20 U.S.C. 1070] STATEMENT OF PURPOSE; PROGRAM AUTHORIZATION.**

(a) **PURPOSE.**—It is the purpose of this part, to assist in making available the benefits of postsecondary education to eligible students (defined in accordance with section 484) in institutions of higher education by—

- (1) providing Federal Pell Grants to all eligible students;
- (2) providing supplemental educational opportunity grants to those students who demonstrate financial need;
- (3) providing for payments to the States to assist them in making financial aid available to such students;
- (4) providing for special programs and projects designed (A) to identify and encourage qualified youths with financial or cultural need with a potential for postsecondary education, (B) to prepare students from low-income families for postsecondary education, and (C) to provide remedial (including remedial language study) and other services to students; and
- (5) providing assistance to institutions of higher education.

(b) **SECRETARY REQUIRED TO CARRY OUT PURPOSES.**—The Secretary shall, in accordance with subparts 1 through 8, carry out programs to achieve the purposes of this part.

**Subpart 1—Federal Pell Grants**

**SEC. 401. [20 U.S.C. 1070a] FEDERAL PELL GRANTS: AMOUNT AND DETERMINATIONS; APPLICATIONS.**

(a) **PROGRAM AUTHORITY AND METHOD OF DISTRIBUTION.**—(1) For each fiscal year through fiscal year 2004, the Secretary shall pay to each eligible institution such sums as may be necessary to pay to each eligible student (defined in accordance with section 484) for each academic year during which that student is in attendance at an institution of higher education, as an undergraduate, a Federal Pell Grant in the amount for which that student is eligible, as determined pursuant to subsection (b). Not less than 85 percent of such sums shall be advanced to eligible institutions prior to the start of each payment period and shall be based upon an amount requested by the institution as needed to pay eligible students until such time as the Secretary determines and publishes in the Federal Register with an opportunity for comment, an alternative payment system that provides payments to institutions in an accurate and

timely manner,<sup>1</sup> except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment.

(2) Nothing in this section shall be interpreted to prohibit the Secretary from paying directly to students, in advance of the beginning of the academic term, an amount for which they are eligible, in cases where the eligible institution elects not to participate in the disbursement system required by paragraph (1).

(3) Grants made under this subpart shall be known as “Federal Pell Grants”.

(b) PURPOSE AND AMOUNT OF GRANTS.—(1) The purpose of this subpart is to provide a Federal Pell Grant that in combination with reasonable family and student contribution and supplemented by the programs authorized under subparts 3 and 4 of this part, will meet at least 75 percent of a student’s cost of attendance (as defined in section 472), unless the institution determines that a greater amount of assistance would better serve the purposes of section 401.

(2)(A) The amount of the Federal Pell Grant for a student eligible under this part shall be—

- (i) \$4,500 for academic year 1999–2000;
- (ii) \$4,800 for academic year 2000–2001;
- (iii) \$5,100 for academic year 2001–2002;
- (iv) \$5,400 for academic year 2002–2003; and
- (v) \$5,800 for academic year 2003–2004,

less an amount equal to the amount determined to be the expected family contribution with respect to that student for that year.

(B) In any case where a student attends an institution of higher education on less than a full-time basis (including a student who attends an institution of higher education on less than a half-time basis) during any academic year, the amount of the Federal Pell Grant to which that student is entitled shall be reduced in proportion to the degree to which that student is not so attending on a full-time basis, in accordance with a schedule of reductions established by the Secretary for the purposes of this division, computed in accordance with this subpart. Such schedule of reductions shall be established by regulation and published in the Federal Register in accordance with section 482 of this Act.

(3)(A) For any academic year for which an appropriation Act provides a maximum basic grant in an amount in excess of \$2,700, the amount of a student’s basic grant shall equal \$2,700 plus—

- (i) one-half of the amount by which such maximum basic grant exceeds \$2,700; plus
- (ii) the lesser of—

(I) the remaining one-half of such excess; or

(II) the sum of the student’s tuition and, if the student has dependent care expenses (as described in section 472(8)) or disability-related expenses (as described in section 472(9)), an allowance determined by the institution for such expenses.

<sup>1</sup>So in law. Section 401(a)(2) of P.L. 105–244 (112 Stat. 1650) added text in the second sentence after “pay eligible students”. The inserted material should have been added after the comma in “pay eligible students.”.

(B) An institution that charged only fees in lieu of tuition as of October 1, 1998, may include in the institution's determination of tuition charged, fees that would normally constitute tuition.

(4) No Federal Pell Grant under this subpart shall exceed the difference between the expected family contribution for a student and the cost of attendance (as defined in section 472) at the institution at which that student is in attendance. If, with respect to any student, it is determined that the amount of a Federal Pell Grant plus the amount of the expected family contribution for that student exceeds the cost of attendance for that year, the amount of the Federal Pell Grant shall be reduced until the combination of expected family contribution and the amount of the Federal Pell Grant does not exceed the cost of attendance at such institution.

(5) No Federal Pell Grant shall be awarded to a student under this subpart if the amount of that grant for that student as determined under this subsection for any academic year is less than \$400, except that a student who is eligible for a Federal Pell Grant that is equal to or greater than \$200 but less than \$400 shall be awarded a Federal Pell Grant of \$400.

(6)(A) The Secretary may allow, on a case-by-case basis, a student to receive 2 Pell grants during a single award year, if—

(i) the student is enrolled full-time in an associate or baccalaureate degree program of study that is 2 years or longer at an eligible institution that is computed in credit hours; and

(ii) the student completes course work toward completion of an associate or baccalaureate degree that exceeds the requirements for a full academic year as defined by the institution.

(B) The Secretary shall promulgate regulations implementing this paragraph.

(7) Notwithstanding any other provision of this subpart, the Secretary shall allow the amount of the Federal Pell Grant to be exceeded for students participating in a program of study abroad approved for credit by the institution at which the student is enrolled when the reasonable costs of such program are greater than the cost of attendance at the student's home institution, except that the amount of such Federal Pell Grant in any fiscal year shall not exceed the grant level specified in the appropriate Appropriation Act for this subpart for such year. If the preceding sentence applies, the financial aid administrator at the home institution may use the cost of the study abroad program, rather than the home institution's cost, to determine the cost of attendance of the student.

(8) No Federal Pell Grant shall be awarded under this subpart to any individual who is incarcerated in any Federal or State penal institution.

(c) PERIOD OF ELIGIBILITY FOR GRANTS.—(1) The period during which a student may receive Federal Pell Grants shall be the period required for the completion of the first undergraduate baccalaureate course of study being pursued by that student at the institution at which the student is in attendance except that any period during which the student is enrolled in a noncredit or remedial course of study as defined in paragraph (2) shall not be counted for the purpose of this paragraph.

(2) Nothing in this section shall exclude from eligibility courses of study which are noncredit or remedial in nature (including courses in English language instruction) which are determined by the institution to be necessary to help the student be prepared for the pursuit of a first undergraduate baccalaureate degree or certificate or, in the case of courses in English language instruction, to be necessary to enable the student to utilize already existing knowledge, training, or skills. Nothing in this section shall exclude from eligibility programs of study abroad that are approved for credit by the home institution at which the student is enrolled.

(3) No student is entitled to receive Pell Grant payments concurrently from more than one institution or from the Secretary and an institution.

(4) Notwithstanding paragraph (1), the Secretary may allow, on a case-by-case basis, a student to receive a basic grant if the student—

(A) is carrying at least one-half the normal full-time work load for the course of study the student is pursuing, as determined by the institution of higher education; and

(B) is enrolled or accepted for enrollment in a postbaccalaureate program that does not lead to a graduate degree, and in courses required by a State in order for the student to receive a professional certification or licensing credential that is required for employment as a teacher in an elementary school or secondary school in that State,

except that this paragraph shall not apply to a student who is enrolled in an institution of higher education that offers a baccalaureate degree in education.

(d) APPLICATIONS FOR GRANTS.—(1) The Secretary shall from time to time set dates by which students shall file applications for Federal Pell Grants under this subpart.

(2) Each student desiring a Federal Pell Grant for any year shall file an application therefor containing such information and assurances as the Secretary may deem necessary to enable the Secretary to carry out the functions and responsibilities of this subpart.

(e) DISTRIBUTION OF GRANTS TO STUDENTS.—Payments under this section shall be made in accordance with regulations promulgated by the Secretary for such purpose, in such manner as will best accomplish the purpose of this section. Any disbursement allowed to be made by crediting the student's account shall be limited to tuition and fees and, in the case of institutionally owned housing, room and board. The student may elect to have the institution provide other such goods and services by crediting the student's account.

(f) CALCULATION OF ELIGIBILITY.—(1) Each contractor processing applications for awards under this subpart (including a central processor, if any, designated by the Secretary) shall, in a timely manner, furnish to the student financial aid administrator (at each institution of higher education which a student awarded a Federal Pell Grant under this subpart is attending), as a part of its regular output document, the expected family contribution for each such student. Each such student financial aid administrator shall—

(A) examine and assess the data used to calculate the expected family contribution of the student furnished pursuant to this subsection;

(B) recalculate the expected family contribution of the student if there has been a change in circumstances of the student or in the data submitted;

(C) make the award to the student in the correct amount; and

(D) after making such award report the corrected data to such contractor and to a central processor (if any) designated by the Secretary for a confirmation of the correct computation of amount of the expected family contribution for each such student.

(2) Whenever a student receives an award under this subpart that, due to recalculation errors by the institution of higher education, is in excess of the amount which the student is entitled to receive under this subpart, such institution of higher education shall pay to the Secretary the amount of such excess unless such excess can be resolved in a subsequent disbursement to the institution.

(3) Each contractor processing applications for awards under this subpart shall for each academic year after academic year 1986–1987 prepare and submit a report to the Secretary on the correctness of the computations of amount of the expected family contribution, and on the accuracy of the questions on the application form under this subpart for the previous academic year for which the contractor is responsible. The Secretary shall transmit the report, together with the comments and recommendations of the Secretary, to the Committee on Appropriations and the Committee on Labor and Human Resources of the Senate and the Committee on Appropriations and the Committee on Education and the Workforce of the House of Representatives.

(g) INSUFFICIENT APPROPRIATIONS.—If, for any fiscal year, the funds appropriated for payments under this subpart are insufficient to satisfy fully all entitlements, as calculated under subsection (b) (but at the maximum grant level specified in such appropriation), the Secretary shall promptly transmit a notice of such insufficiency to each House of the Congress, and identify in such notice the additional amount that would be required to be appropriated to satisfy fully all entitlements (as so calculated at such maximum grant level).

(h) USE OF EXCESS FUNDS.—(1) If, at the end of a fiscal year, the funds available for making payments under this subpart exceed the amount necessary to make the payments required under this subpart to eligible students by 15 percent or less, then all of the excess funds shall remain available for making payments under this subpart during the next succeeding fiscal year.

(2) If, at the end of a fiscal year, the funds available for making payments under this subpart exceed the amount necessary to make the payments required under this subpart to eligible students by more than 15 percent, then all of such funds shall remain available for making such payments but payments may be made under this paragraph only with respect to entitlements for that fiscal year.

(i) TREATMENT OF INSTITUTIONS AND STUDENTS UNDER OTHER LAWS.—Any institution of higher education which enters into an agreement with the Secretary to disburse to students attending that institution the amounts those students are eligible to receive under this subpart shall not be deemed, by virtue of such agreement, a contractor maintaining a system of records to accomplish a function of the Secretary. Recipients of Pell Grants shall not be considered to be individual grantees for purposes of subtitle D of title V of Public Law 100–690.

(j) INSTITUTIONAL INELIGIBILITY BASED ON DEFAULT RATES.—

(1) IN GENERAL.—No institution of higher education shall be an eligible institution for purposes of this subpart if such institution of higher education is ineligible to participate in a loan program under part B or D as a result of a final default rate determination made by the Secretary under part B or D after the final publication of cohort default rates for fiscal year 1996 or a succeeding fiscal year.

(2) SANCTIONS SUBJECT TO APPEAL OPPORTUNITY.—No institution may be subject to the terms of this subsection unless the institution has had the opportunity to appeal the institution's default rate determination under regulations issued by the Secretary for the loan program authorized under part B or D, as applicable. This subsection shall not apply to an institution that was not participating in the loan program authorized under part B or D on the date of enactment of the Higher Education Amendments of 1998, unless the institution subsequently participates in the loan programs.

## **Subpart 2—Federal Early Outreach and Student Services Programs**

### **CHAPTER 1—FEDERAL TRIO PROGRAMS**

#### **SEC. 402A. [20 U.S.C. 1070a-11] PROGRAM AUTHORITY; AUTHORIZATION OF APPROPRIATIONS.**

(a) GRANTS AND CONTRACTS AUTHORIZED.—The Secretary shall, in accordance with the provisions of this chapter, carry out a program of making grants and contracts designed to identify qualified individuals from disadvantaged backgrounds, to prepare them for a program of postsecondary education, to provide support services for such students who are pursuing programs of postsecondary education, to motivate and prepare students for doctoral programs, and to train individuals serving or preparing for service in programs and projects so designed.

\* (b) RECIPIENTS, DURATION, AND SIZE.—

(1) RECIPIENTS.—For the purposes described in subsection (a), the Secretary is authorized, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), to make grants to, and contracts with, institutions of higher education, public and private agencies and organizations, combinations of such institutions, agencies and organizations, and in exceptional circumstances, secondary schools, for planning, developing, or

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Tuesday  
August 3, 1999

# Registered Federal Partners

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## Part III

### Department of Education

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34 CFR Parts 668, 673, 674, 675, 676,  
and 690

Student Assistance General Provisions;  
General Provisions for the Federal  
Perkins Loan Program, Federal Work-  
Study Program, Federal Supplemental  
Educational Opportunity Grant Program,  
and Federal Pell Grant Program;  
Proposed Rule

**DEPARTMENT OF EDUCATION**

**34 CFR Parts 668, 673, 674, 675, 676, and 690**

**RIN 1845-AA01**

**Student Assistance General Provisions; General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program; and Federal Pell Grant Program**

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The proposed regulations would amend the regulations governing the Student Assistance General Provisions, the Campus-Based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs), and the Federal Pell Grant Program. These proposed amendments are a result of recently enacted changes to the Higher Education Act of 1965, as amended (HEA), made by the Higher Education Amendments of 1998 (1998 Amendments).

**DATES:** We must receive your comments on or before September 15, 1999.

**ADDRESSES:** Address all comments about these proposed regulations to: Ms. Kathy Gause, U.S. Department of Education, P.O. Box 23272, Washington, D.C. 20026-3272. If you prefer to send your comments through the Internet use the following address: CBPeIIINPRM@ed.gov

If you want to comment on the information collection requirements you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

**FOR FURTHER INFORMATION CONTACT:**

1. For the Federal Perkins Loan, FWS, and FSEOG programs: Ms. Kathy Gause, U.S. Department of Education, 400 Maryland Avenue, S.W., Regional Office Building 3, Room 3045, Washington, DC 20202-5447. Telephone: (202) 708-8242.

2. For the Student Assistance General Provisions and the Federal Pell Grant Program: Ms. Monica Woods, U.S. Department of Education, 400 Maryland Avenue, S.W., Regional Office Building 3, Room 3045, Washington, DC 20202-5447. 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.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraphs.

**SUPPLEMENTARY INFORMATION:**

**Invitation to Comment**

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 3053, ROB-3, 7th & D Streets, SW, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

**Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record**

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid you may call (202) 205-8113 or (202) 260-9895. If you use a TDD, you may call the Federal Information Relay Service at 1-800-877-8339.

**Negotiated Rulemaking Process**

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements

resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we published a notice in the **Federal Register** (63 FR 59922, November 6, 1998) requesting advice and recommendations from interested parties concerning what regulations were necessary to implement Title IV of the HEA. We also invited advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. We further requested advice and recommendations concerning ways to prioritize the numerous issues in Title IV, in order to meet statutory deadlines. Additionally, we requested advice and recommendations concerning how to conduct the negotiated rulemaking process, given the time available and the number of regulations that needed to be developed.

In addition to soliciting written comments, we held three public hearings and several informal meetings to give interested parties an opportunity to share advice and recommendations with the Department. The hearings were held in Washington, DC, Chicago, and Los Angeles, and we posted transcripts of those hearings to the Department's Information for Financial Aid Professionals' website (<http://ifap.ed.gov>).

We then published a second notice in the **Federal Register** (63 FR 71206, December 23, 1998) to announce the Department's intention to establish four negotiated rulemaking committees to draft proposed regulations implementing Title IV of the HEA. The notice announced the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process and announced that the Department would select participants for the process from nominees of those organizations or groups. We requested nominations for additional participants from anyone who believed that the organizations or groups listed did not adequately represent the list of interests outlined in section 492. Once the four committees were established they met to develop proposed regulations over the course of several months, beginning in January.

The proposed regulations contained in this notice of proposed rulemaking (NPRM) reflect the final consensus of Committee III, which was made up of the following members:

Accrediting Commission of Career Schools and Colleges of Technology  
 American Association of Collegiate Registrars and Admissions Officers  
 American Association of Community Colleges  
 American Association of Cosmetology Schools  
 American Association of State Colleges and Universities  
 American Council on Education  
 Association of American Universities  
 Career College Association  
 Coalition of Higher Education Assistance Organizations  
 Education Finance Council  
 Legal Services Counsel (a coalition)  
 National Association of College and University Business Officers  
 National Association of Equal Opportunity in Higher Education  
 National Association of Graduate/Professional Students  
 National Association of Independent Colleges and Universities  
 National Association of State Student Grant and Aid Programs/National Council of Higher Education Loan Programs (a coalition)  
 National Association of State Universities and Land-Grant Colleges  
 National Association of Student Financial Aid Administrators  
 National Direct Student Loan Coalition  
 The College Board  
 The College Fund/United Negro College Fund  
 United States Department of Education  
 United States Student Association  
 US Public Interest Research Group

As stated in the Committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document.

#### **Affected Programs**

The student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended (HEA), affected by these proposed regulations are the Federal Perkins Loan, FWS, FSEOG, and the Federal Pell Grant programs. These proposed regulations also affect the Student Assistance General Provisions regulations.

The term "campus-based programs" refers to the Federal Perkins Loan, FWS, and FSEOG programs. A description of the major proposed changes to these program regulations follows. The proposed changes that pertain to more than one program are described first, followed by descriptions of provisions that pertain to only a specific program. We will begin with a discussion of the proposed changes to the Student Assistance General Provisions regulations followed by the "campus-

based programs" discussion, and end with proposed changes to the Federal Pell Grant Program.

#### **Summary of Proposed Regulatory Changes**

##### **Student Assistance General Provisions**

##### **Section 668.8 Eligible Program and Section 668.32 Student Eligibility—General**

Section 401(c) of the HEA was amended by the 1998 Amendments to allow students enrolled in a postbaccalaureate teacher certificate or licensing program to receive a Federal Pell Grant. For purposes of the Federal Pell Grant Program, the current Student Assistance General Provisions regulations require an educational program to be an undergraduate program in order to qualify as an eligible program. The current regulations also require that a student not have a baccalaureate degree or first professional degree in order to receive a Federal Pell Grant. These proposed regulations would amend the eligible program provision in § 668.8 and the student eligibility provision in § 668.32 of the Student Assistance General Provisions to conform with the amended HEA.

##### **Section 668.161 Scope and Purpose.**

Amended section 445(c) of the HEA allows an institution, upon the written request of a student, to make payments of FWS funds directly to the student's account at a financial institution or account at the institution for tuition and fees, contracted room and board, and other institutionally provided educational related goods and services. Currently §§ 668.164 and 668.165 of the *Subpart K—Cash Management* regulations establish the rules and procedures under which a participating institution disburses Title IV, HEA program funds. However, Subpart K does not specifically address the crediting of FWS earnings to a student's account at the institution. Section 675.16 of the FWS regulations would be amended to establish the disbursement procedures for paying a student his or her wages. Therefore, these proposed regulations would amend § 668.161 to indicate that an institution must follow § 675.16 for paying a student under the FWS Program instead of §§ 668.164 and 668.165.

##### **Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs**

##### **Section 673.5 Overaward**

These proposed regulations would modify the overaward provisions in

§ 673.5 of the regulations for the campus-based programs. Section 428(a)(2)(C) of the HEA was amended to change the definition of estimated financial assistance to exclude veterans education benefits under Title 38, Chapter 30 (Montgomery GI Bill) and national service education awards or post-service benefits under Title I of the National and Community Service Act of 1990 (AmeriCorps) in determining a student's eligibility for subsidized loans. This applies to a subsidized Federal Stafford Loan (subsidized Stafford Loan) under the Federal Family Education Loan (FFEL) Program and a Federal Direct Stafford/Ford Loan (Direct Subsidized Loan) under the William D. Ford Federal Direct Loan (Direct Loan) Program.

Under current campus-based regulations, if a student has both a subsidized loan and campus-based aid the most stringent requirement regarding resources becomes operative since the student's eligibility for campus-based funds is reduced by the amount of subsidized loans and any Montgomery GI Bill benefits and AmeriCorps funds, or both, paid for the cost of attendance. Thus, students receiving subsidized loans because of the new exclusion of these benefits may have their eligibility for campus-based aid reduced. The Committee concluded that, under the new statute, a student should not lose campus-based eligibility because of the interaction of the various Title IV programs. Therefore, in order to allow students to have the full advantage of this statutory exclusion of benefits without losing campus-based eligibility, these proposed regulations would change the definition of "resources" for the campus-based programs in cases where a student receives both a subsidized loan and Montgomery GI Bill veterans education benefits and/or an AmeriCorps education award. These regulations are proposing that when packaging a student's financial aid under the campus-based programs, an institution may exclude as a resource any portion of a subsidized Stafford Loan or a Direct Subsidized Loan that is equal to or less than the amount of the student's Montgomery GI Bill veterans education benefits and AmeriCorps education awards or post-service benefits paid for the cost of attendance.

##### **Sections 674.10, 675.10, and 676.10 Selection of Students**

Current regulations require institutions to offer to less-than-full-time and independent students at least five percent of its FWS allotment, five percent of its FSEOG allotment, or five percent of the dollar amount of the

loans made under the Federal Perkins Loan Program if the need of all these students exceeds five percent of the total need of all students at an institution. These proposed regulations would amend §§ 674.10, 675.10, and 676.10 in accordance with amended sections 413C(d), 443(b)(3), and 464(b)(2) of the HEA, to provide that if an institution's FWS, FSEOG, or Federal Perkins Loan (respectively) allocation is directly or indirectly based in part on the financial need of less-than-full-time or independent students, then the institution must offer to those students a reasonable portion of the FWS allocation, FSEOG allocation, or dollar amount of Federal Perkins Loans made.

The language in the sections of the HEA referred to above require institutions to "make available" campus-based funds to less-than-full-time and independent students. The Committee realized that in some circumstances it may be difficult for an institution actually to disburse funds to these students because institutions have no control over whether students will accept aid. Therefore, to accommodate these circumstances and prevent a burden on institutions, the Committee agreed that the words "make available" should be interpreted to mean that the institution must "offer" the funds to less-than-full-time and independent students.

These proposed regulations contain no definition of the statutory words "reasonable portion". Institutions are expected to have reasonable packaging policies for awarding campus-based funds. A policy of exclusion for less-than-full-time and independent students would not be acceptable for purposes of this requirement.

### Federal Work-Study Programs

#### Section 675.2 Definitions

In an effort to increase participation of FWS students in community service activities, the definition of "community services," in section 441(c) of the HEA has been amended. The definition of "community services" now includes child care services provided on campus that are "open and accessible to the community" and services to students with disabilities who "are enrolled at the institution." These proposed regulations would amend § 675.2 of the FWS regulations to reflect these statutory changes.

*Child care services.* The statutory changes do not alter the Secretary's current policy on the inclusion of child care services provided on campus as "community service".

This policy is described in Part 3 of *The 1999-2000 Student Financial Aid Handbook* and in "Dear Colleague" letters CB-94-4, dated March 1994, and CB-97-12, dated July 1997. On-campus jobs can meet the definition of community service jobs if the services provided are open and accessible to the community. A university or college in and of itself is not considered the community for this purpose.

A service (i.e., child care) is considered open to the community if the service is publicized to the community and the general public uses the service. These regulations are not proposing to set a numerical count or percentage requirement for institutions to demonstrate public use of the service. However, if the service is provided only to students, faculty, staff, and their families, an FWS job does not meet the definition of "community service" under the FWS Program.

*Services for students with disabilities.* The 1998 Amendments also amended the definition of "community services" to include the provision of support services for students with disabilities who are enrolled at the institution. Current regulations provide that on-campus jobs providing support services for students with disabilities could meet the definition of "community services" only if those services were provided to the community as well. Under section 441(c)(3) of the amended HEA, services to students with disabilities are to be considered as community service activities, even if the services are provided exclusively to students with disabilities who are enrolled at the institution. This is the only statutory exception to the requirement that community services must be open and accessible to the community.

#### Section 675.8 Program Participation Agreement

These proposed regulations would amend the provisions governing the program participation agreement between the Secretary and the institution in § 675.8 in accordance with the statutory change in section 443(b)(6) of the HEA. The statutory change eliminates the requirement that institutions employing FWS students must make "equivalent employment" offered or arranged by the institution reasonably available to all students at the institution who desire to work.

#### Section 675.16 Payments Directly to the Student's Account

These proposed regulations would amend § 675.16, in accordance with amended section 445(c) of the HEA, to allow an institution, upon the written

request of a student, to make payments of FWS funds directly to the student's account at a financial institution or the student's account at the educational institution for tuition and fees, contracted room and board, and other institutionally-provided educationally-related goods and services.

Currently, the FWS regulations prohibit an institution from directly transferring the Federal share of FWS earnings to a student's account at the institution. Since the FWS Program regulations allow for payment to the student by check or similar instrument, the Department in the past eased the administrative burden for institutions by allowing for the electronic transfer of FWS compensation to the student's bank account. This procedure was acceptable if the student signed an authorization for the electronic transfer and the institution maintained that authorization on file. The institution could not require a student to use this method as a condition for receiving FWS funds.

The 1998 Amendments broaden the institution's authority concerning students who want their FWS earnings credited to their accounts at the institution to cover institutional charges. Institutions already had this authority for all other Title IV, HEA program funds under §§ 668.164 and 668.165 of the *Subpart K—Cash Management* regulations.

Under § 668.165 of the current regulations an institution is required to provide specific award information to a student before it starts disbursing Title IV, HEA funds for any award year. However, under the proposed regulations § 668.165 will not apply to the FWS Program. Therefore, to have this requirement continue to apply to the FWS Program, these regulations are proposing that this student notification requirement be added to the FWS regulations in § 675.16. These regulations also propose that an institution, before making an initial disbursement of FWS compensation for an "award period" to a student, must notify the student of the amount of FWS compensation he or she is authorized to earn, and how and when the compensation will be paid.

An "award period" is the period of time covered by the FWS award made to a specific student. For example, if an institution makes an FWS award to a student for only the summer, the "award period" is that period of time. In this example, the period of time crosses over two award years and the portion of compensation earned up to June 30 is reported for one award year and the compensation earned after that

date is reported for the next award year. It is not the intention of the proposed regulations to require that an institution inform the student about the summer award again even though a new award year has started. Because of this factor, the proposed FWS regulations for the student notification refer to an "award period" and not an award year.

*FWS Program student rights and responsibilities.* The FWS Program's purpose is to provide part-time employment to needy undergraduate and graduate students. The important distinction to be made between FWS Program funds and other Title IV program funds is that under the FWS Program, the students hold jobs and their compensation is earned and governed by the same applicable Federal, State, or local laws as any other type of earnings from employment. These proposed regulations would allow institutions to credit FWS earnings to a student's account at the institution or to initiate an EFT to a bank account designated by the student under the following conditions:

- The institution must obtain a written authorization from the student;
- The authorization to transfer funds to a student's account at the institution must be separate from the authorization to have funds transferred to his or her bank account;
- For purposes of the authorization to transfer FWS funds to a student's bank account, the bank forms required to initiate a direct EFT deposit can be considered the authorization;
- The authorization cannot be included as part of a list or in combination with other types of authorizations signed by the student;
- The student may not be required or coerced to provide the authorization;
- The student must be allowed to cancel or modify the authorization at any time;
- The institution must clearly explain how it will use the authorization; and
- If an institution credits a student's account and the total amount of FWS funds credited exceeds the amount of tuition and fees, contracted room and board, and charges for other institutionally-provided educationally-related goods and services, the student must be paid the balance as soon as possible by the institution. However, a credit balance must be paid no later than 14 days after the balance occurred on the student's account.

*Holding excess FWS funds on behalf of students.* These proposed regulations would also allow an institution to hold, on behalf of a student, FWS funds that would otherwise be paid directly to the student after a balance occurred on the

student's account unless specifically prohibited by the Secretary under the terms of a reimbursement payment method.

To hold FWS funds for a student, an institution must:

- Obtain a written authorization from the student for this specific purpose;
- Identify the amount of FWS funds held in excess for each student in a designated subsidiary ledger account;
- Maintain cash in its bank account that is always at a minimum equal to the FWS funds being held for students; and
- Pay any remaining balance by the end of the institution's final FWS payroll period for an award period.

#### *Section 675.18 Use of Funds*

These regulations propose several amendments to § 675.18.

*Carry back funds for summer employment.* First, to provide consistency with the new authority in the FSEOG Program to carry back FSEOG funds, these regulations are proposing to change the date of May 15 in § 675.18(f) to May 1. Currently, an institution is authorized to make payments of FWS funds from the succeeding award year's allocation to students for services performed on or after May 15 of the previous award year but prior to the beginning of the succeeding award year (that is, for summer employment). The HEA now provides this same additional "carry-back" authority for the FSEOG Program. After discussion of various possible dates, the Committee agreed that May 1 is a more realistic date. This is the only proposed change for the FWS carry-forward/carry-back provision.

*Community service percentage requirement:* Second, in accordance with amended section 443(b)(2) of the HEA, these regulations are proposing to amend § 675.18(g) to provide that institutions are required to use at least seven percent of the total funds granted to the institution to compensate students employed in community service activities for the 2000–2001 and subsequent award years. Currently, institutions are required to use at least five percent of those funds to compensate those students.

*New reading tutoring and family literacy project requirement.* Third, in accordance with amended section 443(b)(2) of the HEA, these regulations also propose to amend § 675.18(g) to require that, beginning with the 2000–2001 award year, an institution must ensure that one or more of its FWS students is employed (1) in a reading tutoring project as a reading tutor for children who are preschool age or are in elementary school, or (2) in a family

literacy project performing family literacy activities. As discussed in the preceding paragraph, the HEA previously required that an institution use a specified percentage of its annual FWS allocation to employ students in community service jobs. Although the types of community service jobs were not specified, employing students to tutor children in reading or to work in a family literacy program was recommended to institutions because of the national critical needs in these areas. Encouragement is provided to institutions to employ students in these areas in § 675.26 of the FWS regulations through waivers of the FWS institutional-share requirement.

*Family literacy projects.* As defined in "Dear Colleague" letter CB–98–6, dated May 1998, a family literacy project integrates four components. It provides:

- Literacy or pre-literacy education to children;
- Literacy training for parents or other caregivers of children in the program;
- A means of equipping parents or other caregivers with the skills needed to partner with their children in learning; and
- Literacy activities between parents or other caregivers and their children.

This definition is consistent with the *Even Start* and *Head Start* definitions of family literacy programs. The four parts make up a comprehensive family literacy project. The interaction between parent (or caregiver) and child is very important. The family literacy concept recognizes the family as an institution for education and learning and the role of parents as their children's first teachers. The family literacy concept also is based on the premise that an investment in the education of adults in a family is, simultaneously, an investment in improving the chances for academic success for the children in that family. For more information about family literacy projects, you can review "Dear Colleague" letter CB–98–6 on the Information for Financial Aid Professionals (IFAP) web site at: <http://IFAP.ed.gov>

*Waiver—Employment of students as reading tutors or in a family literacy project:* Section 443(b)(2) of the HEA provides for a waiver of the community service requirement if the Secretary determines that enforcing the requirement would cause hardship for students at the institution. Institutions seeking a waiver of the community service requirement are required to follow the Department's procedure. This procedure requires institutions to submit a written waiver request and any supporting information or documents by

a date established by the Secretary and published in the **Federal Register** each year.

The 1998 Amendments revised section 443(b)(2) of the HEA to grant the Secretary the same waiver authority with respect to the new statutory requirement that institutions must ensure that one or more of its FWS students is employed in a reading tutoring project as a reading tutor for children or in a family literacy project performing family literacy activities. Therefore, these proposed regulations would provide for a waiver if the Secretary determines that enforcing this requirement would create a hardship for students at the institution. The Department would use a waiver procedure that requires institutions seeking a waiver of this new requirement to apply for this waiver in the same manner as for the community service requirement waiver. The institution would be required to submit a written waiver request and any supporting information or documents by the date established by the Secretary and published in the **Federal Register** each year.

The Secretary has approved some waivers to institutions of the community service requirement. In the waiver requests that received approval, the institutions stated that their FWS allocation was very small. It was noted that five percent (increase to seven percent beginning with the 2000–2001 award year) of the FWS allocation only provided enough funds for a student to work for a short period; therefore, the schools were unable to find short-term placement for community service. This was considered a hardship to the student. The fact that it may be difficult for the institution to comply with this provision is not in and of itself a basis for granting a waiver.

*Reading tutoring requirement—Priority for schools.* Fourth, if an institution employs FWS students as reading tutors in elementary schools, section 443(d)(2) of the HEA requires the institution, to the extent practicable, to give priority to employing students in schools that are participating in a reading reform project. The 1998 Amendments require that the reading reform project be one that is designed to train teachers how to teach reading on the basis of scientifically-based research on reading and funded under the Elementary and Secondary Education Act of 1965, as amended (ESEA). Under the new tutoring and literacy activities, the amended HEA also requires that the FWS students tutoring reading in a school participating in a reading reform project described above receive training

from the employing school in the instructional practices used by the school. The Secretary recommends that institutions contact their local educational agency to find out if any elementary schools in their area participate in a reading reform project funded under the ESEA.

This new provision supports the President's "America Reads Challenge" which is designed to ensure that all children read independently and well by the end of the third grade, and also targets at-risk children.

*Reading reform projects.* The Reading Excellence Act amended Title II of the ESEA by adding a component to improve students' reading ability. The Reading Excellence Act recognizes a reading reform project to be a project that supports the improvement of reading instruction. The projects are funded by the Department of Education through competitive grants to State educational agencies. The Secretary believes that most educational policy makers and practitioners have come to agree that school reform can result in increased student achievement only to the extent that the following four principles are implemented: (1) Set high academic standards that all students are expected to achieve; (2) Measure student progress; (3) Ensure that there is a well-qualified teacher in every classroom; and (4) Hold schools accountable for results.

*Payment for time spent in training and travel.* Fifth, in accordance with amended section 443(b)(2)(A) of the HEA, these proposed regulations would amend § 675.18 to provide that an institution may pay FWS students for a reasonable amount of time spent for training for any FWS employment, and for travel that is directly related to employment in community service activities (including tutoring in reading and family literacy activities).

Since every job consists of some type of training, whether formal or informal, it has been the Department's policy to allow FWS students to be paid wages during a training period conducted for a reasonable length of time. This policy has applied whether the student was employed in community service activities or not. Therefore, this provision of the proposed regulations is not a change to previous Department policy. The Secretary recognizes that jobs such as math or reading tutors may require more training than other FWS positions. A training period of an academic term would not be considered reasonable because the goal of the FWS Program is to optimize the number of hours an FWS student spends working. The Secretary would consider a

reasonable training period to be one that occurs before the student begins the duties of tutoring and that does not exceed approximately 20 hours. Students may also be compensated for a reasonable amount of time to perform on-going activities (i.e., preparation and evaluation time) necessary to accomplish their tutoring jobs.

The new provision in section 443(b)(2)(A) for compensating FWS students for time spent traveling to and from their community service job does change current policy. Beginning with the 1999–2000 award year, institutions will be allowed to pay students for a reasonable amount of time spent for travel that is directly related to employment in community service activities. The Department's policy would require that the time spent for travel be reported on the student's FWS time record as the hours worked are currently reported. The Secretary recommends that institutions use a time record that shows a separation for the time spent in travel from hours worked.

#### *Section 675.20 Eligible Employers and General Conditions and Limitation on Employment*

In accordance with amended section 443(b)(1) of the HEA, the proposed regulations amend § 675.20 to clarify that FWS employment may include internships, practicums, or assistantships (e.g., research or teaching assistantships). The 1998 Amendments do not alter the Secretary's current policy on an FWS student receiving academic credit from the work performed in an FWS job. This policy as discussed below is described in Part 3 of *The 1999–2000 Student Financial Aid Handbook*.

It has been the Department's longstanding policy that a student could receive academic credit from the work performed under the FWS Program. However, certain restrictions apply to this type of employment. An internship, practicum, or assistantship does not qualify for FWS employment unless the employer would normally pay the student for the same work even if that student were not FWS eligible. If the employer normally pays or has paid such persons, the internship, practicum, or assistantship qualifies as an FWS job. An example of an internship that normally does not qualify as an FWS job is student teaching because student teachers are not usually compensated for that activity. Also, current Department policy is that a student who receives academic credit for an FWS job cannot be paid any less than he or she would be paid if no academic credit were received.

The 1998 Amendments allow a student to earn FWS funds while earning academic credit in the jobs listed in the prior paragraph because these types of jobs are considered to be outside the normal realm of classroom experience. The list of jobs in these proposed regulations is not meant to be exhaustive. However, Department policy does not allow a student to be paid for receiving instruction in a classroom, laboratory, or other academic setting. Institutions must continue to ensure that students are not being paid for attending class.

Department policy allows an FWS student to be assigned to assist an instructor at any private nonprofit or public institution if the student is doing work the institution would normally support under its own employment program. For example, having a student serve as a research assistant to a professor is appropriate, so long as the work is in line with the professor's official duties and is considered work for the institution itself. However, at a proprietary institution a student may not assist an instructor because instructional activities are not considered student services under § 675.2(b) of the current regulations.

#### *Section 675.23 Employment Provided by a Private For-Profit Organization*

Current regulations provide that if a student is employed by a private for-profit organization the work that the student performs must be academically relevant to the student's educational program. In accordance with amended section 443(c)(4) of the HEA, these proposed regulations would amend § 675.23(b) to provide that jobs in a private for-profit organization must be academically relevant only to the maximum extent possible. This change would allow some students to pursue other employment opportunities that provide other valuable experiences outside their field of study.

#### *Section 675.26 FWS Federal Share Limitations*

Current regulations provide that the Federal share of FWS compensation paid to a student employed other than by a for-profit organization may not exceed 75 percent. In accordance with amended section 443(b)(5) of the HEA, these regulations propose to amend § 675.26 to provide that the Federal share of an FWS student's compensation may exceed 75 percent, but may not exceed 90 percent, if the student is employed at a nonprofit or a public organization that cannot afford to pay the regular non-Federal share. Institutions that choose to use this

provision would have to meet several requirements as prescribed in amended section 443(b)(5) of the HEA:

- No placement at the institution itself would be eligible for the 90 percent match, nor at any agency owned, operated or controlled by the institution. It is the Secretary's view and the Committee agreed that a statement in the institution's file, signed by both the organization and the institution, stating that they have no relationship would satisfy this requirement.

- The organization would have to be selected by the institution on an individual case-by-case basis. It is the Secretary's view and the Committee agreed that an institution would satisfy this requirement by selecting the nonprofit or public organization that meets the requirements of this provision through its normal process of selecting potential employers.

- The nonprofit or public organization must be otherwise unable to afford the costs of this employment. In the Secretary's view and the Committee agreed, a signed letter in the institution's file from an official of the organization stating that the organization cannot afford to pay the regular non-Federal share would be sufficient evidence of the organization's inability to pay.

- This 90 percent funding level would be limited to no more than 10 percent of the students paid under the FWS program. For purposes of this calculation, the 1998 Amendments provide that the institution must use the total number of students paid under the FWS Program during the current award year.

It is important to note that this proposed 10 percent limit on the number of students paid at the 90 percent funding level does not include students whose FWS wages have been exempted from the full institutional match due to current regulations in § 675.26(d) that establish waiver criteria. These proposed regulations would continue to authorize a Federal share of 100 percent of the FWS funds awarded to students by an institution for an award year if the following provisions in the current regulations apply:

- The institution requests the increased Federal share on the Fiscal Operations Report and Application to Participate for that year and is designated as an eligible institution under the Strengthening Institutions Program (34 CFR part 607), the Strengthening Historically Black Colleges and Universities Program (34 CFR part 608), or the Strengthening Historically Black Graduate Institutions Program (34 CFR part 609);

- The student is employed as a reading tutor for preschool age children or children who are in elementary school;

- The student is employed in a family literacy program that provides services to families with preschool age children or children who are in elementary school; or

- The student is employed as a mathematics tutor for children who are in elementary school through the ninth grade.

#### **Work-Colleges Program (Subpart C)**

##### *Section 675.45 Allowable Costs, Federal, Share, and Institutional Share*

The Work-Colleges Program was created by the Higher Education Amendments of 1992 to encourage comprehensive work-learning programs and recognize the special nature of institutions that choose to make work-learning a central part of their educational programs. These proposed regulations would amend § 675.45(a) of the current regulations in accordance with amended section 448 of the HEA to provide Work-Colleges with more flexibility in the use of their funds. These proposed regulations would allow participants in the Work-Colleges Program to coordinate and carry out joint projects and activities to promote work service learning.

These proposed regulations would also allow Work-Colleges to use funds available to them to conduct a comprehensive longitudinal study of academic progress and academic and career outcomes, relative to student self-sufficiency in financing their higher education, repayment of student loans, continued community service, kind and quality of service performed and career choice and community service selected after graduation. The Secretary and the Committee expect that the results of this study will provide valuable information about the work-learning experience.

#### **Federal Supplemental Educational Opportunity Grant Program**

##### *Section 676.18 Use of Funds*

In accordance with amended section 413E of the HEA, these proposed regulations would amend § 676.18 to add a new authority for an institution to carry up to ten percent of its current award year FSEOG allocation forward to spend in the next award year and to carry back up to ten percent of its current award year allocation to spend in the prior award year. Current regulations provide institutions with this flexibility under the FWS Program, but not under the FSEOG Program.

In accordance with amended section 413E, the proposed amendments would also permit institutions to carry back any portion of its current award year FSEOG allocation to make awards to students for payment periods that begin on or after May 1 of the prior award year but end prior to the start of the current award year (summer enrollment through June 30). This carry-back authority would be in addition to the authority to carry back ten percent of the succeeding year's allocation for use at any time during the preceding award year.

#### *Authority to Carry Forward and Carry Back FSEOG Funds During the 1998-99 Award Year*

Under proposed § 676.18, institutions would be allowed to use the new authority provided by amended section 413E beginning with the 1998-99 award year. The Secretary has decided and the Committee agreed that the new carry-forward/carry-back authority for the FSEOG Program may be implemented using the same general concepts used for the FWS Program. Under the proposed regulations, the official allocation letter for a specific award period would be the institution's authority to exercise this option. Any of the funds carried forward or back must be reported on the institution's Fiscal Operations and Application to Participate (FISAP). For example, if an institution carried forward 10 percent of its 1998-99 FSEOG allocation to spend in award year 1999-2000, the institution would be required to report this amount on the FISAP to be submitted by October 1, 1999. Before an institution may spend its current year's allocation, it must spend any funds carried forward from the previous year.

**Note:** Due to the timing of the effective date of the law, an institution is not able to carry back 1998-1999 FSEOG funds to spend in the 1997-98 award year or carry forward 1997-1998 FSEOG funds to spend in the 1998-1999 award year.

These proposed changes will give institutions the flexibility to provide additional FSEOG funds to students at a time when traditionally there were no FSEOG funds available, and also help prevent the need for an institution to return unused FSEOG funds for a particular award year.

#### **Federal Pell Grant Program**

##### **Section 690.6 Duration of Student Eligibility—Undergraduate Course of Study and Eligible Postbaccalaureate Program**

The current regulations restrict Federal Pell Grant eligibility to students who have not earned a baccalaureate

degree. The 1998 Amendments revised section 401(c) of the HEA to extend Federal Pell Grant eligibility to students enrolled in a postbaccalaureate teacher certificate or licensing program even if they have earned a bachelor's degree.

In order to teach in most States, students must complete teacher preparation courses. Some institutions incorporate these courses into a baccalaureate program, while others offer these courses upon completion of a baccalaureate program. To complete the teacher preparation courses after earning a baccalaureate degree requires a fifth year of undergraduate study. This fifth year of undergraduate study is comparable to a fourth year of undergraduate study for a baccalaureate program that incorporates teacher preparation. The 1998 Amendments modified the HEA to allow certain students with a baccalaureate degree to receive a Federal Pell Grant while completing a teacher preparation program. As a result of this statutory change, these proposed regulations would amend the duration of the student eligibility provision of the Federal Pell Grant Program regulations. In addition, these proposed regulations would make corresponding changes to the eligible program provision in § 668.8(h) and the student eligibility provision in § 668.32(c) of the Student Assistance General Provisions regulations.

#### Conditions for Determining Eligibility

The 1998 Amendments provide that on a case-by-case basis, students enrolled in a postbaccalaureate teacher certificate or licensing program may be eligible to receive a Federal Pell Grant. To address this case-by-case determination, the Secretary and the Committee agreed to establish a set of conditions to be applied to each student enrolled in a postbaccalaureate teacher certificate or licensing program. Under the proposed regulations, if a student meets these conditions, and is otherwise eligible, he or she may receive a Federal Pell Grant. These conditions are discussed below and proposed in § 690.6(c).

To be eligible for a Federal Pell Grant, the 1998 Amendments require that an otherwise eligible student must be:

- Enrolled in a postbaccalaureate program that consists of courses required by a State to receive a professional certification or licensing credential necessary for employment as a teacher in an elementary or secondary school in that State;
- Enrolled in a postbaccalaureate program that does not lead to a graduate degree;

- Enrolled at a postsecondary institution that does not offer a baccalaureate degree in education; and
- Enrolled as at least a half-time student.

The 1998 Amendments do not address whether students seeking to renew their current teacher certification or licensure, or obtain a teacher certification or licensure in another subject matter, are eligible to receive a Federal Pell Grant. The Committee reached consensus regarding the scope of eligibility for a Federal Pell Grant under this provision; namely, to provide Federal Pell Grant funds to students seeking to obtain certification or licensure to begin teaching within a State. Thus, the proposed regulations limit Federal Pell Grant eligibility to only those students pursuing an initial teacher certification or licensing credential within a State.

The proposed regulations would also allow students enrolled in a postbaccalaureate teacher certificate or licensing program to be eligible to receive a Federal Pell Grant for the period of time necessary to complete the program.

Treatment of Students Enrolled in the Postbaccalaureate Program as Undergraduate Students Enrolled in an Undergraduate Program.

The 1998 Amendments do not address whether students enrolled in a postbaccalaureate teacher certificate or licensing program are enrolled in an undergraduate or graduate program. Historically, the Federal Pell Grant Program has been preserved as a source of financial assistance for undergraduate students enrolled in an undergraduate program. As previously discussed, the postbaccalaureate teacher certificate or licensing program is comparable to a baccalaureate program that incorporates teacher preparation into the fourth year of undergraduate study. For this reason, the Secretary and the Committee agreed that institutions must treat students who receive a Federal Pell Grant under this provision as undergraduate students enrolled in an undergraduate program.

Under these proposed regulations a student would be treated as an undergraduate student enrolled in an undergraduate program. Therefore, the student is not automatically independent for purposes of calculating the expected family contribution. Whether the student is dependent or independent, the student must maintain the same dependency status for all Title IV, student financial aid programs. Furthermore, the student is only eligible for fifth year undergraduate Perkins, FFEL, and Direct loan amounts.

### Requirement to be a Regular Student in Order to Receive a Federal Pell Grant

The 1998 Amendments do not change the requirement that a Federal Pell Grant recipient must be a regular student. A regular student is a person who is enrolled in an eligible program for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by the institution. Therefore, the institution must provide a student enrolled in a postbaccalaureate teacher certificate or licensing program with a certificate or other recognized educational credential. This is true even if the State provides the student with a certificate upon completion of the postbaccalaureate program. For the purpose of this provision only, it is the view of the Secretary and the Committee agreed that an acceptable recognized educational credential may be an official transcript that documents the student's enrollment in or completion of a postbaccalaureate teacher certificate or licensing program.

### Simultaneous Enrollment in Both the Postbaccalaureate Teacher Certificate or Licensing Program and a Graduate or Professional Degree Program

Neither the 1998 Amendments nor the proposed regulations in § 690.6 address simultaneous enrollment in both the postbaccalaureate program (as described here) and a graduate or professional degree program.

The Secretary and the Committee agreed to allow Pell Grant eligibility to a student who is enrolled in a postbaccalaureate program and a separate graduate or professional degree program. However, to be consistent with the proposed changes in § 690.6, the proposed regulations would require an institution to consider the following when determining a student's eligibility for a Federal Pell Grant:

- A student who is enrolled in a postbaccalaureate teacher certificate or licensing program and receives a Federal Pell Grant is treated as an undergraduate student enrolled in an undergraduate program. Thus, the student must be treated as an undergraduate student for the other Title IV programs; e.g., a student who receives a Federal Pell Grant is only eligible for fifth year undergraduate loan amounts;

- A student is not eligible for a Federal Pell Grant if he or she is solely enrolled in a graduate or professional degree program, even if the program's courses are the same as those required for the postbaccalaureate teacher certificate or licensing program;

- A student is not eligible for a Federal Pell Grant if his or her

enrollment status, based on the hours required for the postbaccalaureate teacher certificate or licensing program, is less than half-time; and

- Only those courses required for the postbaccalaureate teacher certificate or licensing program can be considered when determining the student's enrollment status.

### Section 690.7 Institutional Participation

The 1998 Amendments provide that an institution is ineligible to participate in the Federal Pell Grant Program upon losing its eligibility to participate in the FFEL or Direct Loan programs because of its default rate. This provision is effective after the Secretary's final publication of the cohort default rates for fiscal year 1996. (These rates were published on October 26, 1998). This new provision, in section 401(j) of the HEA, applies to institutions participating in the FFEL or Direct Loan program on or after October 7, 1998. As a result of this statutory change, these regulations propose to amend § 690.7 to provide for this loss of eligibility to participate in the Federal Pell Grant Program. Specific information on the loss of eligibility is provided in proposed § 668.17(b)(4) in a recently published NPRM.

### Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These proposed regulations would address the National Education Goals that (1) all children will start school ready to learn and that student achievement will be enhanced; (2) call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education and for supporting life-long learning; (3) every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship; and (4) the Nation's teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century. The proposed regulations in § 675.18(g) would further

the objectives of these Goals by requiring FWS student participation in reading tutoring and in family literacy projects where the family is recognized as an institution for education and learning and the parent is recognized as their children's first teachers. The objectives of the Goals would also be addressed by the proposal to extend eligibility for Federal Pell Grants to those students who are pursuing a teacher certification or licensing credential through a State approved non-degree postbaccalaureate program.

### Executive Order 12866:

#### 1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits of this regulatory action—both quantitative and qualitative—we have determined that the benefits would 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 note that, as these proposed regulations were subject to negotiated rulemaking, the costs and benefits of the various requirements were discussed thoroughly by negotiators. The consensus reached on a particular requirement generally reflected agreement on the best possible approach to that requirement in terms of cost and benefit.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or to increase any potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the Title IV, HEA programs.

#### 2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

We invite comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
  - Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
  - Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 668.8 *Eligible Program*.)
  - Could the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
  - What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the ADDRESSES section of the preamble.

#### Regulatory Flexibility Act Certification

We certify that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Entities affected by these regulations are institutions of higher education that participate in the Title IV, HEA programs. The institutions are defined as small entities, according to the U.S. Small Business Administration, if they are: for-profit or nonprofit entities with total revenue of \$5,000,000 or less; or entities controlled by governmental entities with populations of 50,000 or less. These proposed regulations would not impose a significant economic impact on a substantial number of small entities. The regulations would benefit both small and large institutions by providing additional flexibility in the administration of the Federal Pell Grant and Campus-Based programs without requiring significant changes to current institutional system operations. These proposed regulations would ease administrative burden and augment student benefits by: expanding Federal Pell Grant eligibility to allow students enrolled in a postbaccalaureate teacher certification or licensing program to receive a Federal Pell Grant; allowing an institution, upon request of a student, to make payments of FWS funds directly to the student's account at the institution; revising the definition of "resources" in the Campus-Based programs to maximize student benefits

and augment institutional flexibility in aid packaging; and implementing new carry-forward and carry-back authorities for the FSEOG Program.

We invite comments from small institutions as to whether the proposed changes would have a significant economic impact on them.

#### Paperwork Reduction Act of 1995

Proposed §§ 673.5, 675.10, 675.16, and 675.20 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review. *Collection of information: General Provisions for the Federal Perkins Loan, FWS, and FSEOG Programs—Section 673.5—Overaward—The Department currently has this section approved under OMB control number 1845–0535. We propose to change the definition of the term "resources" for a student who receives campus-based aid, a subsidized Stafford Loan or a Direct Subsidized Loan, and Montgomery GI Bill veterans educational benefits and/or an AmeriCorps education award paid for the cost of attendance. The institution would be able to exclude as a resource any portion of the subsidized loans that is equal to or less than the amount of the veterans education or AmeriCorps benefits received. This provision does not change the information collection contained in this section.*

*Section 675.10—Selection of students for FWS employment—We propose under § 675.10(c) that if an institution's allocation of FWS funds is based in part on the financial need of students attending the institution as less-than-full-time or independent students, the institution must offer a reasonable portion of the allocation for FWS to those students. The requirement for offering 5 percent of the FWS allocation would be eliminated. This requirement does not change the information collection contained in this section regarding the maintaining of an institution's procedures for selecting students for FWS employment.*

*Section 675.16—Payments to students—We are proposing under § 675.16(a)(2) that before an institution pays FWS compensation to a student, the institution will be required to send the student a notice informing the student of the amount of funds he or she is eligible to earn, and how and when the FWS funds will be paid. To provide the student with this notice is standard institutional practice. The institutions that participate in the Title IV, HEA programs normally send this notice out*

to all students that have applied to their school for Title IV, HEA funds. Students generally receive one notice listing all Title IV, HEA program funds they can expect to receive. FWS funds are earned compensation. Therefore, we have concluded that the requirement for the notice should be reiterated in § 675.16. There are 3,282 institutions of higher education currently participating in the FWS Program, with 747,913 total FWS recipients. We understand that the majority of these 747,913 FWS recipients receive some other type of Title IV, HEA program funds and that institutions are already providing FWS students this information along with information on other types of aid the student can expect to receive in one notice.

Subpart K of the Student Assistance General Provisions regulations (34 CFR Part 668) under the OMB control number 1845–0697 governs the cash management regulations as authorized by section 487 of the HEA. Amendments to this section were part of a Division-wide package—Cash Management/Easy Access for Students and Institutions (EASI)—intended to clarify and consolidate current policies and requirements, and make necessary changes in the regulatory framework for us to improve significantly the delivery of Title IV, HEA program funds to students and institutions. Burden hours for § 668.165(a)(1) were calculated and cleared under 1845–0697 to determine the cost to institutions for notifying students once an award year of: the amounts of Title IV, HEA program funds a student can expect to receive; how and when those funds will be paid; and, whether any Title IV, HEA program loans are subsidized or unsubsidized. There are 6,576 institutions sending this notice to 6,223,450 Title IV aid recipients with an average of 946.4 responses per institution. With each institution taking approximately five minutes to retrieve and mail the information the total average hour burden for each institution is calculated as 78.9 hours. Therefore, annual recordkeeping and reporting burden contained in this collection total 518,846.4 (6,576 respondents × 78.9 hours) hours. Any further calculation of burden hours for § 675.16 for providing a student a notice of the amount of FWS program funds he or she can expect to receive would duplicate hours already calculated for this procedure in § 668.165(a)(1) and cleared under OMB 1845–0697.

Section 675.16 also includes a proposal that upon the written request of a student, an institution may make payments of FWS funds directly to the

student's account at the institution for tuition and fees, room and board, and other institutional provided goods and services. This practice is prohibited by current regulations, so it is difficult to estimate an accurate number of respondents that would be submitting this request. Some institutions have informed the Department that they will not implement this procedure, but will continue to pay FWS students by check or electronic fund transfer to the student's bank account. Other institutions have expressed to the Department that the use of this procedure will be minimal at their institutions.

There are 3,282 institutions currently participating in the FWS Program. A total of 747,913 students receive FWS funds at these institutions. We estimate that 74,791 (10 percent of) respondents may sign a written request to have their FWS earnings credited to their account at an institution and that request will average 1 minute per response. Total annual burden hours for the respondents are estimated to be 1,247 hours. The annual recordkeeping burden hours for 3,282 institutions to obtain signatures and maintain a record of the request in their recordkeeping system are estimated to be 12,472 hours. Annual recordkeeping and reporting burden contained in this collection of information as proposed in these regulations are estimated to be 13,719 hours. The total annual recordkeeping and reporting burden hours for § 675.16 equals 13,963 hours.

Section 675.20—Eligible employers and general conditions and limitation on employment—We propose under § 675.20(d) to clarify that employment under the FWS Program may include internships, practicums, and research, teaching, or other assistantships as determined by the Secretary. This proposed change does not affect the information collection requirement in this section for a written agreement between the institution and the employer that is initiated as part of an institution's normal business practices.

If you want to comment on the information collection requirements please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the ADDRESSES section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper

performance of our functions, including whether the information will have practical use;

- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

#### Intergovernmental Review

The Federal Supplemental Educational Opportunity Grant program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

The Federal Work-Study and Federal Pell Grant programs are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

#### Assessment of Educational Impact

The Secretary particularly requests 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.

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Catalog of Federal Domestic Assistance Numbers: 84.033 Federal Work-Study Program; 84.007 Federal Supplemental Educational Opportunity Grant Program; and 84.063 Federal Pell Grant Program)

#### List of Subjects

*34 CFR Parts 668, 673, 674 and 675*

Colleges and universities, Employment, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

*34 CFR Part 676*

Grant programs—education, Reporting and recordkeeping requirements, Student aid.

*34 CFR Part 690*

Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: July 27, 1999.

**Richard W. Riley,**

*Secretary of Education.*

For the reasons stated in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by amending Parts 668, 673, 674, 675, 676, and 690 as follows:

#### PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

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

**Authority:** 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.8 is amended by revising paragraph (h) to read as follows:

#### § 668.8 Eligible program.

\* \* \* \* \*

(h) *Eligibility for Federal Pell Grant and FSEOG programs.* In addition to satisfying other relevant provisions of this section—

(1) An educational program qualifies as an eligible program for purposes of the Federal Pell Grant Program only if the educational program is an undergraduate program or a postbaccalaureate teacher certificate or licensing program as described in 34 CFR 690.6(c); and

(2) An educational program qualifies as an eligible program for purposes of the FSEOG Program only if the educational program is an undergraduate program.

\* \* \* \* \*  
3. Section 668.32 is amended by revising paragraph (c) to read as follows:

**§ 668.32 Student eligibility—general.**

\* \* \* \* \*  
(c)(1) For purposes of the FSEOG Program, does not have a baccalaureate or first professional degree;

(2) For purposes of the Federal Pell Grant Program—

- (i) Does not have a baccalaureate or first professional degree; or
- (ii) Is enrolled in a postbaccalaureate teacher certificate or licensing program as described in 34 CFR 690.6(c); and
- (iii) Is not incarcerated in a Federal or State penal institution; and

(3) For purposes of the Federal Perkins Loan, FFEL, and Direct Loan programs, is not incarcerated;

\* \* \* \* \*

4. Section 668.161 is amended by revising paragraph (a)(4) to read as follows:

**§ 668.161 Scope and purpose.**

(a) \* \* \*  
(4) *FWS Program*. An institution must follow the disbursement procedures in 34 CFR 675.16 for paying a student his or her wages under the FWS Program instead of the disbursement procedures in 34 CFR 668.164 and 668.165.

\* \* \* \* \*

**PART 673—GENERAL PROVISIONS FOR THE FEDERAL PERKINS LOAN PROGRAM, FEDERAL WORK-STUDY PROGRAM, AND FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM**

5. The authority citation for part 673 continues to read as follows:

**Authority:** 20 U.S.C 421–429, 1070b–1070b–3, and 1087aa–1087ii; 42 U.S.C. 2751–2756b, unless otherwise noted.

6. Section 673.5 is amended by revising paragraph (c)(1) introductory text and paragraph (c)(1)(ix); by redesignating paragraphs (c)(1)(x) and (c)(1)(xi) as paragraphs (c)(1)(xi) and (c)(1)(xii), respectively; and by adding new paragraphs (c)(1)(x) and (c)(4) to read as follows:

**§ 673.5 Overaward.**

\* \* \* \* \*

(c) *Resources*. (1) Except as provided in paragraphs (c)(2), (c)(3), and (c)(4) of this section, the Secretary considers that “resources” include, but are not limited to, any—

\* \* \* \* \*

(ix) Veterans educational benefits paid under Chapters 30, 31, 32, and 35 of title 38 of the United States Code;

(x) National service education awards or post-service benefits paid for the cost of attendance under title I of the National and Community Service Act of 1990 (AmeriCorps);

\* \* \* \* \*

(4) The institution may exclude as a resource any portion of a Federal Direct Stafford/Ford Loan and subsidized Federal Stafford Loan that is equal to or less than the amount of a student’s veterans education benefits paid under Chapter 30 of title 38 of the United States Code (Montgomery GI Bill) and national service education awards or post service benefits paid for the cost of attendance under title I of the National and Community Service Act of 1990 (AmeriCorps).

\* \* \* \* \*

**PART 674—FEDERAL PERKINS LOAN PROGRAM**

7. The authority citation for part 674 continues to read as follows:

**Authority:** 20 U.S.C. 1087aa-1087ii and 20 U.S.C. 421–429, unless otherwise noted.

8. Section 674.10 is amended by revising paragraph (b) to read as follows:

**§ 674.10 Selection of students for loans.**

\* \* \* \* \*

(b) If an institution’s allocation of Federal Capital Contribution is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, a reasonable portion of the dollar amount of loans made under this part must be offered to those students.

\* \* \* \* \*

**PART 675—FEDERAL WORK-STUDY PROGRAMS**

9. The authority citation for part 675 is revised to read as follows:

**Authority:** 42 U.S.C. 2751–2756b, unless otherwise noted.

10. In § 675.2 paragraph (b) is amended by revising paragraphs (1) and (3) of the definition of “community services” to read as follows:

**§ 675.2 Definitions.**

\* \* \* \* \*

(b) \* \* \*

(1) Such fields as health care, child care (including child care services provided on campus that are open and accessible to the community), literacy training, education (including tutorial services), welfare, social services, transportation, housing and neighborhood improvement, public safety, crime prevention and control, recreation, rural development, and community improvement;

\* \* \* \* \*

(3) Support services to students with disabilities, including students with disabilities who are enrolled at the institution; and

\* \* \* \* \*

**§ 675.8 [Amended]**

11. Section 675.8 is amended by removing paragraph (d), and redesignating paragraphs (e), (f), and (g) as paragraphs (d), (e), and (f), respectively.

12. Section 675.10 is amended by revising paragraph (c) to read as follows:

**§ 675.10 Selection of students for FWS employment.**

\* \* \* \* \*

(c) *Part-time and independent students*. If an institution’s allocation of FWS funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, a reasonable portion of the allocation must be offered to those students.

13. Section 675.16 is amended to read as follows by:

A. Redesignating paragraphs (a)(2), (a)(3), and (a)(4), as paragraphs (a)(9), (a)(10), and (a)(11), respectively;

B. Revising paragraph (a)(1) and adding new paragraphs (a)(2) through (a)(8);

C. In newly redesignated paragraph (a)(10) by removing “wages are” and adding, in its place, “compensation is”;

D. In newly redesignated paragraph (a)(11) by removing “wages” and adding, in its place, “compensation”;

E. Revising paragraph (b)(1); and

F. In paragraphs (b)(2), (b)(3), and (c), removing “shall” and adding, in its place, “must”.

**§ 675.16 Payments to students.**

(a)(1) An institution must pay a student FWS compensation at least once a month.

(2) Before an institution makes an initial disbursement of FWS compensation to a student for an award period, the institution must notify the student of the amount of funds the student is authorized to earn, and how

and when the FWS compensation will be paid.

(3) An institution must pay FWS compensation to a student by—

(i) Check or similar instrument that the student can cash on his or her own endorsement;

(ii) Initiating an electronic funds transfer (EFT) to a bank account designated by the student after obtaining the authorization described in paragraph (a)(4)(i) of this section;

(iii) Crediting the student's account at the institution after obtaining the authorization described in paragraph (a)(4)(i) of this section. The institution may only credit the student's account at the institution to satisfy current award year charges for—

(A) Tuition and fees;

(B) Board, if the student contracts with the institution for board;

(C) Room, if the student contracts with the institution for room; and

(D) Other institutionally provided educationally related goods and services; or

(iv) Crediting the student's account at the institution to satisfy minor prior award year authorized charges if these charges are less than \$100 or if the payment of these charges does not, and will not, prevent the student from paying his or her current educational costs after obtaining the authorization described in paragraph (a)(4)(i) of this section.

(4)(i) Except for the noncash contributions allowed under paragraphs (b)(2) and (b)(3) of this section, an institution must obtain a separate written authorization from the student if the student is paid FWS compensation by—

(A) Crediting the student's account at the institution; or

(B) Initiating an EFT to a bank account designated by the student.

(ii) If an institution obtains a written authorization from the student, the institution may hold excess FWS funds under paragraph (a)(8) of this section.

(iii) The institution must obtain and use the written authorization in accordance with the requirements of paragraphs (a)(5) and (a)(6) of this section.

(5) In obtaining the student's written authorization described in paragraph (a)(4) of this section, an institution—

(i) May not require or coerce the student to provide that authorization;

(ii) Must allow the student to cancel or modify that authorization at any time; and

(iii) Must clearly explain how it will carry out that activity.

(6)(i) If a student modifies the written authorization described in paragraph

(a)(4) of this section, the modification takes effect on the date the institution receives the modification notice.

(ii) If a student cancels the written authorization described in paragraph (a)(4)(i)(A) of this section, the institution may use the FWS compensation to pay only those authorized charges incurred by the student before the institution received the notice.

(7) If an institution pays a student FWS compensation by crediting the student's account, and the result is a credit balance, the institution must pay the credit balance directly to the student as soon as possible but no later than 14 days after the balance occurred on the account.

(8) Except if prohibited by the Secretary under the reimbursement payment method, an institution may hold, on behalf of the student, FWS funds that would otherwise be paid directly to the student under paragraph (a)(7) of this section, if the institution obtains the authorization described in paragraph (a)(4)(ii) of this section. If an institution holds excess FWS funds, the institution must—

(i) Identify the amount of FWS funds the institution holds for each student in a subsidiary ledger account designated for that purpose;

(ii) Maintain, at all times, cash in its bank account in an amount at least equal to the amount of FWS funds the institution holds for the student; and

(iii) Pay any remaining balance by the end of the institution's final FWS payroll period for an award period.

\* \* \* \* \*

(b)(1) Except for the noncash contributions allowed under paragraphs (b)(2) or (b)(3) of this section, an institution must pay the student its share of his or her FWS compensation at the same time it pays the Federal share.

\* \* \* \* \*

14. Section 675.18 is amended as follows by:

A. Revising paragraph (a)(2);

B. In paragraph (f), removing, "May 15" and adding, in its place, "May 1";

C. Revising paragraphs (g)(1) and (g)(2); and adding new paragraphs (g)(3) and (h).

**§ 675.18 Use of funds.**

(a) \* \* \*

(2) Paying administrative expenses as provided for in 34 CFR 673.7;

\* \* \* \* \*

(g) *Community service.* (1) For the 2000–2001 award year and subsequent award years, an institution must use at least seven percent of the sum of its initial and supplemental FWS

allocations for an award year to compensate students employed in community service activities. In meeting this community service requirement, an institution must include at least one—

(i) Reading tutoring project that employs one or more FWS students as reading tutors for children who are preschool age or are in elementary school; or

(ii) Family literacy project that employs one or more FWS students in family literacy activities.

(2) The Secretary may waive the requirements in paragraph (g)(1) of this section if the Secretary determines that an institution has demonstrated that enforcing the requirements in paragraph (g)(1) of this section would cause a hardship for students at the institution.

(3) To the extent practicable, in providing reading tutors for children under paragraph (g)(1)(i), an institution must—

(i) Give priority to the employment of students to tutor in reading in schools that are participating in a reading reform project that—

(A) Is designed to train teachers how to teach reading on the basis of scientifically-based research on reading; and

(B) Is funded under the Elementary and Secondary Education Act of 1965; and

(ii) Ensure that any student who is employed in a school participating in a reading reform project described in paragraph (g)(3)(i) of this section receives training from the employing school in the instructional practices used by the school.

(h)(1) *Payment for time spent in training and travel.* For any award year, an institution may pay students for a reasonable amount of time spent for training that is directly related to FWS employment.

(2) Beginning with the 1999–2000 award year, an institution may pay students for a reasonable amount of time spent for travel that is directly related to employment in community service activities (including tutoring in reading and family literacy activities).

15. Section 675.20 is amended by adding a new paragraph (d) to read as follows:

**§ 675.20 Eligible employers and general conditions and limitation on employment.**

\* \* \* \* \*

(d) *Academic credit and work-study.* (1) A student may be employed under the FWS program and also receive academic credit for the work performed. Such jobs include, but are not limited to, work performed when the student is—

- (i) Enrolled in an internship;
- (ii) Enrolled in a practicum; or
- (iii) Employed in a research, teaching, or other assistantship.

(2) A student employed in an FWS job and receiving academic credit for that job may not be—

- (i) Paid less than he or she would be if no academic credit were received;
- (ii) Paid for receiving instruction in a classroom, laboratory, or other academic setting; and
- (iii) Paid unless the employer would normally pay the person for the same position.

16. Section 675.23 is amended by revising paragraph (b)(1) to read as follows:

**§ 675.23 Employment provided by a private for-profit organization.**

\* \* \* \* \*

- (b) \* \* \*  
 (1) The work that the student performs must be academically relevant to the student's educational program, to the maximum extent practicable; and

\* \* \* \* \*

17. Section 675.26 is amended by revising paragraph (a)(1), by redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4), by adding a new paragraph (a)(2), and by revising paragraph (d)(2)(iii) to read as follows:

**§ 675.26 FWS Federal share limitations.**

(a)(1) The Federal share of FWS compensation paid to a student employed other than by a private for-profit organization, as described in § 675.23, may not exceed 75 percent unless the Secretary approves a higher share under paragraph (a)(2) or (d) of this section.

(2) The Federal share of the compensation paid to a student may exceed 75 percent, but may not exceed 90 percent, if—

- (i) The student is employed at a private nonprofit organization or a Federal, State, or local public agency that—

- (A) Is not a part of, and is not owned, operated, or controlled by, or under common ownership, operation, or control with, the institution;

- (B) Is selected by the institution on an individual case-by-case basis;

- (C) Would otherwise be unable to afford the costs of this employment; and

- (ii) The number of students compensated under paragraph (a)(2)(i) of this section is not more than 10 percent of the total number of students paid under the FWS Program at the institution.

\* \* \* \* \*

- (d) \* \* \*

(2) \* \* \*

(iii) The student is employed in a family literacy project that provides services to families with preschool age children or children who are in elementary school; or

\* \* \* \* \*

**Subpart C—Work-Colleges Program**

18. Section 675.45 is amended by adding new paragraphs (a)(5) and (a)(6) to read as follows:

**§ 675.45 Allowable costs, Federal share, and institutional share.**

(a) \* \* \*

(5) Coordinate and carry out joint projects and activities to promote work service learning.

(6) Carry out a comprehensive, longitudinal study of student academic progress and academic and career outcomes, relative to student self-sufficiency in financing their higher education, repayment of student loans, continued community service, kind and quality of service performed, and career choice and community service selected after graduation.

\* \* \* \* \*

**PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM**

19. The authority citation for part 676 continues to read as follows:

**Authority:** 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

20. Section 676.10 is amended by revising paragraph (b) to read as follows:

**§ 676.10 Selection of students for FSEOG awards.**

\* \* \* \* \*

(b) *Part-time and independent students.* If an institution's allocation of FSEOG funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, a reasonable portion of the allocation must be offered to those students.

21. Section 676.18 is amended by revising paragraph (a)(2), and adding new paragraphs (c), (d), (e) and (f) to read as follows:

**§ 676.18 Use of funds.**

(a) \* \* \*

(2) Paying administrative expenses as provided for in 34 CFR 673.7.

\* \* \* \* \*

(c) *Carry forward funds.* (1) An institution may carry forward and expend in the next award year up to 10 percent of the sum of its initial and

supplemental FSEOG allocations for the current award year.

(2) Before an institution may spend its current year FSEOG allocation, it must spend any funds carried forward from the previous year.

(d) *Carry back funds.* An institution may carry back and expend in the previous award year up to 10 percent of the sum of its initial and supplemental FSEOG allocations for the current award year. The institution's official allocation letter represents the Secretary's approval to carry back funds.

(e) *Use of funds carried forward and carried back.* An institution may use the funds carried forward or carried back under paragraphs (c) and (d) of this section, respectively, for activities described in paragraph (a) of this section.

(f) *Carry back funds for summer FSEOG awards.* An institution may carry back and expend in the previous award year any portion of its initial and supplemental FSEOG allocations for the current award year to make awards to eligible students for payment periods that begin on or after May 1 of the previous award year but end prior to the beginning of the current award year.

**PART 690—FEDERAL PELL GRANT PROGRAM**

22. The authority citation for part 690 continues to read as follows:

**Authority:** 20 U.S.C. 1070a, unless otherwise noted.

23. Section 690.6 is amended by revising the heading and paragraph (a), and adding new paragraphs (c) and (d) to read as follows:

**§ 690.6 Duration of student eligibility—undergraduate course of study and eligible postbaccalaureate program.**

(a) Except as provided in paragraphs (c) and (d) of this section, a student is eligible to receive a Federal Pell Grant for the period of time required to complete his or her first undergraduate baccalaureate course of study.

\* \* \* \* \*

(c) An otherwise eligible student who has a baccalaureate degree and is enrolled in a postbaccalaureate program is eligible to receive a Federal Pell Grant for the period of time necessary to complete the program if—

(1) The postbaccalaureate program consists of courses that are required by a State for the student to receive a professional certification or licensing credential that is required for employment as a teacher in an elementary or secondary school in that State;

(2) The postbaccalaureate program does not lead to a graduate degree;

(3) The institution offering the postbaccalaureate program does not also offer a baccalaureate degree in education;

(4) The student is enrolled as at least a half-time student; and

(5) The student is pursuing an initial teacher certification or licensing credential within a State.

(d) An institution must treat a student who receives a Federal Pell Grant under

paragraph (c) of this section as an undergraduate student enrolled in an undergraduate program for title IV purposes.

24. In § 690.7 paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

**§ 690.7 Institutional participation.**

\* \* \* \* \*

(c)(1) If an institution loses its eligibility to participate in the FFEL or

Direct Loan program under the provisions of 34 CFR 668.17, it also loses its eligibility to participate in the Federal Pell Grant Program for the same period of time.

(2) That loss of eligibility must be in accordance with the provisions of 34 CFR 668.17(b).

\* \* \* \* \*

[FR Doc. 99-19724 Filed 8-2-99; 8:45 am]

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Thursday  
October 28, 1999

# Registered Federal read

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## Part VI

### Department of Education

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34 CFR Part 668 et al.  
Student Assistance General Provisions;  
General Provisions for the Federal  
Perkins Loan Program, Federal Work-  
Study Program, and Federal  
Supplemental Educational Opportunity  
Grant Program; Federal Perkins Loan  
Program; Federal Work-Study Programs;  
Federal Supplemental Educational  
Opportunity Grant Program; and Federal  
Pell Grant Program; Final Rule

## DEPARTMENT OF EDUCATION

34 CFR Parts 668, 673, 674, 675, 676, and 690

RIN 1845-AA01

**Student Assistance General Provisions; General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program; Federal Perkins Loan Program; Federal Work-Study Programs; Federal Supplemental Educational Opportunity Grant Program; and Federal Pell Grant Program**

AGENCY: Department of Education.

ACTION: Final regulations.

**SUMMARY:** These final regulations amend the regulations governing the Student Assistance General Provisions, the Campus-Based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs), and the Federal Pell Grant Program. These regulations incorporate changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998 (1998 Amendments).

**DATES:** *Effective Date:* These regulations are effective July 1, 2000.

*Implementation Date:* The Secretary has determined, in accordance with section 482(c)(2)(A) of the Act, that institutions may, at their discretion, choose to implement the provisions of §§ 673.5(c), 675.26(a), and 675.26(d)(2)(iii) on or after October 28, 1999. For further information see "Implementation Date of These Regulations" under the SUPPLEMENTARY INFORMATION section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathy Gause, U.S. Department of Education, 400 Maryland Avenue, SW, Regional Office Building 3, Room 3045, Washington, DC 20202-5447. 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.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiocassette, or computer diskette) on request to the contact person listed above.

**SUPPLEMENTARY INFORMATION:** These regulations implement certain provisions of the 1998 Amendments (Pub. L. 105-244), enacted October 7, 1998. On August 3, 1999, we published

a notice of proposed rulemaking (NPRM) in the **Federal Register** (64 FR 42206). In the NPRM, we proposed to amend the Student Assistance General Provisions regulations (part 668) which apply to all of the Title IV, HEA programs, the General Provisions regulations for the Campus-Based programs (part 673), and the regulations for the Federal Perkins Loan (part 674), FWS (part 675), FSEOG (part 676), and the Federal Pell Grant (part 690) programs.

The NPRM included a discussion of the proposed changes that will not be repeated here. The following list summarizes those changes and identifies the pages of the preamble to the NPRM on which the discussion can be found:

**Student Assistance General Provisions**

*Section 668.8 Eligible Program and Section 668.32 Student Eligibility—General*

The conforming changes to the Student Assistance General Provisions regulations resulting from allowing certain students enrolled in a postbaccalaureate teacher certificate or licensing program to receive a Federal Pell Grant, as proposed in §§ 668.8(h) and 668.32(c) (page 42207 of the NPRM).

*Section 668.161 Scope and Purpose*

The conforming changes to the Student Assistance General Provisions regulations resulting from changing the procedures that institutions must follow for paying students under the FWS Program, as proposed under § 668.161(a) (page 42207 of the NPRM).

**Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs**

*Section 673.5 Overaward*

The revision of the definition of the term "resources" for awarding campus-based aid resulting from the change in the definition of "estimated financial assistance" in determining a student's eligibility for subsidized loans, as proposed in § 673.5(c) (page 42207 of the NPRM).

*Sections 674.10, 675.10, and 676.10 Selection of Students*

The requirement that an institution offer less-than-full-time or independent students a reasonable portion of the FWS allocation, FSEOG allocation, or dollar amount of Federal Perkins Loans made, instead of offering five percent of those amounts, as proposed in

§§ 674.10(b), 675.10(c), and 676.10(b) (pages 42207-42208 of the NPRM).

**Federal Work-Study Programs**

*Section 675.2 Definitions*

The revision of the definition of "community services," as proposed in § 675.2(b) (page 42208 of the NPRM).

*Section 675.8 Program Participation Agreement*

The elimination of the requirement that an institution employing FWS students make equivalent non-FWS jobs reasonably available to all students at the institution who want to work, as proposed in § 675.8 (page 42208 of the NPRM).

*Section 675.16 Payments Directly to the Student's Account*

The procedures under which an institution would be allowed, upon request of a student, to make payments of FWS funds directly to the student's account at a financial institution or to credit the student's account at the educational institution, as proposed in § 675.16 (pages 42208-42209 of the NPRM).

*Section 675.18 Use of Funds*

The requirement that increases the minimum percentage of an institution's FWS allocation that must be spent on community service jobs from five to seven percent, as proposed in § 675.18(g) (page 42209 of the NPRM).

The requirement that an institution, in meeting the community service requirement, must ensure that one or more of its FWS students is employed (1) in a community service reading tutoring project as a reading tutor for children who are preschool age or are in elementary school, or (2) performing family literacy activities in a community service family literacy project, as proposed in § 675.18(g) (page 42209 of the NPRM).

The provision of a waiver of the above requirement, as provided in § 675.18(g) (pages 42209-42210 of the NPRM).

The requirement that if an institution employs FWS students as reading tutors in elementary schools, the institution, to the extent practicable, must give priority to employing students in schools that are participating in a reading reform project, as proposed in § 675.18(g) (page 42210 of the NPRM).

The clarification that an institution may pay FWS students for a reasonable amount of time spent for training for any FWS employment, as proposed in § 675.18(h) (page 42210 of the NPRM).

The provision that an institution may pay FWS students for a reasonable amount of time spent for travel that is

directly related to employment in community service activities (including tutoring in reading and family literacy activities), as proposed in § 675.18(h) (page 42210 of the NPRM).

*Section 675.20 Eligible Employers and General Conditions and Limitation on Employment*

The clarification that FWS employment may include internships, practicums, or assistantships (e.g., research or teaching assistantships), as proposed in § 675.20(d) (pages 42210–42211 of the NPRM).

*Section 675.23 Employment Provided by a Private For-Profit Organization*

The provision that if a student is employed by a private for-profit organization the work that the student performs must be academically relevant to the student's educational program only to the maximum extent possible, as proposed in § 675.23(b) (page 42211 of the NPRM).

*Section 675.26 FWS Federal Share Limitations*

The provision that the Federal share of an FWS student's compensation may exceed 75 percent, but may not exceed 90 percent, if the student is employed at a nonprofit or a public organization that cannot afford to pay the regular non-Federal share, as proposed in § 675.26(a) (page 42211 of the NPRM).

The authorization of a Federal share of 100 percent of the FWS funds awarded to students by an institution for an award year, if the student is performing literacy activities when employed in a family literacy project that provides services to families with preschool age children or children who are in elementary school, as proposed in § 675.26(d) (page 42211 of the NPRM).

**Work-Colleges Program (Subpart C)**

*Section 675.45 Allowable Costs, Federal Share, and Institutional Share*

The provision of more flexibility to Work-Colleges by allowing them to use available funds to coordinate and carry out joint projects to promote work service learning, and to conduct a comprehensive longitudinal study of academic progress and academic and career outcomes, as proposed in § 675.45(a) (page 42211 of the NPRM).

**Federal Supplemental Educational Opportunity Grant Program**

*Section 676.18 Use of funds.*

The inclusion of a new authority for an institution to carry up to ten percent of its current award year FSEOG allocation forward to spend in the next award year and to carry back up to ten

percent of its current award year allocation to spend in the prior award year, as proposed in § 676.18 (pages 42211–42212 of the NPRM).

The inclusion of a new authority for an institution to carry back any portion of its current award year FSEOG funds to make awards to students for payment periods that begin on or after May 1 of the prior award year but end prior to the start of the current award year, as proposed in § 676.18(f) (page 42212 of the NPRM).

**Federal Pell Grant Program**

*Section 690.6 Duration of Student Eligibility—Undergraduate Course of Study and Eligible Postbaccalaureate Program*

The provision that extends Federal Pell Grant eligibility to certain students enrolled in a postbaccalaureate teacher certificate or licensing program even if they have earned a bachelor's degree, as proposed in § 690.6 (pages 42212–42213 of the NPRM).

*Section 690.7 Institutional Participation*

The provision that an institution is ineligible to participate in the Federal Pell Grant Program upon losing its eligibility to participate in the FFEL or Direct Loan programs because of its default rate, as proposed in § 690.7(c) (page 42213 of the NPRM).

*Substantive Changes to the NPRM*

Except for minor editorial and technical revisions, there are no differences between the NPRM and these final regulations.

*Implementation Date of These Regulations*

Section 482(c) of the Higher Education Act of 1965, as amended (20 U.S.C. 1089(c)) requires that regulations affecting programs under Title IV of the Act be published in final form by November 1 prior to the start of the award year in which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier. If the Secretary designates a regulation for early implementation, he may specify when and under what conditions the entity may implement it. Under this authority, the Secretary has designated the following regulations for early implementation:

§ 673.5(c)—Upon publication, these regulations may be implemented by institutions at their discretion. This means that when packaging campus-based programs, institutions may exclude as a resource any portion of a subsidized Stafford Loan under the

FFEL Program or Direct Subsidized Loan under the Direct Loan Program that is equal to or less than the amount of the student's Montgomery GI Bill—active duty veterans education benefits and AmeriCorps education awards or post-service benefits paid for the cost of attendance.

§ 675.26(a)—Upon publication, these regulations may be implemented by institutions at their discretion. This means that institutions may pay a Federal share of up to 90 percent for an FWS student employed at a nonprofit or a public organization that can not afford to pay the regular non-Federal share under the requirements specified by the Secretary.

§ 675.26(d)(2)(iii)—Upon publication, these regulations may be implemented by institutions at their discretion. This means that institutions may pay a Federal share of up to 100 percent for an FWS student performing family literacy activities when employed in a family literacy project that provides services to families with preschool age children or children who are in elementary school. The waiver of the institutional share requirement will no longer be limited to tutoring in a family literacy program.

**Analysis of Comments and Changes**

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 Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary 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 the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on August 3, 1999 in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of Committee III dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by September 15, and several comments were received. An analysis of the comments 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 the Secretary to make.

#### General

*Comments:* A number of commenters representing institutions of higher education and organizations submitted joint and individual comments that were supportive of our efforts to provide consistency among the Title IV, HEA programs and to allow institutions more flexibility to assist students. Several commenters stated that there are many positive aspects to these proposed regulations.

*Changes:* None.

#### Student Assistance General Provisions and the Federal Pell Grant Program

Sections 668.8 Eligible Program, 668.32 Student Eligibility—General, and 690.6 Duration of Student Eligibility—Undergraduate Course of Study and Eligible Postbaccalaureate Program

*Comments:* One commenter requested clarification on whether a student enrolled in the type of program offered at the commenter's school would qualify for a Federal Pell Grant. The commenter's institution does not award a baccalaureate degree in education. Students must choose another field of study, but may have a concentration in education. The baccalaureate degree the institution awards is for that other field of study, not for education.

The commenter stated that it is also possible for students to enter a teacher certification program after they receive their baccalaureate degrees and before they begin any graduate study.

*Discussion:* As described by the commenter, the student enrolled in the institution's baccalaureate degree program would be ineligible to receive a Federal Pell Grant under the provisions in § 690.6, but may be eligible to receive a Federal Pell Grant as an undergraduate student. However, a student enrolled in the institution's teacher certification program would be ineligible for a Federal Pell Grant award for the reasons discussed below.

The 1998 Amendments created a very limited exception to the requirement that a Federal Pell Grant recipient be an undergraduate student. Thus, to qualify for a Federal Pell Grant, a student who has a bachelor's degree must first be enrolled in an institution of higher education that does not offer a baccalaureate degree in education. Second, the student must be enrolled in a postbaccalaureate program that (a) consists of the courses required by a State to receive a professional

certification or licensing credential necessary for employment as a teacher in an elementary or secondary school in that State, and (b) does not lead to a graduate degree. Third, the student must be pursuing an initial teacher certification or licensing credential within a State. Fourth, the student must be enrolled as at least a half-time student.

Therefore, the student enrolled in the commenter's baccalaureate program does not come within the requirements contained in § 690.6 because the program in which he or she is enrolled is not a postbaccalaureate program. The student enrolled in the commenter's teacher certificate program does not meet the requirements of § 690.6, even if the courses included in the certificate program are required by the State, because the certificate program does not appear to be a postbaccalaureate program. An undergraduate program does not become a postbaccalaureate program merely because it admits students who have baccalaureate degrees.

*Changes:* None.

#### Section 668.161 Scope and Purpose

*Comments:* One organization stated that the proposed amendments to § 668.161 to indicate that an institution must follow § 675.16 for paying a student under the FWS Program instead of §§ 668.164 and 668.165 make the disbursement procedures under § 668.164 inapplicable to the FWS Program. The commenter requested clarification on whether the definition of disbursement under § 668.164(a)(1) still applies to the FWS Program.

*Discussion:* We agree with the commenter that the proposed language in § 668.161 does not make clear that the definition of disbursement in § 668.164 is still applicable to the FWS Program. This definition continues to apply to all Title IV, student financial aid programs.

*Changes:* We have revised the regulations to clarify that the definition of disbursement in § 668.164(a) will continue to apply to the FWS Program, Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs.

#### Section 673.5 Overaward

*Comments:* Several commenters, including two organizations, objected to the proposal that would change the definition of "resources" for the campus-based programs.

*Discussion:* The proposed regulations would modify the overaward provisions in § 673.5 of the regulations for the

campus-based programs. They would apply in cases where students receive both a subsidized loan and veterans education benefits under Title 38, Chapter 30 (Montgomery GI Bill—active duty) and/or national service education awards or post-service benefits under Title I of the National and Community Service Act of 1990 (AmeriCorps).

The statute requires that these benefits must be excluded as estimated financial assistance in determining a student's eligibility for a subsidized Stafford Loan or Direct Subsidized Loan. However, the statute requires that these same benefits must be considered as a resource for the campus-based programs, as well as estimated financial assistance for unsubsidized loans. The proposed regulations would allow an institution, in packaging campus-based aid, to exclude as a resource any portion of a subsidized Stafford Loan or Direct Subsidized Loan that is equal to or less than the amount of the student's Montgomery GI Bill—active duty veterans education benefits and/or AmeriCorps education awards or post-service benefits paid for the cost of attendance.

*Changes:* None.

*Comments:* Some commenters stated that the treatment of the aforementioned benefits in two different ways in determining a student's eligibility is confusing and an administrative burden for institutions. They stated that it is extremely difficult for institutions to package a student when the student has both subsidized loans and campus-based aid. One commenter stated that it would be difficult to explain to students why in some cases their benefits are treated as a resource, but not in other cases.

Most of the commenters stated that the proposal would require schools that use computerized packaging systems to reprogram their financial aid software to determine when to include or exclude all or a part of these benefits. Commenters also believed that this requirement would result in institutions being forced to implement a verification system to determine the type of benefits the student is receiving while also determining, on a case-by-case basis, the type and amount of benefits that are to be considered as estimated financial assistance. They also stated that the issue is further complicated by the fact that a student's financial aid package does not always remain the same after making initial awards. Changes in resources require recalculating the student's eligibility for Federal assistance. Commenters also stated that any combination of Montgomery GI Bill benefits, AmeriCorps benefits,

subsidized Stafford loans and campus-based aid will involve manual intervention to correct an overaward situation.

One of the organizations that objected to the proposal expressed concern about errors institutions may make in interpreting this provision and calculating student awards, and therefore requests that institutions be held harmless and not assessed any liabilities until the Department can provide guidance on correct implementation.

Some commenters recommended that we work with Congress to treat Montgomery GI Bill benefits and AmeriCorps education awards or post-service benefits identically for all student aid programs.

*Discussion:* We understand the concerns that the commenters have regarding handling students that have these benefits along with other types of Title IV aid. However, this provision that treats veterans and AmeriCorps benefits different for the Title IV programs is the result of the change in section 428(a)(2)(C) of the HEA that requires that these benefits must be excluded as "estimated financial assistance" for purposes of subsidized loans.

*Changes:* None.

*Comments:* One commenter expressed his belief that the order in which the student received the financial aid awards determines if the student is overawarded and would mean that students with similar need and aid may not be treated the same.

*Discussion:* Under current campus-based regulations, if a student has both a subsidized loan and campus-based aid, the most stringent requirement regarding resources becomes operative because the student's eligibility for campus-based funds is reduced by the amount of subsidized loans as well as any Montgomery GI Bill—active duty benefits and AmeriCorps funds, or both, paid for the cost of attendance. Thus, students receiving subsidized loans because of the new exclusion of these benefits may have their eligibility for campus-based aid reduced. The negotiated rulemaking committee concluded that the proposed change in the definition of "resources" for the campus-based programs is the best solution to allow students to have the full advantage of this statutory exclusion of benefits for subsidized loans without losing campus-based eligibility.

We remind the commenters that the use of the proposed regulations that would change the definition of "resources" for the campus-based

programs in cases where a student receives both a subsidized loan and Montgomery GI Bill—active duty veterans education benefits and/or an AmeriCorps education award is an option provided to an institution and not a requirement. Unlike the requirements mandated by section 428(a)(2)(C) of the HEA for subsidized loans, where the definition of "estimated financial assistance" requires the exclusion of these benefits, this proposal provides the institution with the flexibility to address different packaging issues if the financial aid administrator determines that it is necessary to rectify a particular situation on a case-by-case basis.

*Changes:* None.

*Comment:* One commenter also noted that it is frequently difficult to identify the specific type of veterans benefits that individual veterans may be receiving. This commenter encourages us to work closely with the Veterans Administration to develop computer database interfaces that will permit this information to be reported on the Institutional Student Information Records, or to set up a web site similar to the National Student Loan Data System that will permit access to this information. Until this can be accomplished, the commenter encourages us to seek other means of enabling participating institutions to easily identify those veterans receiving Montgomery GI Bill education benefits.

*Discussion:* Regardless of our campus-based regulations, an institution, under the statute, must be able to identify the Montgomery GI Bill—active duty benefits and the AmeriCorps funds for students applying for subsidized loans. We thank the commenter for the suggestion on solutions for identifying veterans benefits. We will explore possible systems solutions to address this comment.

*Changes:* None.

*Comments:* One organization in expressing its support for this proposed regulation, noted the confusion caused by the proliferation of names by which Direct and FFEL loans are known. The commenter suggested that we use the name "Direct Subsidized Loan" when referring to the Federal Direct Stafford/Ford Loan.

*Discussion:* We agree with the commenter that the names for the Direct and FFEL loans can be confusing, and that "Direct Subsidized Loan" is the simplest name to understand when referring to a Federal Direct Stafford/Ford Loan.

*Changes:* For clarity, we have added the words "Direct Subsidized Loan" in

parenthesis in § 673.5(c)(4) after "Federal Direct Stafford/Ford Loan."

*Comments:* Another commenter also expressed concern with the lack of clarification on a required implementation date, which the commenter believes could possibly cause institutional liability. One organization also sought clarification on when institutions could begin using the proposed new definition of "resources" for the campus-based programs. The organization further recommended that we authorize optional early implementation by institutions under the Master Calendar.

*Discussion:* In response, the Secretary authorizes optional early implementation by institutions of this provision under the Master Calendar. Institutions may begin using this new definition for "resources" effective with the publication date of these regulations. This authority is discussed in the DATES and SUPPLEMENTARY INFORMATION sections of this preamble.

*Changes:* None.

#### Federal Work-Study Programs

##### Section 675.2 Definitions

*Comments:* One commenter stated that on-campus facilities should count as community service employers even if the service is provided only for students, faculty, staff, and their families, because these individuals pay taxes and also are part of the "local community."

*Discussion:* The statute states that the definition of "community services" now includes child care services provided on campus that are "open and accessible to the community." A university or college in and of itself is not considered the community for this purpose. Therefore, if the service is provided only to students, faculty, staff, and their families, an FWS job does not meet the definition of "community service." As stated in the NPRM (page 42208), these regulations are not proposing to set a numerical count or percentage requirement for institutions to demonstrate public use of on-campus services.

*Changes:* None.

##### Section 675.16 Payments Directly to the Student's Account

*Comments:* One organization commented that the proposed regulations governing the application of a student's FWS earnings to his or her institutional account are far too prescriptive. The commenter believes the procedure will discourage institutions from offering students this option, and that implementation will

create a significant cost and administrative burden for institutions. The same commenter believes the current cash management regulations (Subpart K) provides sufficient protection for the student and recommends that these proposed regulations be rescinded and institutions be referred to the existing cash management regulations.

*Discussion:* Prior to the 1998 Amendments, the FWS regulations prohibited an institution from directly transferring the Federal share of FWS earnings to a student's account at the institution. The 1998 Amendments broadened the institution's authority concerning students who want their FWS earnings credited to their accounts at the institution to cover institutional charges. The commenter is correct that the *Subpart K—Cash Management* regulations already regulated disbursement procedures for all other Title IV, HEA program funds. We do not agree with the commenter that the proposed regulations in § 675.16 will discourage institutions from offering students this option, and that implementation will create a significant cost and administrative burden for institutions. We believe that it was important to make a distinction between FWS Program funds and other Title IV program funds. In the FWS Program students hold jobs and their compensation is earned and governed by the same applicable Federal, State, or local laws as any other type of earnings from employment. We also believe that it will be less confusing to have the FWS disbursement procedures in the FWS Program regulations.

*Changes:* None.

*Comments:* Another commenter noted that in most cases students receiving FWS funds are notified of the amount of the award on the financial aid award letter sent to them by the institution. This commenter asks us to clarify that an award letter sent to the student by the institution meets the requirement for notifying the student of the amount of FWS compensation he or she is authorized to earn.

*Discussion:* We are aware that providing a student with a notice of the amount of funds he or she is eligible to earn, and how and when the FWS funds will be paid is standard institutional practice and required by regulations. The award letter, as used by many institutions, meets the requirement for notification to a student of the amount of FWS compensation he or she is authorized to earn. It was not our intent to confuse the public in § 675.16 by implying that an additional notice is required. Because FWS funds are earned

compensation, we concluded that the requirement for the notice should be reiterated in the new provisions in § 675.16.

*Changes:* None.

*Comments:* Another organization stated that the proposed regulations in § 675.16 are not clear about what would be required if the student rescinds an authorization to hold excess FWS earnings. The commenter observed that § 675.16(a)(4) allows a student to authorize an institution to credit FWS funds to the student's institutional account and also allows a student to authorize an institution to hold excess FWS funds (credit balances). The commenter noted that § 675.16(a)(7) generally requires that a credit balance consisting of FWS funds be paid out to the student within 14 days, presumably if the student authorizes crediting the account but does not authorize holding excess funds. Section 675.16(a)(6)(i) states that if any authorization allowed under § 675.16(a)(4) is modified, the modification takes effect on the date received. The commenter asked whether the institution has up to 14 days to process the FWS credit balance after a student rescinds his or her authorization that allowed an institution to hold excess FWS funds.

*Discussion:* We agree with the commenter that the proposed language in the regulations in § 675.16 is not clear about what would be required if the student rescinds an authorization to hold excess FWS earnings. Our intent is that the excess FWS funds must be paid by the institution to the student as soon as possible, but not later than 14 days after the student rescinds an authorization to hold excess funds.

*Changes:* We have revised the regulations and added a new § 675.16(a)(9) to reflect that if a student cancels the written authorization to hold excess FWS funds, the institution must pay those funds to the student as soon as possible but no later than 14 days after the institution receives that cancellation notice.

#### Sections 675.18 Use of Funds and 675.26 FWS Federal Share Limitations

*New reading tutoring and family literacy project requirement (§ 675.18(g)(1) and waiver of FWS institutional-share requirement for literacy activities (§ 675.26(d)(2)).*

*Comments:* A commenter representing an organization requested clarification on the wording in § 675.18(g)(1)(ii) that refers to a family literacy project that employs students "in family literacy activities." The commenter stated that the statute simply requires students to be employed in a family literacy project

and is silent on whether students must be engaged in family literacy activities. The commenter stated that the statute authorizes a 100 percent Federal share for FWS students employed in a family literacy project, and the proposed language in § 675.26(d)(2)(iii) reflects the statute in that it only requires the student to be employed in a family literacy project, as long as the project provides certain services.

*Discussion:* For purposes of employment in a family literacy project, both of the following new statutory provisions require that the student be performing family literacy activities.

Amended section 443(b)(2) of the HEA requires, that beginning with the 2000–2001 award year, an institution must ensure that in meeting the FWS community service requirement at least one or more of its FWS students is employed (1) in a reading tutoring project as a reading tutor for children who are preschool age or are in elementary school, or (2) performing family literacy activities in a family literacy project.

Amended section 443(d)(3) of the HEA provides that, beginning with the 2000–2001 award year, an institution may pay a Federal share of compensation that exceeds 75 percent to students employed (1) in a reading tutoring project as a reading tutor for children who are preschool age or are in elementary school, or (2) performing family literacy activities in a family literacy project.

We agree that the different proposed language used in § 675.18(g)(2)(ii) and § 675.26(d)(2)(iii) is confusing. The HEA is specific on the reference to family literacy activities. The new FWS community service requirement in section 443(b) of the HEA does require that the family literacy project employ one or more FWS students in family literacy activities. Further, the new authority in section 443(d) of the HEA to pay a Federal share of up to 100 percent of the compensation earned by a student employed in a family literacy project also requires the student to be performing family literacy activities.

In accordance with the amended statute, these regulations amend § 675.18(g)(1)(ii) to require that, beginning July 1, 2000, an institution must ensure that one or more of its FWS students is employed (1) in a reading tutoring project as a reading tutor for children who are preschool age or are in elementary school, or (2) performing family literacy activities in a family literacy project.

We have changed § 675.26(d)(2)(iii) of these regulations to clarify that the waiver of the institutional-share

requirement is for an FWS student performing family literacy activities when employed in a family literacy project that provides services to families with preschool age children or children who are in elementary school.

*Changes:* We have revised the language in § 675.26(d)(2)(iii) to make this language consistent with the family literacy activities language used in § 675.18(g)(1)(ii). This change also follows the language provided in the statute that the FWS student must perform family literacy activities when employed in a family literacy project.

*Comments:* The same commenter also requested clarification of the effective date on which institutions may pay a 100 percent Federal share for family literacy employment in addition to tutoring.

*Discussion:* The Secretary is authorizing optional early implementation of the new institutional-share waiver for an FWS student performing family literacy activities when employed in a family literacy project. Effective with the publication date of these regulations institutions may begin to pay a Federal share of compensation that exceeds 75 percent to a student performing family literacy activities that are not limited just to tutoring. This authority is discussed in the **DATES** and the **SUPPLEMENTARY INFORMATION** sections of the preamble.

*Changes:* None.

*Comments:* The commenter further requested clarification on whether indirect services in a family literacy project would qualify the employment: (1) as community service; (2) as satisfying the separate family literacy project requirement; and/or (3) as eligible for the 100 percent Federal share?

*Discussion:* We are not defining "family literacy activities" for purposes of the new community service requirement in § 675.18(g)(1)(ii) or the new waiver of the institutional-share requirement in § 675.26(d)(2)(iii). We are providing reasonable flexibility to institutions to determine the job description and duties for an FWS student performing family literacy activities. Under the revised statute and regulations, the jobs in family literacy projects are not limited to just students employed as tutors. For example, the family literacy activities may include an FWS student training tutors, performing administrative tasks such as coordinating the tutors, or working as an instructional aide who prepares the materials for the project. However, it would not be reasonable to include

janitorial or building repair jobs for the project as family literacy activities.

Under § 675.26(d)(2)(iii), to qualify for the new FWS waiver of the institutional-share, the family literacy activities job does not have to be community service. For example, the family literacy activities could be open to only institutional staff and their families. However, under § 675.18(g)(1)(ii), an FWS student's job as a reading tutor in a required reading tutoring project or job performing family literacy activities in a required family literacy project must be considered community service.

The definition of "community services" in § 675.2 does not require that the service provided by the FWS student be "direct" to be considered community service. The services must be open and accessible to the community. A service is considered open to the community if the service is publicized to the community and the general public uses the service. A university or college in and of itself is not considered the community for this purpose.

In determining whether the FWS student's employment provides community service, the institution must always consider whether the service provided by the student primarily benefits the community as opposed to the agency or institution. For example, if an FWS student was hired to take care of the grounds for the administrative offices of the private nonprofit agency that provides the family literacy project, that job would not be community service. It is important to note that this job would also not be considered to be performing family literacy activities.

*Changes:* None.

**Waiver—Employment of Students as Reading Tutors or in a Family Literacy Project (§ 675.18(g)(2))**

*Comments:* As stated in the discussion for the previous comments, beginning July 1, 2000, an institution must ensure that one or more of its FWS students is employed (1) in a reading tutoring project as a reading tutor for children who are preschool age or are in elementary school, or (2) performing family literacy activities in a family literacy project. Section 443(b)(2) of the HEA grants the Secretary waiver authority with respect to both of these requirements if the Secretary determines that enforcing them would cause hardship for students at an institution.

Several institutions commented that their academic programs are solely focused on health professions programs with a majority of either graduate or first-professional degree students

attending their institutions. They stated that they are "single-purpose institutions" providing degrees in health professions (e.g., nursing, occupational therapy, medical technicians, biological sciences, dentistry, medicine, pharmacy, dental hygiene, physical therapy, clinical nutrition, medical technology). The institutions have no problem meeting and exceeding the community service percentage requirement for FWS. However, students in these programs actively seek community service activities that involve health care (e.g., the homeless medical clinic). The graduate and professional programs are rigorous and time-consuming, and the nature and demands of their academic programs do not support their employment in area elementary and secondary schools as reading tutors. Students are typically in classes from 8 a.m. to 5 p.m. One of these commenters stated that it is common for students to be available to work FWS jobs only on evenings or weekends, and if literacy tutor positions are not available in the time frames that students can work because of academic requirements, penalties should not be assessed.

Another of these commenters stated that the proposed reading tutoring/family literacy placement would strain their resources to create, monitor and staff the necessary support mechanisms to implement a component that students, faculty and staff are currently not geared to provide (as a health professions institution). Several of the institutions that focus primarily on health professions requested that the final regulations provide clear guidance to institutions on what would be viewed as a hardship and steps the institution must take to qualify for a waiver. One of these commenters requested that we consider granting an automatic waiver of the reading tutoring/family literacy placement requirement for "single-purpose institutions."

*Discussion:* We do not foresee many instances in which a waiver of the reading tutoring and family literacy activities requirement would be granted. However, we are sensitive to the commenters' concerns and will evaluate situations involving institutions that specialize in health professions or other single areas of study, along with other waiver requests, if they are submitted during the waiver process. To allow flexibility to consider all factors that are valid reasons for a waiver, we are not specifying the circumstances that would receive a waiver in these final regulations.

In the Spring of 2000, the Department plans to issue a Dear Partner Letter

regarding the waiver process that will provide procedures and time frames for institutions to request waivers of the community service and/or the reading tutor/family literacy activities requirements for the 2000–2001 award year. We intend to notify institutions of our decision on their waiver requests prior to the start of the 2000–2001 award year so as not to cause any disruptions to institutions' award processes. Institutions should keep in mind that a waiver will be granted if they provide evidence that enforcing the requirement would cause a hardship for students at the institution. The fact that it may be difficult for the institution to comply with this provision is not in and of itself a basis for granting a waiver.

*Changes:* None.

*Comments:* One commenter expressed opposition to the new reading tutoring and family literacy project requirement by stating that it seems that schools are being forced more and more to implement "social policy" as a consequence of accessing Title IV funds. The commenter stated that the commenter trains career oriented and vocationally focused students who are not interested in these types of projects. Therefore, the commenter suggested that the entire reading tutoring and family literacy project requirement be waived and that we focus more on simplifying the HEA rather than complicating the regulations with social initiatives.

*Discussion:* Reading is a fundamental skill for learning and many American school children have trouble learning how to read. The FWS students not only help children read better by giving them extra learning time, they also build confidence and boost motivation. Research shows that children whose parents work with them on literacy skills during early childhood have a better chance of reading well and independently.

Student achievement in reading and mathematics in the United States is below the international average. There is a growing interest among many professionals in technical, mathematical and scientific fields to share their enthusiasm and knowledge about mathematics with school children. College students, particularly those with an affinity for mathematics and science, seek opportunities to mesh their interests with their commitment to community service. Students who need help in mastering the fundamentals of reading and mathematics in elementary and middle school can benefit from extra help, personal attention, and additional learning time.

We believe that participation in these community service activities can help to

serve the needs of the community and give FWS students a rewarding and enriching experience. College students participating as tutors of reading and math may decide to pursue teaching as a career, based on successful tutoring experiences. This investment in our youth is an investment in this country's future. We believe that the efforts associated with regulations for FWS students to tutor children in reading and math, and work in family literacy activities, are justified by the benefits of preparing children to compete in the global economy and ensuring our Nation's economic growth.

*Changes:* None.

**Payment for Time Spent in Training and Travel (§ 675.18(h))**

*Comments:* One commenter expressed concern about the ability of time cards to demonstrate travel time when the student is employed in community service. This commenter suggested that we leave this regulation as flexible as possible by allowing a simple statement from the student attached to an already existing time card that only lists hours worked. Another commenter also questioned the requirement that travel time be designated separately on timesheet records, and suggested that the supervisor's signature certifying the accuracy of the timesheet record should be adequate documentation.

*Discussion:* The Department's policy does require that the time spent for travel that is directly related to employment in community service activities be reported on the student's FWS time record as the hours worked are also reported. We recommend that institutions use a time record that shows a separation for the time spent in travel from hours worked. This enables those hours to be monitored by a supervisor to ensure that the hours are reasonable and maintains the integrity of the FWS Program.

*Changes:* None.

*Comments:* A commenter objected to the differential treatment of FWS earnings for training and travel. The commenter believes that the differential treatment of earnings for training and travel time for standard off-campus FWS positions and those designated as community service are inequitable and administratively cumbersome. That commenter recommends that the treatment of earnings for travel and training be consistent across all off-campus FWS employment positions.

*Discussion:* The proposed regulations do not represent a change in our policy to allow FWS students to be paid wages during a training period conducted for a reasonable length of time for any FWS

employment. The examples of math or reading tutors as positions that may require longer training periods were not used in the preamble to the NPRM (page 42210) to imply that an FWS student could not be paid for a training period in other types of FWS jobs. This policy applies whether the student is employed in community service activities or not.

With regard to payment for travel time, the HEA at section 443(b)(2)(A) clearly provides that beginning with the 1999–2000 award year, institutions will be allowed to pay students for a reasonable amount of time spent for travel that is directly related to employment in community service activities. We do not have authority to allow institutions to pay for travel time for any other types of FWS jobs.

*Changes:* None.

### **Goals 2000: Educate America Act**

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These regulations address the National Education Goals that (1) all children will start school ready to learn and that student achievement will be enhanced; (2) call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education and for supporting life-long learning; (3) every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship; and (4) the Nation's teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century. The regulations in § 675.18(g) further the objectives of these Goals by requiring FWS student participation in reading tutoring and in family literacy projects where the family is recognized as an institution for education and learning and the parent is recognized as their children's first teachers. The objectives of the Goals are also addressed by extending eligibility for Federal Pell Grants to those students who are pursuing a teacher certification or licensing credential through a State

approved non-degree postbaccalaureate program.

#### Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We discussed the potential costs and benefits of these final regulations in the preamble to the NPRM on page 42213.

#### Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

#### Intergovernmental Review

The Federal Supplemental Educational Opportunity Grant program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

The Federal Perkins Loan, Federal Work-Study, and Federal Pell Grant programs are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

#### 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: 84.033 Federal Work-Study Program; 84.037 Federal Perkins Loan Program; 84.007 Federal Supplemental Educational Opportunity Grant Program; and 84.063 Federal Pell Grant Program)

#### List of Subjects

##### 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

##### 34 CFR Part 673, 674, 675, and 676

Employment, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

##### 34 CFR Part 690

Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: October 20, 1999.

**Richard W. Riley,**  
 Secretary of Education.

For the reasons stated in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by amending Parts 668, 673, 674, 675, 676, and 690 as follows:

#### PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

**Authority:** 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.8 is amended by revising paragraph (h) to read as follows:

##### § 668.8 Eligible program.

\* \* \* \* \*

(h) *Eligibility for Federal Pell Grant and FSEOG programs.* In addition to satisfying other relevant provisions of this section—

(1) An educational program qualifies as an eligible program for purposes of the Federal Pell Grant Program only if the educational program is an undergraduate program or a postbaccalaureate teacher certificate or licensing program as described in 34 CFR 690.6(c); and

(2) An educational program qualifies as an eligible program for purposes of the FSEOG Program only if the educational program is an undergraduate program.

\* \* \* \* \*

3. Section 668.32 is amended by revising paragraph (c) to read as follows:

##### § 668.32 Student eligibility—general.

\* \* \* \* \*

(c)(1) For purposes of the FSEOG Program, does not have a baccalaureate or first professional degree;

(2) For purposes of the Federal Pell Grant Program—

(i)(A) Does not have a baccalaureate or first professional degree; or

(B) Is enrolled in a postbaccalaureate teacher certificate or licensing program as described in 34 CFR 690.6(c); and

(ii) Is not incarcerated in a Federal or State penal institution; and

(3) For purposes of the Federal Perkins Loan, FFEL, and Direct Loan programs, is not incarcerated;

\* \* \* \* \*

4. Section 668.161 is amended by revising paragraph (a)(4) to read as follows:

##### § 668.161 Scope and purpose.

(a) \* \* \*

(4) *FWS Program.* An institution must follow the disbursement procedures in 34 CFR 675.16 for paying a student his or her wages under the FWS Program instead of the disbursement procedures in §§ 668.164(b) through (g) and 668.165.

\* \* \* \* \*

**PART 673—GENERAL PROVISIONS FOR THE FEDERAL PERKINS LOAN PROGRAM, FEDERAL WORK-STUDY PROGRAM, AND FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM**

5. The authority citation for part 673 continues to read as follows:

**Authority:** 20 U.S.C 421–429, 1070b-1070b-3, and 1087aa-1087ii; 42 U.S.C. 2751–2756b, unless otherwise noted.

6. Section 673.5 is amended by revising paragraph (c)(1) introductory text and paragraph (c)(1)(ix); by redesignating paragraphs (c)(1)(x) and (c)(1)(xi) as paragraphs (c)(1)(xi) and (c)(1)(xii), respectively; by adding new paragraphs (c)(1)(x) and (c)(4); and by revising the OMB control number following the section to read as follows:

**§ 673.5 Overaward.**

\* \* \* \* \*

(c) *Resources.* (1) Except as provided in paragraphs (c)(2), (c)(3), and (c)(4) of this section, the Secretary considers that “resources” include, but are not limited to, any—

\* \* \* \* \*

(ix) Veterans educational benefits paid under Chapters 30, 31, 32, and 35 of title 38 of the United States Code;

(x) National service education awards or post-service benefits paid for the cost of attendance under title I of the National and Community Service Act of 1990 (AmeriCorps);

\* \* \* \* \*

(4) The institution may exclude as a resource any portion of a Federal Direct Stafford/Ford Loan (Direct Subsidized Loan) and subsidized Federal Stafford Loan that is equal to or less than the amount of a student’s veterans education benefits paid under Chapter 30 of title 38 of the United States Code (Montgomery GI Bill) and national service education awards or post service benefits paid for the cost of attendance under title I of the National and Community Service Act of 1990 (AmeriCorps).

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 1845–0019)

**PART 674—FEDERAL PERKINS LOAN PROGRAM**

7. The authority citation for part 674 continues to read as follows:

**Authority:** 20 U.S.C. 1087aa–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

8. Section 674.10 is amended by revising paragraph (b) to read as follows:

**§ 674.10 Selection of students for loans.**

\* \* \* \* \*

(b) If an institution’s allocation of Federal Capital Contribution is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, a reasonable portion of the dollar amount of loans made under this part must be offered to those students.

\* \* \* \* \*

**PART 675—FEDERAL WORK-STUDY PROGRAMS**

9. The authority citation for part 675 is revised to read as follows:

**Authority:** 42 U.S.C. 2751–2756b, unless otherwise noted.

10. In § 675.2 paragraph (b) is amended by revising paragraphs (1) and (3) of the definition of “community services” to read as follows:

**§ 675.2 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*Community services* \* \* \*

(1) Such fields as health care, child care (including child care services provided on campus that are open and accessible to the community), literacy training, education (including tutorial services), welfare, social services, transportation, housing and neighborhood improvement, public safety, crime prevention and control, recreation, rural development, and community improvement;

\* \* \* \* \*

(3) Support services to students with disabilities, including students with disabilities who are enrolled at the institution; and

\* \* \* \* \*

**§ 675.8 [Amended]**

11. Section 675.8 is amended by removing paragraph (d), and redesignating paragraphs (e), (f), and (g) as paragraphs (d), (e), and (f), respectively.

12. Section 675.10 is amended by revising paragraph (c), and by revising the OMB control number following the section to read as follows:

**§ 675.10 Selection of students for FWS employment.**

\* \* \* \* \*

(c) *Part-time and independent students.* If an institution’s allocation of FWS funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, a reasonable portion of the allocation must be offered to those students.

(Approved by the Office of Management and Budget under control number 1845–0019)

13. Section 675.16 is amended to read as follows by:

(a.) Redesignating paragraphs (a)(2), (a)(3), and (a)(4), as paragraphs (a)(10), (a)(11), and (a)(12), respectively;

(b.) Revising paragraph (a)(1) and adding new paragraphs (a)(2) through (a)(9);

(c.) In newly redesignated paragraph (a)(11), removing “wages are” and adding, in its place, “compensation is”;

(d.) In newly redesignated paragraph (a)(12), removing “wages” and adding, in its place, “compensation”;

(e.) Revising paragraph (b)(1);

(f.) In paragraphs (b)(2), (b)(3), and (c), removing “shall” and adding, in its place, “must”; and

(g.) Revising the OMB control number following the section.

**§ 675.16 Payments to students.**

(a)(1) An institution must pay a student FWS compensation at least once a month.

(2) Before an institution makes an initial disbursement of FWS compensation to a student for an award period, the institution must notify the student of the amount of funds the student is authorized to earn, and how and when the FWS compensation will be paid.

(3) An institution must pay FWS compensation to a student by—

(i) Check or similar instrument that the student can cash on his or her own endorsement;

(ii) Initiating an electronic funds transfer (EFT) to a bank account designated by the student after obtaining the authorization described in paragraph (a)(4)(i) of this section;

(iii) Crediting the student’s account at the institution after obtaining the authorization described in paragraph (a)(4)(i) of this section. The institution may only credit the student’s account at the institution to satisfy current award year charges for—

(A) Tuition and fees;

(B) Board, if the student contracts with the institution for board;

(C) Room, if the student contracts with the institution for room; and

(D) Other institutionally provided educationally related goods and services; or

(iv) Crediting the student’s account at the institution to satisfy minor prior award year authorized charges if these charges are less than \$100 or if the payment of these charges does not, and will not, prevent the student from paying his or her current educational costs after obtaining the authorization described in paragraph (a)(4)(i) of this section.

(4)(i) Except for the noncash contributions allowed under paragraphs (b)(2) and (b)(3) of this section, an institution must obtain a separate written authorization from the student if the student is paid FWS compensation by—

(A) Crediting the student's account at the institution; or (B) Initiating an EFT to a bank account designated by the student.

(ii) If an institution obtains a written authorization from the student, the institution may hold excess FWS funds under paragraph (a)(8) of this section.

(iii) The institution must obtain and use the written authorization in accordance with the requirements of paragraphs (a)(5) and (a)(6) of this section.

(5) In obtaining the student's written authorization described in paragraph (a)(4) of this section, an institution—

(i) May not require or coerce the student to provide that authorization;

(ii) Must allow the student to cancel or modify that authorization at any time; and

(iii) Must clearly explain to the student how it will carry out that activity.

(6)(i) If a student modifies the written authorization described in paragraph (a)(4) of this section, the modification takes effect on the date the institution receives the modification notice.

(ii) If a student cancels the written authorization described in paragraph (a)(4)(i)(A) of this section, the institution may use the FWS compensation to pay only those authorized charges incurred by the student before the institution received the notice.

(7) If an institution pays a student FWS compensation by crediting the student's account, and the result is a credit balance, the institution must pay the credit balance directly to the student as soon as possible but no later than 14 days after the balance occurred on the account.

(8) Except if prohibited by the Secretary under the reimbursement payment method, an institution may hold, on behalf of the student, FWS funds that would otherwise be paid directly to the student under paragraph (a)(7) of this section, if the institution obtains the authorization described in paragraph (a)(4)(ii) of this section. If an institution holds excess FWS funds, the institution must—

(i) Identify the amount of FWS funds the institution holds for each student in a subsidiary ledger account designated for that purpose;

(ii) Maintain, at all times, cash in its bank account in an amount at least

equal to the amount of FWS funds the institution holds for the student; and  
(iii) Pay any remaining balance by the end of the institution's final FWS payroll period for an award period.

(9) If a student cancels the written authorization as described in paragraph (a)(4)(ii) of this section to hold excess FWS funds, the institution must pay those funds directly to the student as soon as possible but no later than 14 days after the institution receives that cancellation notice.

\* \* \* \* \*

(b)(1) Except for the noncash contributions allowed under paragraph (b)(2) or (b)(3) of this section, an institution must pay the student its share of his or her FWS compensation at the same time it pays the Federal share.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 1845-0019)

14. Section 675.18 is amended as follows by:

- (A) Revising paragraph (a)(2);
- (B) In paragraph (f), removing, "May 15" and adding, in its place, "May 1";
- (C) Revising paragraphs (g)(1) and (g)(2); and adding new paragraphs (g)(3) and (h).

**§ 675.18 Use of funds.**

(a) \* \* \*

(2) Paying administrative expenses as provided for in 34 CFR 673.7;

\* \* \* \* \*

(g) *Community service.* (1) For the 2000-2001 award year and subsequent award years, an institution must use at least seven percent of the sum of its initial and supplemental FWS allocations for an award year to compensate students employed in community service activities. In meeting this community service requirement, an institution must include at least one—

(i) Reading tutoring project that employs one or more FWS students as reading tutors for children who are preschool age or are in elementary school; or

(ii) Family literacy project that employs one or more FWS students in family literacy activities.

(2) The Secretary may waive the requirements in paragraph (g)(1) of this section if the Secretary determines that an institution has demonstrated that enforcing the requirements in paragraph (g)(1) of this section would cause a hardship for students at the institution.

(3) To the extent practicable, in providing reading tutors for children under paragraph (g)(1)(i), an institution must—

(i) Give priority to the employment of students to tutor in reading in schools

that are participating in a reading reform project that—

(A) Is designed to train teachers how to teach reading on the basis of scientifically-based research on reading; and

(B) Is funded under the Elementary and Secondary Education Act of 1965; and

(ii) Ensure that any student who is employed in a school participating in a reading reform project described in paragraph (g)(3)(i) of this section receives training from the employing school in the instructional practices used by the school.

(h) *Payment for time spent in training and travel.* (1) For any award year, an institution may pay students for a reasonable amount of time spent for training that is directly related to FWS employment.

(2) Beginning with the 1999-2000 award year, an institution may pay students for a reasonable amount of time spent for travel that is directly related to employment in community service activities (including tutoring in reading and family literacy activities).

15. Section 675.20 is amended by adding a new paragraph (d), and by revising the OMB control number following the section to read as follows:

**§ 675.20 Eligible employers and general conditions and limitation on employment.**

\* \* \* \* \*

(d) *Academic credit and work-study.* (1) A student may be employed under the FWS program and also receive academic credit for the work performed. Those jobs include, but are not limited to, work performed when the student is—

- (i) Enrolled in an internship;
- (ii) Enrolled in a practicum; or
- (iii) Employed in a research, teaching, or other assistantship.

(2) A student employed in an FWS job and receiving academic credit for that job may not be—

- (i) Paid less than he or she would be if no academic credit were received;
- (ii) Paid for receiving instruction in a classroom, laboratory, or other academic setting; and
- (iii) Paid unless the employer would normally pay the person for the same position.

(Approved by the Office of Management and Budget under control number 1845-0019)

16. Section 675.23 is amended by revising paragraph (b)(1) to read as follows:

**§ 675.23 Employment provided by a private for-profit organization.**

\* \* \* \* \*

(b) \* \* \*

(1) The work that the student performs must be academically relevant to the student's educational program, to the maximum extent practicable; and

\* \* \* \* \*

17. Section 675.26 is amended by revising paragraph (a)(1), by redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4), by adding a new paragraph (a)(2), and by revising paragraph (d)(2)(iii) to read as follows:

**§ 675.26 FWS Federal share limitations.**

(a)(1) The Federal share of FWS compensation paid to a student employed other than by a private for-profit organization, as described in § 675.23, may not exceed 75 percent unless the Secretary approves a higher share under paragraph (a)(2) or (d) of this section.

(2) The Federal share of the compensation paid to a student may exceed 75 percent, but may not exceed 90 percent, if—

(i) The student is employed at a private nonprofit organization or a Federal, State, or local public agency that—

(A) Is not a part of, and is not owned, operated, or controlled by, or under common ownership, operation, or control with, the institution;

(B) Is selected by the institution on an individual case-by-case basis;

(C) Would otherwise be unable to afford the costs of this employment; and

(ii) The number of students compensated under paragraph (a)(2)(i) of this section is not more than 10 percent of the total number of students paid under the FWS Program at the institution.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(iii) The student is performing family literacy activities in a family literacy project that provides services to families with preschool age children or children who are in elementary school; or

\* \* \* \* \*

**Subpart C—Work-Colleges Program**

18. Section 675.45 is amended by adding new paragraphs (a)(5) and (a)(6) to read as follows:

**§ 675.45 Allowable costs, Federal share, and institutional share.**

(a) \* \* \*

(5) Coordinate and carry out joint projects and activities to promote work service learning.

(6) Carry out a comprehensive, longitudinal study of student academic

progress and academic and career outcomes, relative to student self-sufficiency in financing their higher education, repayment of student loans, continued community service, kind and quality of service performed, and career choice and community service selected after graduation.

\* \* \* \* \*

**PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM**

19. The authority citation for part 676 continues to read as follows:

**Authority:** 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

20. Section 676.10 is amended by revising paragraph (b) to read as follows:

**§ 676.10 Selection of students for FSEOG awards.**

\* \* \* \* \*

(b) *Part-time and independent students.* If an institution's allocation of FSEOG funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, a reasonable portion of the allocation must be offered to those students.

21. Section 676.18 is amended by revising paragraph (a)(2), and adding new paragraphs (c), (d), (e) and (f) to read as follows:

**§ 676.18 Use of funds.**

(a) \* \* \*

(2) Paying administrative expenses as provided for in 34 CFR 673.7.

\* \* \* \* \*

(c) *Carry forward funds.* (1) An institution may carry forward and expend in the next award year up to 10 percent of the sum of its initial and supplemental FSEOG allocations for the current award year.

(2) Before an institution may spend its current year FSEOG allocation, it must spend any funds carried forward from the previous year.

(d) *Carry back funds.* An institution may carry back and expend in the previous award year up to 10 percent of the sum of its initial and supplemental FSEOG allocations for the current award year. The institution's official allocation letter represents the Secretary's approval to carry back funds.

(e) *Use of funds carried forward and carried back.* An institution may use the funds carried forward or carried back under paragraphs (c) and (d) of this section, respectively, for activities described in paragraph (a) of this section.

(f) *Carry back funds for summer FSEOG awards.* An institution may carry back and expend in the previous award year any portion of its initial and supplemental FSEOG allocations for the current award year to make awards to eligible students for payment periods that begin on or after May 1 of the previous award year but end prior to the beginning of the current award year.

**PART 690—FEDERAL PELL GRANT PROGRAM**

22. The authority citation for part 690 continues to read as follows:

**Authority:** 20 U.S.C. 1070a, unless otherwise noted.

23. Section 690.6 is amended by revising the heading and paragraph (a), and adding new paragraphs (c) and (d) to read as follows:

**§ 690.6 Duration of student eligibility—undergraduate course of study and eligible postbaccalaureate program.**

(a) Except as provided in paragraphs (c) and (d) of this section, a student is eligible to receive a Federal Pell Grant for the period of time required to complete his or her first undergraduate baccalaureate course of study.

\* \* \* \* \*

(c) An otherwise eligible student who has a baccalaureate degree and is enrolled in a postbaccalaureate program is eligible to receive a Federal Pell Grant for the period of time necessary to complete the program if—

(1) The postbaccalaureate program consists of courses that are required by a State for the student to receive a professional certification or licensing credential that is required for employment as a teacher in an elementary or secondary school in that State;

(2) The postbaccalaureate program does not lead to a graduate degree;

(3) The institution offering the postbaccalaureate program does not also offer a baccalaureate degree in education;

(4) The student is enrolled as at least a half-time student; and

(5) The student is pursuing an initial teacher certification or licensing credential within a State.

(d) An institution must treat a student who receives a Federal Pell Grant under paragraph (c) of this section as an undergraduate student enrolled in an undergraduate program for title IV purposes.

24. In § 690.7 paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

**§ 690.7 Institutional participation.**

\* \* \* \* \*

(c)(1) If an institution loses its eligibility to participate in the FFEL or Direct Loan program under the

provisions of 34 CFR 668.17, it also loses its eligibility to participate in the Federal Pell Grant Program for the same period of time.

(2) That loss of eligibility must be in accordance with the provisions of 34 CFR 668.17(b).

\* \* \* \* \*

[FR Doc. 99-28167 Filed 10-27-99; 8:45 am]

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