

DEPARTMENT OF EDUCATION**34 CFR Parts 668, 674, 675, 676, 682, 685, and 690**

RIN 1840-AC39

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations, 34 CFR Part 668, to implement an amendment made to the General Education Provisions Act (GEPA) by the Improving America's Schools Act of 1994 (IASA). That amendment decreased from five years to three years the length of time that a recipient of federal funds is required to maintain records. In addition, the Secretary is consolidating and clarifying existing records retention rules, and reducing administrative burden on institutions.

DATES: Effective Date: These regulations take effect July 1, 1997. However, affected parties do not have to comply with the information collection requirements in § 668.24 until the Department of Education publishes in the Federal Register the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Paula Husselmann or Kenneth Smith, U.S. Department of Education, 600 Independence Avenue, SW, ROB-3, Room 3045, Washington, DC 20202-5346. The telephone number for Paula Husselmann is (202)708-4902. The telephone number for Kenneth Smith is (202)708-9406. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) AT 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On September 13, 1996, the Secretary published a notice of proposed rulemaking (NPRM) for the Student Assistance General Provisions (Part 668) in the Federal Register (61 FR 48564-48569). The NPRM included a discussion of the major issues surrounding the proposed changes that will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to

the NPRM on which a discussion of those changes can be found:

Section 668.24 Record Retention and Examinations

The Secretary proposed to reduce from five years to three years the length of time that a recipient of title IV, HEA program funds must maintain records. (page 48564)

The Secretary proposed that the recordkeeping period should be the same for all programs, to the extent possible. The Secretary proposed as a general rule that, other than records relating to student loans, an institution must keep records relating to its administration of a title IV, HEA program for an award year for three years after the end of that award year. (page 48564)

The Secretary proposed the following requirements for certain types of records that do not fit within the general rule. With regard to records relating to student loans under the FFEL Program and the William D. Ford Federal Direct Loan (Direct Loan) Program, the Secretary proposed that an institution keep those records for three years after the end of the award year in which the student borrower last attended the institution. (page 48564)

The Secretary proposed that an institution keep loan records relating to the repayment of Federal Perkins Loans in accordance with the regulations governing that program, 34 CFR 674.19. (page 48564)

The Secretary proposed that an institution keep the Fiscal Operations Report and Application to Participate in the Federal Perkins Loan, Federal Supplemental Educational Opportunity Grant (FSEOG), and Federal Work-Study (FWS) Programs (FISAP) and the records supporting information contained in a FISAP, including income grid information, for three years after the end of the award year in which the FISAP was submitted. (page 48564)

The Secretary proposed to accommodate new technology by allowing an institution to satisfy its recordkeeping requirements under various electronic formats. The Secretary proposed that all record information, except those records required to be retained in electronic format, be retrievable in a coherent hard copy or in other media format acceptable to the Secretary. (pages 48564-48565)

The Secretary proposed that an institution make its records readily available for review at an institutional location designated by the Secretary. (page 48565)

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, thirty-three parties submitted comments on the proposed regulations. The Secretary notes that many of the commenters are groups representing significant numbers of people and entities. Therefore, when the Secretary refers to a commenter, the Secretary is, in most cases, referring to groups of individuals or entities.

An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—generally are not addressed.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States. This issue is further discussed in the Appendix to these regulations, under the analysis of comments and changes for § 668.24, "General" comments, and for § 682.414(a)(3).

List of Subjects

34 CFR Part 668

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

34 CFR Part 674

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

34 CFR Part 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 Parts 682 and 685

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

34 CFR Part 690

Colleges and universities, Education of disadvantaged, Grant programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Programs; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program 84.063 Federal Pell Grant Program; 84.069 State Student Incentive Grant Program; 84.268 Federal Direct Student Loan Program; and 84.272 National Early Intervention Scholarship and Partnership Program. Catalog of Federal Domestic Assistance Number for the Presidential Access Scholarship Program has not been assigned.)

Dated: November 20, 1996.

Richard W. Riley,
Secretary of Education.

The Secretary amends Parts 668, 674, 675, 676, 682, 685, and 690 of Title 34 of the Code of Federal Regulations 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 668.24 is revised to read as follows:

§ 668.24 Record retention and examinations.

(a) *Program records.* An institution shall establish and maintain, on a current basis, any application for title IV, HEA program funds and program records that document—

- (1) Its eligibility to participate in the title IV, HEA programs;
- (2) The eligibility of its educational programs for title IV, HEA program funds;
- (3) Its administration of the title IV, HEA programs in accordance with all applicable requirements;
- (4) Its financial responsibility, as specified in this part;
- (5) Information included in any application for title IV, HEA program funds; and
- (6) Its disbursement and delivery of title IV, HEA program funds.

(b) *Fiscal records.* (1) An institution shall account for the receipt and expenditure of title IV, HEA program funds in accordance with generally accepted accounting principles.

(2) An institution shall establish and maintain on a current basis—

- (i) Financial records that reflect each HEA, title IV program transaction; and
- (ii) General ledger control accounts and related subsidiary accounts that identify each title IV, HEA program transaction and separate those transactions from all other institutional financial activity.

(c) *Required records.* (1) The records that an institution must maintain in order to comply with the provisions of this section include but are not limited to—

- (i) The Student Aid Report (SAR) or Institutional Student Information Record (ISIR) used to determine eligibility for title IV, HEA program funds;
- (ii) Application data submitted to the Secretary, lender, or guaranty agency by the institution on behalf of the student or parent;
- (iii) Documentation of each student's or parent borrower's eligibility for title IV, HEA program funds;
- (iv) Documentation relating to each student's or parent borrower's receipt of title IV, HEA program funds, including but not limited to documentation of—
 - (A) The amount of the grant, loan, or FWS award; its payment period; its loan period, if appropriate; and the calculations used to determine the amount of the grant, loan, or FWS award;
 - (B) The date and amount of each disbursement or delivery of grant or loan funds, and the date and amount of each payment of FWS wages;
 - (C) The amount, date, and basis of the institution's calculation of any refunds or overpayments due to or on behalf of the student; and
 - (D) The payment of any refund or overpayment to the title IV, HEA program fund, a lender, or the Secretary, as appropriate;

(v) Documentation of and information collected at any initial or exit loan counseling required by applicable program regulations;

(vi) Reports and forms used by the institution in its participation in a title IV, HEA program, and any records needed to verify data that appear in those reports and forms; and

(vii) Documentation supporting the institution's calculations of its completion or graduation rates under §§ 668.46 and 668.49.

(2) In addition to the records required under this part—

(i) Participants in the Federal Perkins Loan Program shall follow procedures established in 34 CFR 674.19 for documentation of repayment history for that program;

(ii) Participants in the FWS Program shall follow procedures established in 34 CFR 675.19 for documentation of work, earnings, and payroll transactions for that program; and

(iii) Participants in the FFEL Program shall follow procedures established in 34 CFR 682.610 for documentation of additional loan record requirements for that program.

(d) *General.* (1) An institution shall maintain required records in a systematically organized manner.

(2) An institution shall make its records readily available for review by the Secretary or the Secretary's authorized representative at an institutional location designated by the Secretary or the Secretary's authorized representative.

(3) An institution may keep required records in hard copy or in microform, computer file, optical disk, CD-ROM, or other media formats, provided that—

(i) Except for the records described in paragraph (d)(3)(ii) of this section, all record information must be retrievable in a coherent hard copy format or in other media formats acceptable to the Secretary;

(ii) An institution shall maintain the Student Aid Report (SAR) or Institutional Student Information Record (ISIR) used to determine eligibility for title IV, HEA program funds in the format in which it was received by the institution, except that the SAR may be maintained in an imaged media format;

(iii) Any imaged media format used to maintain required records must be capable of reproducing an accurate, legible, and complete copy of the original document, and, when printed, this copy must be approximately the same size as the original document;

(iv) Any document that contains a signature, seal, certification, or any other image or mark required to validate the authenticity of its information must be maintained in its original hard copy or in an imaged media format; and

(v) Participants in the Federal Perkins Loan Program shall follow procedures established in 34 CFR 674.19 for maintaining the original promissory notes and repayment schedules for that program.

(4) If an institution closes, stops providing educational programs, is terminated or suspended from the title IV, HEA programs, or undergoes a change of ownership that results in a

change of control as described in 34 CFR 600.31, it shall provide for—

(i) The retention of required records; and

(ii) Access to those records, for inspection and copying, by the Secretary or the Secretary's authorized representative, and, for a school participating in the FFEL Program, the appropriate guaranty agency.

(e) *Record retention.* Unless otherwise directed by the Secretary—(1) An institution shall keep records relating to its administration of the Federal Perkins Loan, FWS, FSEOG, or Federal Pell Grant Program for three years after the end of the award year for which the aid was awarded and disbursed under those programs, provided that an institution shall keep—

(i) The Fiscal Operations Report and Application to Participate in the Federal Perkins Loan, FSEOG, and FWS Programs (FISAP), and any records necessary to support the data contained in the FISAP, including "income grid information," for three years after the end of the award year in which the FISAP is submitted; and

(ii) Repayment records for a Federal Perkins loan, including records relating to cancellation and deferment requests, in accordance with the provisions of 34 CFR 674.19;

(2)(i) An institution shall keep records relating to a student or parent borrower's eligibility and participation in the FFEL or Direct Loan Program for three years after the end of the award year in which the student last attended the institution; and

(ii) An institution shall keep all other records relating to its participation in the FFEL or Direct Loan Program, including records of any other reports or forms, for three years after the end of the award year in which the records are submitted; and

(3) An institution shall keep all records involved in any loan, claim, or expenditure questioned by a title IV, HEA program audit, program review, investigation, or other review until the later of—

(i) The resolution of that questioned loan, claim, or expenditure; or

(ii) The end of the retention period applicable to the record.

(f) *Examination of records.* (1) An institution that participates in any title IV, HEA program and the institution's third-party servicer, if any, shall cooperate with an independent auditor, the Secretary, the Department of Education's Inspector General, the Comptroller General of the United States, or their authorized representatives, a guaranty agency in whose program the institution

participates, and the institution's accrediting agency, in the conduct of audits, investigations, program reviews, or other reviews authorized by law.

(2) The institution and servicer must cooperate by—

(i) Providing timely access, for examination and copying, to requested records, including but not limited to computerized records and records reflecting transactions with any financial institution with which the institution or servicer deposits or has deposited any title IV, HEA program funds, and to any pertinent books, documents, papers, or computer programs; and

(ii) Providing reasonable access to personnel associated with the institution's or servicer's administration of the title IV, HEA programs for the purpose of obtaining relevant information.

(3) The Secretary considers that an institution or servicer has failed to provide reasonable access to personnel under paragraph (f)(2)(ii) of this section if the institution or servicer—

(i) Refuses to allow those personnel to supply all relevant information;

(ii) Permits interviews with those personnel only if the institution's or servicer's management is present; or

(iii) Permits interviews with those personnel only if the interviews are tape recorded by the institution or servicer.

(4) Upon request of the Secretary, or a lender or guaranty agency in the case of a borrower under the FFEL Program, an institution or servicer promptly shall provide the requester with any information the institution or servicer has respecting the last known address, full name, telephone number, enrollment information, employer, and employer address of a recipient of title IV funds who attends or attended the institution.

(Authority: 20 U.S.C. 1070a, 1070b, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087, 1087a et seq., 1087cc, 1087hh, 1088, 1094, 1099c, 1141, 1232f; 42 U.S.C. 2753; and section 4 of Pub. L. 95-452, 92 Stat. 1101-1109)

§ 668.25 [Amended]

3. Section 668.25(c)(4)(i) is amended by removing "§ 668.23(h)" and adding, in its place, "§ 668.24".

§ 668.26 [Amended]

4. Section 668.26(b)(3) is amended by removing the word "five" and adding, in its place, the word "three".

PART 674—FEDERAL PERKINS LOAN PROGRAM

5. 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.

6. Section 674.19 is amended by revising paragraph (d); removing paragraph (e)(4)(v) and redesignating paragraph (e)(4)(vi) as paragraph (e)(4)(v); and revising paragraphs (e)(1) and (e)(3), and the heading of paragraph (e)(4) to read as follows:

§ 674.19 Fiscal procedures and records.

* * * * *

(d) *Records and reporting.* (1) An institution shall establish and maintain program and fiscal records that are reconciled at least monthly.

(2) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(e) * * *

(1) *Records.* An institution shall follow the record retention and examination provisions in this part and in 34 CFR 668.24.

* * * * *

(3) *Period of retention of repayment records.* An institution shall retain repayment records, including cancellation and deferment requests, for at least three years from the date on which a loan is assigned to the Department of Education, canceled, or repaid.

(4) *Manner of retention of promissory notes and repayment schedules.*

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PART 675—FEDERAL WORK-STUDY PROGRAMS

7. The authority citation for Part 675 continues to read as follows:

Authority: 42 U.S.C. 2571-2756b, unless otherwise noted.

8. Section 675.19 is amended by removing paragraphs (b)(2)(v) through (b)(2)(vii), (b)(4), (b)(5), and (c); adding the word "and" at the end of paragraph (b)(2)(iii); removing the semicolon at the end of paragraph (b)(2)(iv), and adding, in its place, a period; and revising paragraph (b)(1) to read as follows:

§ 675.19 Fiscal procedures and records.

* * * * *

(b) * * *

(1) An institution shall follow the record retention and examination provisions in this part and in 34 CFR 668.24.

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PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

9. The authority citation for Part 676 continues to read as follows:

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

10. Section 676.19 is amended by removing paragraph (c); and revising paragraph (b) to read as follows:

§ 676.19 Fiscal procedures and records.

* * * * *

(b) *Records and reporting.* (1) An institution shall follow the record retention and examination provisions in this part and in 34 CFR 668.24.

(2) An institution shall establish and maintain program and fiscal records that are reconciled at least monthly.

(3) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

11. The authority citation for Part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

12. Section 682.414 is amended by revising paragraph (a)(2); redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5), respectively; adding a new paragraph (a)(3); removing the citation "(a)(3)(iv)" in redesignated paragraph (a)(4)(iii), and adding, in its place, "(a)(4)(iv)"; adding the words "required under § 682.305(c)" after the words "audit report" in redesignated paragraph (a)(4)(iv); removing "paragraphs (a)(3)(ii)(C)-(K) of this section on microfilm, optical disk, or other machine readable format" in redesignated paragraph (a)(5)(i), and adding, in its place, "paragraphs (a)(4)(ii)(C)-(K) of this section in accordance with 34 CFR 668.24(d)(3) (i) through (iv)"; removing paragraph (c) introductory text; removing paragraphs (c)(1) and (c)(2); adding a new paragraph (c)(1); redesignating paragraph (c)(3) as (c)(2); removing "Sec. 682.401(b) (19) and (20)" in redesignated paragraph (c)(2), and adding in its place, "§ 682.401(b) (21) and (22)" to read as follows:

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) * * *

(2) The guaranty agency shall retain records for each loan for at least five years after the loan is paid in full or has been determined to be uncollectible in accordance with the agency's write-off procedures. However, in particular cases the Secretary may require the retention of records beyond this minimum period. For the purpose of this section, the term "paid in full" includes loans paid by the Secretary due to the borrower's death (or student's death in the case of a PLUS loan), the borrower's permanent and total disability or bankruptcy, the discharge of the borrower's loan obligation because of attendance at a closed school, or because the student's eligibility to borrow had been falsely certified by the school.

(3) A guaranty agency shall retain a copy of the audit report required under § 682.410(b) for not less than five years after the report is issued.

* * * * *

(c) *Inspection requirements.* (1) For purposes of examination of records, references to an institution in 34 CFR 668.24(f) (1) through (3) shall mean a guaranty agency or its agent.

* * * * *

13. Section 682.610 is amended by revising paragraphs (a) and (b); removing the word "or" at the end of paragraph (c)(2)(ii); removing the period at the end of paragraph (c)(2)(iii), and adding, in its place, "; or"; redesignating paragraph (f)(2) as paragraph (c)(2)(iv); removing the words "the school" the first time they appear in redesignated paragraph (c)(2)(iv), and adding, in their place, "it"; removing the words "the school shall notify the holder of the loan within 30 days thereafter, either directly or through the guaranty agency" in redesignated paragraph (c)(2)(iv); and removing paragraphs (d), (e), and (f) to read as follows:

§ 682.610 Administrative and fiscal requirements for participating schools.

(a) *General.* Each school shall—
 (1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in the regulations in this part and in 34 CFR part 668;

(2) Follow the record retention and examination provisions in this part and in 34 CFR 668.24; and

(3) Submit all reports required by this part and 34 CFR part 668 to the Secretary.

(b) *Loan record requirements.* In addition to records required by 34 CFR part 668, for each Stafford, SLS, or PLUS loan received by or on behalf of its students, a school shall maintain a copy of the loan application or data

electronically submitted to the lender, that includes—

- (1) The name of the lender;
- (2) The address of the lender;
- (3) The amount of the loan and the period of enrollment for which the loan was intended;

(4) For loans delivered to the school by check, the date the school endorsed each loan check, if required;

(5) The date or dates of delivery of the loan proceeds by the school to the student or to the parent borrower; and

(6) For loans delivered by electronic funds transfer or master check, a copy of the borrower's written authorization required under § 682.604(c)(3) to deliver the initial and subsequent disbursements of each FFEL program loan.

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PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

14. The authority citation for Part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

15. Section 685.309 is amended by revising paragraphs (a)(1), (c), and (d); removing paragraphs (e), (f), and (g); redesignating paragraphs (h), (i), and (j) as paragraphs (e), (f), and (g), respectively to read as follows:

§ 685.309 Administrative and fiscal control and fund accounting requirements for schools participating in the Direct Loan Program.

(a) * * *

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in this part and in 34 CFR part 668; and

* * * * *

(c) *Record retention requirements.* An institution shall follow the record retention and examination requirements in this part and in 34 CFR 668.24.

(d) *Accounting requirements.* A school shall follow accounting requirements in 34 CFR 668.24(b).

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PART 690—FEDERAL PELL GRANT PROGRAM

16. The authority citation for Part 690 continues to read as follows:

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

17. Section 690.81 is amended by revising paragraph (a) to read as follows:

§ 690.81 Fiscal control and fund accounting procedures.

(a) An institution shall follow provisions for maintaining general fiscal

records in this part and in 34 CFR 668.24(b).

* * * * *

18. Section 690.82 is revised to read as follows:

§ 690.82 Maintenance and retention of records.

(a) An institution shall follow the record retention and examination provisions in this part and in 34 CFR 668.24.

(b) For any disputed expenditures in any award year for which the institution cannot provide records, the Secretary determines the final authorized level of expenditures.

(Approved by the Office of Management and Budget under control number 1840-0681) (Authority: 20 U.S.C. 1070a, 1232f)

Appendix—Analysis of Comments and Changes

(Note: This Appendix will not be codified in the Code of Federal Regulations.)

Section 668.24 Record retention and examinations—General

Comments: Most of the commenters applauded the Secretary for his efforts to reduce the record retention requirements for institutions. The commenters encouraged the Secretary to continue to examine regulations for standardization among provisions, and to maintain the dual goals of data and program integrity and burden reduction. Organizations representing institutions and other participants in the title IV, HEA programs expressed their gratitude for the reduction in the amount of time that a recipient of federal funds must maintain records, and for the Secretary's efforts to consolidate and clarify existing record retention rules.

Two commenters indicated that the reduced time period should be accompanied by a reduction in the number of records that institutions are required to retain. The commenters encouraged the Secretary to review the data available in the Department's various databases, identify duplication of data collection, and seek to transfer data maintenance from institutions to the Department in an effort to reduce administrative burden on institutions.

Some commenters preferred that records be retained longer than three years and asked the Secretary to encourage institutions to retain records for a longer period. The commenters believe that the National Student Loan Data System and other technological initiatives will facilitate the retention of records for an indefinite period of time. Some commenters approved of the inclusion of a more comprehensive list of records in the SFA Handbook; one

commenter recommended that the Secretary also include the list in the Audit Guide, *Compliance Audits (Attestation Engagements) of Federal Student Financial Assistance Programs at Participating Institutions*.

Discussion: The Secretary appreciates the commenters' responses and will continue to evaluate regulations for burden reduction. The Secretary agrees that a more comprehensive list of records should be included in the Audit Guide. The Secretary does not agree that an institution does not have to maintain records that it has provided to ED databases because institutions are responsible for maintaining the records necessary to show their compliance with applicable statutes and regulations and their expenditure of title IV, HEA program funds.

Changes: None.

Section 668.24(a) Program Records

Comments: One commenter recommended that paragraph (a)(5) of this section be removed. The commenter explained that the application information requirement is provided for in the introductory language of paragraph (a) and is, therefore, redundant under (a)(5).

Discussion: The Secretary does not agree that paragraph (a)(5) repeats the introductory language of paragraph (a). The introductory language refers to the application itself, while paragraph (a)(5) refers to program records that document the information included in an application.

Changes: None.

Section 668.24(c) Required Records

Comments: A few commenters recommended that proof of high school diploma, GED, or documentation of "ability-to-benefit" be added to the list of required records under this paragraph. A number of commenters expressed concern over the use of the term "disbursement" in paragraph (c)(1)(iv)(B) because of the difference between its use for the FFEL Program and its use for other title IV, HEA programs. (In the FFEL Program, lenders "disburse" loan proceeds to a borrower's institution and the institution "delivers" those proceeds to the borrower.) One commenter recommended that this provision list various documents currently included in § 682.610 of the FFELP regulations. A few commenters recommended that the Secretary incorporate a reference to the Direct Loan Program regulations. One commenter recommended that the Secretary establish a future effective date for implementation of these regulations.

Discussion: Records documenting that a student has a high school diploma, GED, or the ability-to-benefit are covered in paragraph (c)(1)(iii), student eligibility records. The Secretary believes that it is not necessary to list them separately in this section.

The Secretary agrees with the commenters that the reference to disbursement should be expanded to include FFEL proceeds that are delivered to students and parents. The Secretary did not add the recommended FFELP items to the list of documentation because that would not be in keeping with the intent of these regulations to simplify and consolidate provisions. The Secretary did not reference the Direct Loan Program in this provision because there is no comparable provision under the Direct Loan Program. With respect to the effective date, these regulations will take effect July 1, 1997.

Changes: The Secretary has revised § 668.24(c)(1)(iv)(B) to include delivery of FFELP loan proceeds.

Section 668.24(d) General Requirements

Comments: One commenter requested clarification concerning the retention of records in a systematically organized manner. The commenter requested assurance that the Secretary is simply restating current policy and is not attempting to tell institutions how to keep files.

Discussion: The Secretary is simply restating current requirements and current policy. The Secretary is not attempting to tell institutions how to keep files to comply with this requirement.

Changes: None.

Comments: Many commenters addressed the proposal that an institution maintain an electronic record in the format in which it was originally received or transmitted. The commenters overwhelmingly objected to the proposal, indicating that it was expensive, duplicative, time-consuming, and inconsistent with technological innovation. The commenters suggested that it should be sufficient for institutions to reproduce, on request, the data contained in the records of each title IV transaction that it has sent or received electronically.

Some commenters recommended that the Secretary add lenders and guarantors specifically to § 668.24(d)(4) for access to records.

Discussion: The Secretary agrees with the points made by the commenters with respect to maintaining electronically transmitted records in the original format. However, the Secretary

believes that the Student Aid Report (SAR) or Institutional Student Information Record (ISIR) used to determine eligibility for title IV, HEA program funds should be retained by the institution in the format in which it was received because, for program review purposes and audit purposes, it is essential that these basic eligibility records be available in a consistent, comprehensive, and verifiable format.

Because the SAR is a hard copy document, for the purposes of these regulations it must be maintained in either its original hard copy format or in an imaged format. The ISIR, an electronic record, must be available in its original format, either as it was supplied by the Department to the institution on a magnetic tape or cartridge or as it was archived using EDEExpress software supplied to the institution. This enables the Secretary's representative to access the ISIR electronically, to discriminate among data and to authenticate the record. The information contained on the ISIR can be cross-checked or verified against applicant information supplied by the student at the central processor.

The Secretary does not believe that retention of an ISIR is burdensome because by using EDEExpress the institution maintains the record during the applicable award year, and, after the award year has ended, the institution has the ability, again using EDEExpress, to archive the data to a disk or other computer format. An institution that receives ISIR's on magnetic tapes or cartridges can simply make a copy of the file received from the Secretary.

The Secretary agrees to include guarantors in the provision governing access to title IV, HEA records when an institution closes or ceases providing educational programs. The Secretary does not agree to include lenders in this provision. Lenders do not have the enforcement and monitoring responsibilities which would necessitate their inclusion.

Changes: Proposed § 668.24(d)(3)(ii) has been changed to require only that the SAR or ISIR used to determine eligibility for title IV, HEA funds be retained in the format in which it was received, under the conditions described above. In addition, guarantors have been added to the access provision.

Comments: Several respondents commented on the issue of imaging documents. Several commenters asked the Secretary to remind institutions that an institution is not required to retain an original or imaged copy of a FFELP or Direct Loan Program promissory note, and that a photocopy or electronic

record of data elements sent to the lender or the Secretary is permitted under existing regulations. A few commenters requested clarification of the storage requirement for Perkins Loan promissory notes, and student aid records in general, vis-a-vis imaging requirements. One commenter encouraged the Secretary to require the maintenance of hard copy of promissory notes only if imaged copies of promissory notes have not served the Secretary well in court.

Discussion: The commenters are correct that institutions are not required to maintain an original or imaged copy of a promissory note for FFELP or Direct Loan Program loans. The institution may maintain the information needed to recreate the promissory note data in an alternate format. However, the commenters should note that the formats available to institutions for this retention are not restricted to the commenter's list.

With respect to a Perkins promissory note, an institution may image the note for administrative purposes, but retention of the original promissory note is necessary for legal purposes. An institution should refer to § 674.19 of the Federal Perkins Loan regulations for further guidance. The imaging provision applies to all other student aid records.

Changes: None.

Section 668.24(e) Record Retention

Comments: Generally speaking, the commenters strongly supported the reduction in the length of record retention. However, the commenters differed in their approach to records for the loan programs. Some commenters were concerned about the difference in retention requirements among the title IV loan programs. Some commenters recommended a longer retention period for Federal Perkins Loans, while other commenters recommended a shorter retention period; e.g. three years from the academic year in which the loan was made. A few commenters suggested that the requirements be the same for all loan programs; for example, bringing the Federal Perkins Loan Program into alignment with the FFEL and Direct Loan Programs, and requiring the retention of records until three years from the student's last day of attendance.

Other commenters objected to the proposed loan retention record requirements and requested that the Secretary remind institutions that loan records may be retained longer than the regulations require, particularly records related to loan proceeds disbursed by electronic fund transfer (EFT). These commenters noted that the shorter

period may cause problems. For example, since a lender or guaranty agency may not be aware of problems with a loan until repayment begins, institutions may need to retain records to respond to borrower defenses, and records may be needed to appeal a cohort default rate.

Some commenters contended that the FFELP and Direct Loan requirements essentially nullify the reduction in retention requirements because most institutions purge all records for a student at one time. The commenters indicated that if a student obtained title IV, HEA program grant funds, the record retention requirements for the loan programs would in effect become the record retention requirement for the grant programs because of the interrelation of all the title IV, HEA programs.

One commenter recommended that only the data that the institution used to process a loan application be retained. For example, the institution would retain only the actual expected family contribution (EFC) and estimated financial assistance (EFA); it would not have to retain supporting documentation. One commenter recommended that the Secretary encourage institutions to retain records for a longer period for undergraduate students who are enrolled in extended programs.

Discussion: The Secretary carefully considered the various recommendations by the commenters. While the Secretary would prefer to have uniform requirements among all the title IV, HEA programs, the nature of the FFEL and Direct Loan Programs require a different treatment because problems may arise with regard to a loan many years after the student received the loan. The separate timeframe helps protect students from improper claims for repayment on loans by allowing them access to institutional enrollment, eligibility, and disbursement records; helps protect institutions against claims and liabilities; and provides additional substantiation to the validity of a loan when that loan is challenged.

With respect to the longer retention period for loans records negating the shorter period required for other title IV, HEA programs, this is not a change. This difference in requirements is unavoidable given the interrelationship of the title IV, HEA programs.

The Secretary also reminds institutions that records may always be retained longer than required by regulation.

Changes: None.

Comments: With regard to the retention of FISAP records for the campus-based programs, commenters requested that the Secretary change the retention requirement from three years after the end of the award year in which the institution submits the FISAP to three years after the year for which data are reported. Some commenters viewed the proposed regulations as an increase rather than a decrease in retention time from existing regulations.

Discussion: In the current regulations, institutions are required to maintain the FISAP and the records supporting it for five years after the FISAP's submission. Therefore, under the existing regulations, assuming that an institution submitted its FISAP in October, 1996, to request funds for the 1997-98 award year and to report expenditures for the 1995-96 award year, the institution would have to keep the FISAP and FISAP information until October, 2001.

While reducing the record retention period from five year to three years, the Secretary also determined to standardize the period for which institutions have to keep records and that standard period, to the extent possible, runs from the end of an award year. However, because institutions in a FISAP request funds in one award year, for expenditure in the following award year, based on events in the preceding award year, several alternative were possible to align the FISAP and FISAP records to this standard.

The revised legal standard for keeping records requires an institution to keep records for three years after the activity for which funds are used. Thus, for example, when an institution submitted a FISAP in October, 1996, for funds to be expended in award year 1997-98, the Secretary could have proposed that the institution keep FISAP and FISAP records until three years after the award year in which the requested funds were used, *i.e.* June 30, 2001. However, consistent with the purpose of reducing the record retention period, the Secretary has chosen to require institutions to keep FISAP and FISAP records for three years after the end of the award year in which the funds were requested, *i.e.* June 30, 2000 in this example.

The commenters' suggestion that the record period begin after the end of the award year on which the funds were based, *i.e.* June 30, 1999, three years after June 30, 1996, would amount to only a one-year retention period for the year in which requested funds were expended, and two years and nine months from the date the FISAP was submitted. Moreover, that suggestion would allow the Department only one

year after the year in which funds were expended to review whether the institution's income grid information supported the amount the institution received and expended. The Secretary believes that such a short period is inappropriate and unacceptable.

The recommendation that a common date be established for all records created during an award year is available to institutions at their option. An institutions is free to establish its own common date for purging records as long as all minimum regulatory requirements are met.

Changes: None.

Section 668.24(f) Examination of Records

Comments: Some commenters asked the Secretary to provide for a review by guarantors whether or not the institution participates in the FFEL Program when the review occurs. A few commenters asked the Secretary to include a borrower's phone number and enrollment information in the list of information that an institution must provide to a requestor. A few commenters asked the Secretary to include language to clarify that third party servicers must comply with these regulations. One commenter recommended that instead of providing timely access to the Secretary or his representative, the institution should promptly provide that access.

Discussion: The Secretary would encourage an institution that no longer participates in a guaranty agency's program under the FFEL program to cooperate with a review by that guaranty agency, but since the institution no longer participates in the program, the Secretary will not impose this requirement.

Third-party servicers are specifically subject to the provisions of paragraph (f). The requirements contained in paragraphs (a) through (e) apply to participating institutions, and institutions are responsible for complying with those requirements, regardless of whether they use a third-party servicer. It is the responsibility of the institution to make sure that its third-party servicer satisfies all the regulatory requirements contained in paragraphs (a) through (e) because it will suffer the consequence for the servicer's failure to comply.

The Secretary agrees with the suggestion of the commenters regarding the provision of additional information. Finally, the Secretary believes that the term "timely access" is sufficient to ensure promptness and has, therefore, not changed the regulation to accommodate this recommendation.

Changes: Section 668.24(f)(4) has been changed to include information about a borrower's telephone number and enrollment status.

Section 682.414 Records, Reports, and Inspection Requirements for Guaranty Agency Programs

Comments: Many commenters noted that while the record retention requirement for institutions was reduced from five to three years, FFEL Program lenders and guaranty agencies must continue to maintain their records for five years under paragraph (a)(2). Commenters stated that a three-year period is sufficient for enforceability, and asked that record retention requirements for lenders and guaranty agencies be the same as those for institutions.

One commenter believed that an inconsistency exists between this NPRM and an FFEL program NPRM that was published in the Federal Register on September 19, 1996 (61 FR 49382). The commenter noted that in the September 19, 1996, NPRM, the Secretary considers guaranty agencies to be trustees of the federal government and fiduciaries, because they receive and process federal funds, but that for the purposes of these regulations, guaranty agencies are not considered recipients of program funds.

Other commenters stated that they understood that the amended GEPA provisions did not apply to guaranty agencies and lenders. However they indicated that the five-year record retention requirement imposed on lenders and guaranty agencies was not statutorily required and therefore the Secretary could reduce that period by regulation. Many of the commenters who suggested a reduction in the record retention requirements for lenders and guaranty agencies suggested that this reduction be issued in a separate NPRM.

Discussion: The GEPA provision, 20 U.S.C. § 1232f(a), applies only to entities that receive federal funds through a grant, loan, or similar process and hold federal funds for a period of time. Lenders and guaranty agencies receive contractually required payments and funds to which GEPA does not apply. Moreover, as a fiduciary, a guaranty agency is held to a very strict standard of accountability and would be well advised to maintain records for a long period. On the other hand, the fact that the Secretary considers that a guaranty agency a fiduciary does not make the guaranty agency a recipient of federal funds under GEPA.

The records of lenders and guaranty agencies are critical in enforcing the loan obligations of the borrower and for determining institutional eligibility

under the FFEL Program. For example, a three-year limit on keeping records would not provide adequate documentation for cohort default rate servicing appeals, on which ED and institutions rely.

The Secretary remains committed to reducing burden and intends to continue exploring effective ways of reducing the recordkeeping burden of guaranty agencies and lenders. Though the requested change from five years to three years of record retention is not made in these final regulations, the Secretary will consider this suggestion along with other options for reducing burden, and will propose any resulting changes to regulations in a separate NPRM.

Changes: None.

Comments: Many commenters asked for clarification of the provision that "in particular cases the Secretary may require the retention of records beyond this minimum period." They questioned the purpose of this provision, asked for clarification or examples of the specific records that are intended, and also asked that the requirement either be clarified or dropped.

Several commenters noted that § 682.414(a)(4)(iii) provides a requirement for lenders similar to that in § 682.414(a)(2) and asked that it be either clarified with examples or removed.

Discussion: Any record may be subject to this provision. For the most part, the purpose of this requirement is the same as that for § 668.24(e)(3). It provides an additional retention period for records involved in an audit, review, or investigation. It may also be applied on a case-by-case basis, when the Secretary considers such an extension necessary.

The requirement at § 682.414(a)(2) was added as a technical correction, to conform requirements for guaranty agencies to those of lenders. As several commenters noted, this requirement exists in previous regulations for lenders, and is included in these regulations as § 682.414(a)(4)(iii).

Changes: None.

Comments: Many commenters noted that the citation given in paragraph (a)(3), "Sec. 682.305(c)," is a reference to a lender audit, not to an audit of a guaranty agency. As the lender audits are not available to the guaranty agencies, the commenters recommended changing the citation to "Sec. 682.410(b)."

Several commenters noted that if the citation were not an error, they objected to its requirement. One commenter felt that this requirement was unnecessary, as the audit report is provided to the Secretary, and asked that the requirement be removed.

Discussion: The technical correction recommended is correct. As for the commenter's feeling that the requirement to retain this information caused unnecessary duplication, the Secretary does not agree. The guaranty agency or lender is responsible for maintaining records necessary to show its compliance with applicable statute and regulations.

Changes: The cross-reference in § 682.414(a)(3) to "Sec. 682.305(c)" is changed to § 682.410(b).

Comments: One commenter asked that § 682.414(a)(5)(i) be revised to permit all loan records to be stored in electronic or imaged formats. The commenter noted that this would be consistent with the requirements for institutions in § 668.24(d), and would recognize advancements in technology.

Discussion: The records in question are the loan application and the signed promissory note, including the repayment instrument. These original, hard copy documents must be maintained in order to protect the enforceability of the loan. Allowing these documents to be stored in formats other than hard copy would not be consistent with the requirements for other programs. This requirement for FFEL is comparable to that for Federal Perkins Loans (see § 674.19(e)(4)) and to the requirements for maintenance of Direct Loan Program promissory notes by the Direct Loan Servicing Center. However, the Secretary is continuing to monitor Courts' acceptance of other forms and may make changes in this area in the future.

Changes: None.

Comments: Many commenters noted the provision in § 682.414(a)(5)(ii) that a lender or guaranty agency shall either return the original note to the borrower or notify the borrower under an alternate procedure that is acceptable under State law that the loan is paid in full. The commenters asked that the Secretary preempt State law in this instance and state that lenders and guaranty agencies shall inform borrowers that their loans are paid in full through a written notice. Commenters reasoned that this would

protect the federal fiscal interest from an enforceability standpoint and would standardize the process.

One commenter asked that this paragraph be revised to allow lenders to choose between the two options, and noted a risk of returning promissory notes, that they might be returned in error, thus damaging the enforceability of the loan, and that promissory notes for one or more loans might be especially prone to this.

Discussion: The Secretary is merely moving this rule, not changing its substance. The Secretary believes that the current rule remains appropriate.

Changes: None.

Section 682.610 Administrative and Fiscal Requirements for Participating Schools

Section 682.610(a) General

Comments: One commenter recommended that "school" in the introduction to this paragraph be changed to "institution," for consistency.

Discussion: The word "school" is used in 34 CFR 682 to distinguish between schools and other participants that could be considered "institutions" (for example, a lender is a financial institution). The use of the word "school" in this paragraph creates no inconsistency.

Changes: None.

Section 682.610(b) Loan Record Requirements

Comments: Many commenters noted that PLUS loans are not included in paragraph (b)(4), and believe that they have been omitted unintentionally. The commenters ask that PLUS loans be included in this paragraph, and that other provisions of § 682.610(b)(4) be modified to reflect that change.

Discussion: The Secretary agrees with the commenters.

Changes: Section 682.610(b) is revised to include PLUS loans.

Comments: Many commenters requested that "master check" be added to language in § 682.610(b)(6), which was designated as § 682.610(b)(4)(iii) in the NPRM, in order to codify the inclusion of master check records for record retention purposes. One commenter noted that the citation "§ 682.604(c)(3)" applies to both EFT and master check.

Discussion: The Secretary agrees with the commenters.

Changes: Section 682.610(b)(6) has been amended to include master checks.

Comments: Many commenters noted that § 682.610(b)(9)(iv), as designated in current regulations, remains unchanged in these regulations, and request that “master check” be added to this paragraph in order to codify the inclusion of master check records for record retention.

Discussion: The commenters are in error. All of § 682.610(b) is replaced by new language in these final regulations; § 682.610(b)(9) has become § 682.610(b)(6), which has been discussed earlier.

Changes: None.

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