

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 686, 690, and 691

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[Docket ID ED-2009-OPE-0001]

Student Assistance General Provisions; Teacher Education Assistance for College and Higher Education (TEACH) Grant Program; Federal Pell Grant Program; Academic Competitiveness Grant Program and National Science and Mathematics Access To Retain Talent Grant Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary is adopting as final, with changes, interim final regulations for the Academic Competitiveness (ACG) and National Science and Mathematics to Retain Talent Grant (National SMART Grant) programs; Student Assistance General Provisions; Federal Pell Grant Program; and Teacher Education Assistance for College and Higher Education (TEACH) Grant Program. These final regulations are needed to implement provisions of the Higher Education Act of 1965 (HEA), as amended by the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA) and the Higher Education Opportunity Act of 2008

(HEOA). The new statutory provisions became effective July 1, 2009.

DATES: These regulations are effective January 22, 2010.

FOR FURTHER INFORMATION CONTACT:

Topic	Contact person and information
General information and information related to rigorous secondary school programs and eligible majors.	Sophia McArdle. Telephone: (202) 219-7078 or via the Internet: <a href="mailto:sophia.mcardle@ed.gov">sophia.mcardle@ed.gov</a> .
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Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the first contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** On May 1, 2009, the Secretary published interim final regulations for the ACG and National SMART Grant Programs in the **Federal Register** (74 FR 20210). The interim final regulations became effective July 1, 2009. At the time the interim final regulations were published, the Secretary requested public comment on whether changes to the regulations were warranted.

In the preamble to the interim final regulations, the Secretary discussed, on pages 20210 through 20218, the major issues covered by the regulations. The following paragraphs summarize those issues and identify the relevant sections of the interim final regulations:

The Secretary amended the definition of the term *ACG Scheduled Award* to be the maximum amount of an ACG that would be paid to a full-time first-year student or a full-time second-year student for the applicable year. A *National SMART Grant Scheduled Award* was defined as the maximum amount of a National SMART Grant that would be paid to a full-time third-year,

fourth-year, or fifth-year student for the applicable year (see § 691.2(d)).

In § 691.2(d), the Secretary defined the term *annual award* to be the maximum ACG or National SMART Grant amount a student would receive for enrolling as a full-time, three-quarter-time, or half-time student and remaining in that enrollment status for one year.

The Secretary amended the definition of the term *eligible major* in § 691.2(d) to include, in addition to majors in physical, life, or computer sciences, mathematics, technology, engineering or a critical foreign language, a qualifying liberal arts curriculum as determined by the Secretary.

The Secretary amended the definition of the term *eligible program* to include, for the ACG program, an undergraduate certificate program of at least one academic year in length and, for the National SMART Grant program, a degree program with at least five full undergraduate years of coursework at a degree-granting institution of higher education (see § 691.2(d)).

In § 691.2(e), the Secretary defined the terms *first-year*, *second-year*, *third-year*, *fourth-year*, and *fifth-year* as a student's grade level in the student's eligible program as determined by the institution for all students in the eligible program.

The Secretary amended the method by which the duration of student eligibility was determined, by basing eligibility on a student's grade level, rather than on the student's academic year (see §§ 691.2(d) and 691.6). In § 691.6(b)(2), the Secretary provided that a fourth-year student enrolled in a National SMART Grant-eligible program with less than five full years of coursework continues to be considered a fourth-year student for purposes of the National SMART Grant program until he or she completes his or her first undergraduate baccalaureate course of study, and that a fifth-year student, enrolled in a National SMART Grant-eligible program with a least five full years of coursework, continues to be considered a fifth-year student until he or she completes his or her first undergraduate baccalaureate course of study.

In § 691.8, the Secretary detailed how correspondence courses would be applied toward a student's enrollment status (i.e., as a half-time, three-quarter-time, and full-time student) in an eligible program.

The Secretary removed the provisions from § 691.15(a) that stated that eligibility for ACGs and National SMART Grants is limited to U.S. citizens and students who are enrolled full-time.

With respect to eligibility for a first-year ACG, the Secretary provided that the restriction on prior enrollment does not apply to students who were enrolled as regular students in an eligible program of undergraduate education that was also part of a secondary school program of study, and clarified that transfer students who are first-year students are not considered to have been previously enrolled and, therefore, are not subject to the prior enrollment restriction (§ 691.15(b)(1)(ii)(C)).

The Secretary amended § 691.16 to provide that starting with the 2009–2010 award year, a designated official, consistent with State law, may recognize and report to the Secretary any secondary school programs of study that prepare students for college and that the designated official deems rigorous. These programs supplement the secondary school programs previously recognized by the Secretary as rigorous. It is no longer the Secretary's role to recognize secondary school programs of study as rigorous.

The Secretary exempted a student enrolled in a qualifying liberal arts curriculum from the requirement that the student must declare an eligible major to receive a National SMART Grant and provided that an institution need only document a student's progress in completing the program in the intended or declared National SMART Grant-eligible program (§§ 691.15(d)(3) and 691.15(e)).

The Secretary amended the regulations to provide that an eligible major includes any "critical foreign language" found in section 103(3) of the HEA, rather than critical foreign languages identified by the Secretary after consulting with the Director of National Intelligence. The Secretary also amended the regulations to provide that an eligible major includes qualifying liberal arts curricula and to describe the process by which an institution requests designation of a liberal arts curriculum as an eligible major.

In § 691.62, the Secretary set the ACG and National SMART Grant annual award amounts for full-time, three-quarter-time, and half-time students. The annual award for a full-time student is the same amount as the student's Scheduled Award.

The Secretary described in §§ 691.63 and 691.66 how ACG and National SMART Grant payments for a payment period must be calculated for full-time, three-quarter-time, and half-time students as well as for students in a program of study offered by correspondence.

The Secretary amended § 691.63(h) to provide that a student may not progress

to the next year in a grade level (rather than next academic year) during a payment period.

#### Analysis of Comments and Changes

The final regulations in this document were developed through the analysis of the two comments we received on the interim final regulations published on May 1, 2009. An analysis of the comments and of the changes to the regulations since publication of the interim final regulations follows. We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. Generally, we do not address technical and other minor changes.

#### General Comment

*Comment:* One commenter supported the interim final regulations, citing in particular its approval of the definitions of *annual award*, *first-year*, *second-year*, *third-year*, *fourth-year*, and *fifth-year*, the requirement that the grade level used for purposes of awarding ACG and National SMART Grant funds be the same grade level used for determining annual loan limits under the Federal Family Education Loan (FFEL) Program and the William D. Ford Federal Direct Loan (Direct Loan) Program, and the provisions governing enrollment status and student eligibility that allow students enrolled less than full-time but at least half-time to be eligible for ACG and National SMART Grants.

*Discussion:* The Secretary appreciates the support of the commenter.

*Changes:* None.

#### Definitions (§ 691.2)

##### Eligible Program (§ 691.2(d))

*Comment:* One commenter was concerned that, under the definition of the term *eligible program* in § 691.2(d), a five-year program that is a qualifying liberal arts curriculum identified as an eligible major under § 691.17(b) would not qualify as a National SMART Grant-eligible program. The commenter believed that the HEA does not disqualify a five-year program from eligibility and that a student in such a program would be eligible for a third- and fourth-year National SMART Grant.

*Discussion:* We do not agree with the commenter. Section 401A(c)(3)(E) of the HEA specifies that a student can receive a fifth-year National SMART Grant if he or she is enrolled in a program requiring five full years of coursework for which a baccalaureate degree is awarded in the physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language. Section 401A(c)(3)(D) of the HEA contains

National SMART Grant eligibility requirements for students enrolled in a liberal arts curriculum, providing that such curriculum must consist of at least four years of study in mathematics and three years of study in the sciences, with a laboratory requirement in each of those years or that the student study a subject that is at least equal to the requirements for an academic major at an institution that offers a baccalaureate degree in that subject. While section 401A(c)(3)(D) of the HEA does not explicitly state that a qualified liberal arts curriculum may not be a five year program, we find it to be implicit, based on the structure of section 401(c)(3) and because section 401A(c)(3)(E) of the HEA, covering fifth-year National SMART Grant eligibility, does not include liberal arts curricula as a major for which a student may earn a fifth-year grant.

*Changes:* None.

*Comments:* One commenter noted that the definition of the term *eligible program* for purposes of the ACG Program incorporates certificate programs but does not specify that certificate programs must be offered by degree-granting institutions of higher education.

*Discussion:* We agree with the commenter that a certificate program is an eligible program only if it is offered at a two-year or four-year degree-granting institution. Section 401A(c)(3)(A) of the HEA provides that an eligible student that receives a first-year ACG award must be enrolled or accepted for enrollment in the first year of a program of undergraduate education at a two- or four-year degree-granting institution of higher education, "including a program of not less than one year for which the institution awards a certificate." To receive a second year ACG in accordance with section 401A(c)(3)(B) of the HEA, an eligible student must be enrolled or accepted for enrollment in the second year of a program of undergraduate education at a two- or four-year degree-granting institution of higher education, "including a program of not less than two years for which the institution awards a certificate."

*Changes:* We have amended the definition of the term *eligible program* in § 691.2(d) to provide that, for purposes of the ACG Program, an undergraduate program of at least one academic year in length that leads to a certificate must be offered by a two-year or four-year degree-granting institution of higher education for a first-year ACG. Also, we have clarified in this definition that, for a second-year ACG, an eligible program is an undergraduate program of

at least two academic years in length that leads to a certificate or associate degree and is offered by a two-year or four-year degree-granting institution of higher education.

*Duration of Student Eligibility—  
Undergraduate Course of Study*  
(§ 691.6)

*Comment:* One commenter supported the provisions in § 691.6(b) that extend the National SMART Grant eligibility of a student in the final year of a student's four- or five-year program until the student graduates. Under these provisions, a student enrolled in a National SMART Grant-eligible program with less than five full years of coursework in the case of a fourth-year student, or with at least five full years of coursework in the case of a fifth-year student, remains a fourth- or fifth-year student respectively until the completion of his or her undergraduate baccalaureate course of study. The commenter encouraged the Department to adopt the same policy for students enrolled in associate degree programs and questioned whether the policy would also apply to certificate programs.

The commenter also believed that under § 691.6 a student enrolled in a certificate program that is longer than one academic year in length would be eligible for a second-year ACG. For example, an eligible student enrolled in a program that is 45 credit hours and 45 weeks of instructional time in length would receive the maximum first-year ACG as well as half of a second-year ACG. The commenter further questioned whether that student could ever be eligible to receive more than half of a second-year ACG.

The commenter also stated that in the loan programs, a student enrolled in a program that is one academic year in length could never receive funds at second-year loan limits regardless of how long it took the student to complete the program. The commenter questioned whether a student who took more than one academic year to complete a one-year certificate program would ever be eligible to receive any portion of a second-year ACG for the extra time it took to complete the program.

*Discussion:* We appreciate the commenter's support of the change in the regulations that extends a student's eligibility for a National SMART Grant award for a fourth- and fifth-year student until the student completes his or her first undergraduate baccalaureate course of study. We also appreciate the commenter's recommendation that the regulations should extend the final year of eligibility to students enrolled in one-

academic-year certificate programs or two-academic-year certificate or associate degree programs. However, to provide the extensions for shorter educational programs would result in an estimated increase in program costs of \$16 million over the final two years of the ACG and National SMART Grant programs. To make the changes, we would need to identify savings to offset the cost increase. We have been unable to identify any offsetting savings.

We do not agree with the commenter's assessment that a student enrolled in a program that is 45 credit hours and 45 weeks of instructional time in length would be eligible for half of a second-year ACG. The student in that example would only qualify for a full first-year ACG. Section 401A(c)(3)(D) of the HEA provides that a student may be eligible for a second-year ACG if he or she is enrolled in a certificate program of not less than two years. Although the program in the example is longer than one-academic year in length, the student would not qualify for any portion of the second-year ACG because the program is less than two academic years in length. The program is an eligible program only for a first-year ACG.

We note that in some cases, under the FFEL and Direct Loan programs, a student in a certificate or associate degree program that extends to a third-year grade level may receive funds at the third-year annual loan limits. For purposes of ACG, as a third-year student, the student would not qualify for funds from a second-year ACG.

*Changes:* None.

*Eligibility To Receive a Grant (§ 691.15)*

*Comments:* One commenter noted that a student who enters college with a full year of credit from Advanced Placement (AP) or International Baccalaureate (IB) coursework will not have a grade point average (GPA), and therefore cannot qualify for a second-year ACG because he or she cannot meet the minimum 3.0 GPA required to receive an ACG. The commenter suggested that the Department allow the AP or IB exam scores to satisfy the GPA requirement, or allow the final high school GPA to be used, or provide some other method by which an equivalency for the GPA could be determined.

*Discussion:* Section 401A(c)(3)(B)(ii) of the HEA specifies that to receive a second-year ACG, a student must obtain a cumulative GPA of at least 3.0 (or the equivalent as determined under regulations prescribed by the Secretary) at the end of the first year of the program of undergraduate education. The statute does not allow for any other GPA, such as a final high school GPA,

to satisfy the 3.0 GPA requirement. With respect to AP or IB exam scores, there is no standardized methodology for equating AP or IB exam scores with undergraduate grades. Regulations for determining the numeric equivalent at institutions of higher education that assess GPA on a numeric scale other than a 4.0 scale were previously published. In the case of credits that are awarded when no postsecondary coursework has been completed, the Secretary believes that it is not possible to determine a numeric equivalent, and therefore agrees with the commenter that a student in this circumstance cannot qualify for a second-year ACG because he or she cannot meet the minimum 3.0 GPA required to receive an ACG.

*Changes:* None.

*Comment:* One commenter commended the Secretary for eliminating from § 691.15(e) the requirement that the institution document a student's progress in his or her major each term. The same commenter stated that any requirement to document progress in the student's program outside of normal satisfactory academic progress is unnecessary and meaningless and recommended deleting all of § 691.15(e).

*Discussion:* The commenter misunderstood the interim final regulations. The Secretary did not eliminate the requirement to document progress in the major for each term. Rather, the interim final regulations removed the requirement in § 691.15(c)(2)(ii) that a student enroll in courses necessary both to complete the degree program and fulfill the requirements of the eligible major each payment period, and that the institution document that enrollment. Section 691.15(e) continues to require an institution to document a student's progress in taking the courses necessary to complete the National SMART Grant-eligible program in the intended or declared major. The Secretary does not agree that documenting progress in the student's program beyond that required to show a student's satisfactory academic progress under § 668.34(e) is unnecessary or meaningless. National SMART Grant eligibility is determined each payment period, and institutions must document that a student achieved at least a 3.0 cumulative GPA for each payment period. Under the satisfactory academic progress regulations in § 668.34(e), an institution is required to review a student's academic progress only at the end of each year. Because eligibility for a National SMART Grant is determined each payment period, an annual review would be insufficient to

ensure that a student continues to make the necessary progress in his or her National SMART Grant-eligible program for every payment period.

*Changes:* None.

*Calculation of a Grant for a Payment Period (§ 691.63(h))*

*Comment:* One commenter questioned whether it was appropriate to provide that a student may not progress to the next grade level during a payment period, as was previously required when progression was based on a student's academic year. The commenter noted various reasons why a student's grade level may change during a payment period, including error, late grade submission, or late arriving transcripts from other institutions. The commenter believed that we should treat a student's grade level change made during a payment period similarly to the way we treat grade level changes for purposes of determining annual loan limits under the FFEL and Direct Loan programs.

*Discussion:* While a student's grade level may change during a payment period for a variety of reasons, a student can only be eligible for payment from one Scheduled Award during the payment period. This circumstance is fundamentally different from the application of annual loan limits that are not applied on the same basis as determining Scheduled Awards for ACG and National SMART Grants. Except in the case of an institutional error, we believe that a Scheduled Award based on a student's grade level at the outset of the payment period is the most appropriate Scheduled Award for determining the student's eligibility for payment. If, due to an institutional error, an incorrect grade level was the basis for determining the student's award, the institution must correct the error and adjust the student's award based on the correct grade level.

*Changes:* None.

*Calculation of a Federal Pell Grant for a Payment Period (§ 690.63(d))*

*Comment:* None.

*Discussion:* In reviewing the interim final regulations, we identified an error in the amendatory language related to § 690.63(d). Specifically, we inadvertently amended § 690.63(d)(1)(i) instead of § 690.63(d)(1).

*Changes:* We are correcting the error by amending § 690.63(d)(1), so that it is consistent with § 691.63(d)(1), which governs calculation of an ACG or National SMART Grant for a payment period.

## Executive Order 12866

### 1. Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive order, it has been determined that this final regulatory action will have an annual effect on the economy of more than \$100 million. Therefore, this action is "economically significant" and subject to OMB review under section 3(f)(1) of Executive Order 12866.

### Need for Federal Regulatory Action

As discussed in the interim final regulations, these regulations address a range of issues affecting students and institutions of higher education participating in the ACG and National SMART Grant programs. They are needed to implement statutory changes enacted through the ECASLA and the HEOA.

### Regulatory Alternatives Considered

Alternatives to the regulations were considered as part of the rulemaking process. These alternatives were reviewed in detail in the preamble to the interim final regulations under both the *Regulatory Impact Analysis* and the *Reasons* sections accompanying the discussion of each proposed regulatory provision. To the extent that they were addressed in response to comments received on the interim final regulations, alternatives are also considered elsewhere in the preamble to these final regulations under the *Discussion* sections related to each provision. No comments were received

related to the *Regulatory Impact Analysis* discussion of these alternatives.

As discussed above in the *Analysis of Comments and Changes* section, the final regulations reflect statutory amendments included in the HEOA and minor revisions in response to public comments. None of these changes result in revisions to cost estimates prepared for and discussed in the *Regulatory Impact Analysis* of the interim final regulations.

One alternative suggested by a commenter that was considered involved extending the final year of eligibility for students enrolled in one-academic-year certificate programs or two-academic-year certificate or associate degree programs. A commenter argued that such an extension would be more equitable and would maximize the amount of ACG funds awarded to students who did not receive or were ineligible for some portion of his or her first- or second-year award. The Department considered providing that a first-year student, enrolled in an ACG-eligible certificate program of at least one academic year, but less than two academic years, in length would continue to be considered a first-year student until he or she completes the certificate program. Similarly, the Department also considered providing that a second-year student, enrolled in an ACG-eligible certificate or associate's degree program of at least two academic years in length, would continue to be considered a second-year student until he or she completes the program. An analysis of this alternative indicated it would increase program costs by \$16 million over award years 2009–10 and 2010–11. Given the lack of an offset for these increased costs, the Department decided to make no change to the interim final regulations to adopt this alternative.

### Transfers

These final regulations broaden access to the ACG and National SMART Grant programs by implementing statutory changes that extend eligibility to part-time students who are enrolled at their institution on at least a half-time basis, eligible noncitizens, and students enrolled in certain certificate programs. The final regulations also allow eligible degree programs with at least five full undergraduate years to award National SMART Grant awards in the third, fourth, and fifth years of the program. Mandatory funding for the ACG and National SMART Grant programs is provided through fiscal year 2010, after which the program will sunset. Funds for fiscal year 2010 will be used to

support the 2010–2011 award year. As noted in the *Regulatory Impact Analysis* in the interim final regulations, the Department estimates changes implemented through these regulations will result in 538,000 additional awards totaling \$448 million over award years 2009–2010 and 2010–2011. More specifically, under current estimates, expanding eligibility to less-than-full-time students, eligible noncitizens, and students at certificate programs will increase ACG awards by 209,000 in 2009–2010 and 241,000 in 2010–2011 and increase National SMART Grant awards by 43,000 in 2009–2010 and 45,000 in 2010–2011.

As noted in the *Regulatory Impact Analysis* in the interim final regulations, those changes, which are adopted as final through this notice, implement statutory changes replacing the term “academic year” with the term “year” for the purposes of determining a student’s period of eligibility for an ACG or a National SMART Grant. These changes are expected to significantly simplify the process of determining eligibility for participating institutions of higher education and students.

As noted, statutory changes in program eligibility criteria implemented by these final regulations will increase the dollar amount of grant awards under the ACG and National SMART Grant programs by \$448 million over award years 2009–2010 and 2010–2011. These changes will increase Federal costs by the same amount.

Because institutions of higher education affected by these final regulations already participate in the ACG and National SMART Grant programs, these schools must have already established systems and procedures to meet program eligibility requirements. These final regulations reflect discrete changes in specific parameters associated with the Department’s current regulations for these programs, rather than entirely new requirements. Some of these changes, such as those replacing “academic year” with “year” for the purposes of determining program eligibility, are expected to significantly simplify program administration. Overall, the Department believes entities continuing to participate in the Pell Grant, ACG, and National SMART Grant programs have already absorbed virtually all of the administrative costs related to implementing these final regulations. Marginal costs over this baseline are primarily related to one-time changes that are not expected to be significant.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section, we identify and explain burdens specifically associated

with information collection requirements. See the heading *Paperwork Reduction Act of 1995*.

#### Accounting Statement

As required by OMB Circular A–4 (available at <http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf>), in Table 1, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these final regulations. As previously noted, the Department estimates changes implemented through these regulations will result in 538,000 additional awards totaling \$448 million over award years 2009–2010 and 2010–2011. Thus, the Department estimates that the annualized monetized transfers from Federal grant payments to students will be \$224 million for 2009–2011.

TABLE 1—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED SAVINGS

[In millions]	
Category	Transfers
Annualized Monetized Transfers .....	\$224

#### Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities. These final regulations affect institutions of higher education, States, State agencies, and individual students. The U.S. Small Business Administration (SBA) Size Standards define these institutions as “small entities” if they are for-profit or nonprofit institutions with total annual revenue below \$5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. Individuals are not defined as “small entities” under the Regulatory Flexibility Act.

Based on revenue data from the Integrated Postsecondary Education Data System, less than 10 percent of the schools participating in the ACG and National SMART Grant programs meet the definition of “small entities” (279 out of 3,036). A primary factor limiting the number of small institutions in these programs is the requirement that only degree-granting institutions may offer ACG or SMART Grants. A disproportionate number of Title IV schools meeting the SBA definition are vocational institutions that do not offer degrees.

The Department estimates these regulations will result in a net reduction

in overall burden; most individual institutions are expected to see burden reduced as well. Due to data limitations, however, the Department was unable to develop burden estimates tailored specifically for small institutions. These institutions may be more likely to have unique problems, such as limited staff or technical resources, which could lead to greater than normal difficulties in implementing these regulations. In general, however, the Department believes that even for most small institutions, the impact of regulations that simplify program requirements or otherwise reduce burden will more than offset any additional burden associated with changes expected to increase the number of applicants. Given that, and the small number of affected entities meeting the SBA guidelines, the Department has determined that these final regulations do not impose significant new costs on a substantial number of entities.

Specific burden concerns are discussed in more detail elsewhere in this preamble, primarily in the *Paperwork Reduction Act of 1995* section.

#### Paperwork Reduction Act of 1995

Sections 691.15 and 691.16 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of these sections to OMB for its review.

##### *Section 691.15(a)—Eligibility To Receive a Grant*

The final regulations amend the eligibility requirements to receive an ACG or a National SMART Grant by removing several restrictive criteria. Prior to July 1, 2009, which was the effective date of this provision in the HEOA, only students who were U.S. citizens were eligible to receive an ACG or a National SMART Grant. Under these final regulations, and consistent with other Title IV, HEA programs, in addition to U.S. citizens, students who can provide evidence from the United States Citizenship and Immigration Service, an office of the United States Department of Homeland Security, that they are in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident, may qualify as eligible noncitizens for the ACG and National SMART Grant programs.

The requirement that a student be enrolled on a full-time basis is also removed. Under these final regulations, students enrolled on at least a half-time or greater basis may be eligible to

receive an ACG or a National SMART Grant.

The final regulations provide that the restriction on prior postsecondary enrollment does not apply to students who were enrolled as regular students in an eligible program of undergraduate education that was also part of a secondary school program of study. We also clarify that transfer students who are first-year students are not considered to have been previously enrolled and, therefore, are not subject to the prior enrollment restriction.

It is estimated that these changes regarding student eligibility will result in an increase in the burden hours associated with the programs through the Common Origination and Disbursement (COD) System. We estimate that the final regulations will increase burden for institutions of higher education by 12,412 hours, under OMB Control Number 1845–0039.

#### *Section 691.16—Rigorous Secondary School Program of Study*

The final regulations amend the current regulations to provide that, starting with the 2009–2010 award year, a designated official, consistent with State law, may recognize and report any information to the Secretary about rigorous secondary school programs of study that prepare students for college. These rigorous programs provide an option by which a student could meet the rigorous secondary school program of study requirement for receipt of an ACG.

Consistent with the amendments to section 401A of the HEA, rigorous programs submitted by States and recognized by the Secretary as rigorous after January 1, 2005, but before July 1, 2009, will continue to be listed in the document published annually by the Secretary listing rigorous secondary school programs of study. This listing also includes the new rigorous secondary programs of study as reported to the Department for students graduating during the current award year and for students graduating during award years subsequent to the current award year. In addition to any new programs of study, the information that designated officials report to the Department about rigorous secondary school programs of study also includes changes to previously reported rigorous programs of study or any deleted rigorous programs of study. Consistent with the deadline set by the Secretary for reporting rigorous high school programs to the Department, we expect that 56 SEAs reporting for the State (and/or on behalf of the State's LEAs) will be reporting to the Department

annually. In addition, designated officials will report information regarding the rigorous programs offered by private and home schools for an estimated 36,000 high school students who attend private high schools and home schools for the year of the students' secondary school graduation or completion.

It is estimated that these changes regarding reporting of rigorous secondary school programs of study will result in an increase in burden hours. We estimate that the final regulations will increase burden for States, private high schools, home schools, and individuals by 18,280 hours, under new OMB Control Number 1845–0092.

#### **Intergovernmental Review**

These programs are 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.

#### **Assessment of Educational Impact**

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: 84.063 Federal Pell Grants; 84.375

Academic Competitiveness Grants; 84.376 National SMART Grants; 84.379 TEACH Grants)

#### **List of Subjects in 34 CFR Parts 668, 686, 690, and 691**

Colleges and universities, Elementary and secondary education, Grant programs—education, Student aid.

Dated: November 18, 2009.

**Arne Duncan**,  
*Secretary of Education.*

■ For the reasons discussed in the preamble, the interim final regulations amending parts 668, 686, 690, and 691 of title 34 of the Code of Federal Regulations that were published in the **Federal Register** on May 1, 2009 (74 FR 20210) are adopted as final with the following changes:

#### **PART 690—FEDERAL PELL GRANT PROGRAM**

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

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

■ 2. Section 690.63 is amended by revising paragraph (d)(1) to read as follows:

#### **§ 690.63 Calculation of a Federal Pell Grant for a payment period.**

\* \* \* \* \*

(d) \* \* \*

(1) Determining his or her enrollment status for the term;

\* \* \* \* \*

#### **PART 691—ACADEMIC COMPETITIVENESS GRANT (ACG) AND NATIONAL SCIENCE AND MATHEMATICS ACCESS TO RETAIN TALENT GRANT (NATIONAL SMART GRANT) PROGRAMS**

■ 3. The authority citation for part 691 continues to read as follows:

**Authority:** 20 U.S.C. 1070a–1, unless otherwise noted.

■ 4. Section 691.2(d) is amended by revising paragraph (1) of the definition of “Eligible program” to read as follows:

#### **§ 691.2 Definitions.**

\* \* \* \* \*

(d) \* \* \*

*Eligible program:* \* \* \*

(1) For purposes of the ACG Program—

(i) Is an undergraduate program of at least one academic year, but less than two academic years, in length that leads to a certificate at a two- or four-year degree-granting institution of higher education;

(ii) Is an undergraduate program of at least two academic years in length that leads to a certificate at a two- or four-year degree-granting institution of higher education;

(iii) Leads to an associate’s degree or a bachelor’s degree;

(iv) Is at least a two-academic-year program acceptable for full credit toward a bachelor’s degree; or

(v) Is a graduate degree program that includes at least three years of undergraduate education; or

\*      \*      \*      \*      \*