DEPARTMENT OF EDUCATION

34 CFR Parts 600, 668, 675, and 690

RIN 1845–AA19

Institutional Eligibility; Student Assistance General Provisions; Federal Work-Study Programs; and the Federal Pell Grant Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Institutional Eligibility, the Student Assistance General Provisions, the Federal Work-Study (FWS) Programs, and the Federal Pell Grant Program regulations. These final regulations implement changes negotiated under the negotiated rulemaking process mandated by Congress under section 492 of the Higher Education Act of 1965, as amended, (HEA). These changes streamline the application, reapplication, and certification processes for institutions that wish to participate in the title IV, HEA programs and provide simplification and flexibility in other provisions of the regulations that apply to the title IV HEA programs.

DATES: *Effective Date:* These regulations are effective July 1, 2001.

Implementation Date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the HEA (20 U.S.C. 1089(c)(2)(A)), that institutions that administer title IV, HEA program funds may, at their discretion, choose to implement §§ 600.31, 668.5 and 675.19 on or after November 1, 2000. For further information see ''Implementation Date of These Regulations'' under the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mark Washington, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3045, ROB–3, Washington, DC 20202–5447. Telephone: (202) 260–9321.

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SUPPLEMENTARY INFORMATION: On August 10, 2000 the Secretary published a notice of proposed rulemaking (NPRM) for Institutional Eligibility, Student Assistance General Provisions, Federal Work-Study Programs (FWS), Federal Family Education Loan (FFEL) Program, William D. Ford Direct Loan (Direct Loan) Program; and the Federal Pell Grant Program, in the **Federal Register** (65 FR 49134).

In the preamble to the NPRM, the Secretary discussed on pages 49135 through 49147 the major changes proposed in that document. These included the following:

- Revising §§ 600.20 and 600.21, amending §§ 600.10 and 600.31, and removing §§ 600.9 and 600.30 to streamline the application, reapplication and certification processes for institutions that wish to participate in the title IV, HEA programs (pages 49149–49152).
- Revising § 600.31 to clarify the reporting responsibilities for institutions that undergo a change of ownership that results in change of control (pages 49151–49152).
- Revising § 668.5 to expand the possibilities for institutions to create written agreements with certain other entities to have part or all of their eligible programs provided by those entities (pages 49152–49153).
- Adding flexibility in § 668.13 to the training requirements for institutional certification (page 49153).
- Revising in § 668.19 the process for obtaining a transfer student's financial aid history (page 49153).
- Revising § 675.19 to permit additional certification and record retention options for FWS program administration (pages 49153–49154).
- Providing in §§ 682.604 and 685.301 additional flexibility in the loan disbursement rules for students enrolled in non-traditional programs (page 49154).
- Clarifying in § 668.165 the notification requirements when title IV loan proceeds are credited to a student's institutional account (page 49154).
- Adding flexibility in § 682.207 to lender disbursement requirements and eligibility determinations for students receiving loan proceeds under the FFEL Program (page 49154).

In these final regulations, we make two significant changes from the regulations that we proposed in the NPRM published on August 10, 2000. First, we will require all institutions to report to us of their intent to add a location offering 50 percent or more of an eligible program, regardless of the type of institution. A small number of institutions—those that meet one or more of the specified conditions discussed later in the analysis of comments—will have to await our approval of the new location before disbursing title IV, HEA program funds to students at that location. Other institutions must report to us their intent to add additional locations, but are not required to wait for our approval of those locations.

Second, public institutions must report changes in governance to us within 10 days of their occurrence.

The Secretary published an NPRM on July 27, 2000, for parts 682 and 685 in the **Federal Register** (65 FR 46316). In the preamble to that NPRM, the Secretary discussed (on pages 46317–46320) proposed changes to the FFEL and Direct Loan regulations. In order to consolidate the final regulations for the FFEL and Direct Loan programs into a single **Federal Register** publication, those proposed provisions of parts 682 and 685 that were published in the August 10, 2000 NPRM are now included as a part of the final regulations that respond to the July 27, 2000 NPRM. We strongly encourage the reader to refer to the preambles from both of the NPRMs for a full discussion of these regulations.

Implementation Date of These Regulations

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

Section 600.31—Change of Ownership Resulting in a Change of Control for Private Nonprofit, Private For-Profit and Public Institutions

These regulations may be implemented upon publication of this final rule. This means that if an institution is subject to loss of eligibility due to a change in ownership that results in a change of control, it may ask the Secretary to permit it to continue to participate in the title IV, HEA programs on a provisional basis, provided that the institution submits a materially complete application.

This early implementation also changes the definition of ''ownership interests'' to exclude certain institutional investors, and clarifies when a shareholder would be deemed a

controlling shareholder for change of control issues.

Early implementation means that public institutions that experience a change in governance will not be considered to have undergone a change in ownership resulting in a change of control, but these institutions must report such changes within ten days of the occurrence.

Finally, early implementation means that the provisions that define more clearly ownership in a publicly-traded institution will be in effect.

Section 668.5—Written Arrangements To Provide Educational Programs

These regulations may be implemented by institutions upon publication of this final rule. This means that a school may use a single written arrangement with a study-abroad organization to represent agreements between the school and one or more foreign schools. Also, any of the eligible institutions that are parties to a written arrangement may make title IV calculations and disbursements and will not be considered third-party servicers.

Section 675.19—Fiscal Procedures and Records

These regulations may be implemented upon publication of this final rule. Institutions that administer the Federal Work-Study (FWS) Programs will now have the option to certify FWS timesheets in writing or electronically. If an institution elects to use an electronic certification option, it should be certain to use the appropriate safeguards, as outlined in the NPRM at page 49145.

Analysis of Comments and Changes

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations.

These regulations were published in proposed form on August 10, 2000, following the completion of the negotiated rulemaking process. The Secretary invited comments on the proposed regulations that were due by September 25, 2000, and we received thirty-three comments.

An analysis of the comments we received and of the changes we made in the regulations since publication of the NPRM follows.

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

Section 600.20—Application Procedures for Establishing, Reestablishing, Maintaining, or Expanding Institutional Eligibility and Certification

Applying for Additional Locations (Permanent and Temporary)

Comments: Many commenters supported exempting public institutions from applying for approval to add an additional location at which 50 percent or more of an eligible program will be offered, if the additional location is properly licensed and accredited, and located within the same state as the main campus. Commenters opined that the exemption is warranted because the Federal government's interests are generally protected by sufficient oversight and systems of control at public institutions. Additionally, most of these commenters believed that sufficient financial backing by those governing public entities, and monitoring by accrediting agencies are suitable to ensure the academic quality of the location and to protect students who rely upon title IV assistance.

One commenter believed the exemption is appropriate because public institutions that have added locations in the past have not placed Federal funds at risk.

Another commenter generally supported the proposed exemption, but believed that the exemption should apply to an additional location even if the location is not in the same state as the main campus. That commenter believed that the reasons given by the Department for the proposed exemption for public institutions (sufficient oversight and financial backing by a public entity) are valid, regardless of whether the additional location is located in the same state as the main campus.

Six commenters did not support requiring public institutions to report a new location. The commenters contended that, because we have virtually always approved additional locations for public institutions, required reporting would create unnecessary paperwork and a potential for delay. Some of the commenters also believed that the minimal risk represented by public institutions delivering title IV, HEA assistance made reporting unnecessary.

Another commenter supported requiring public institutions to inform us of a new location. That commenter felt that six years between recertification cycles for participation in the student aid programs is too long for locations to go unreported. The commenter believed that those entities charged with oversight will improve the quality of such oversight, by having an awareness of such locations. The commenter noted that these benefits appear to outweigh the minimal burden of reporting the locations.

Several commenters opposed our proposal exempting public institutions from applying for approval of an additional location. These commenters felt that treating public institutions differently from other institutions is unwarranted, and would give an unfair advantage to public institutions by eliminating potential delays. The commenters believed that one set of criteria should be developed for all institutions.

Two commenters felt that the unfair competitive advantage referred to above would not serve the needs of students nor the public interest, because it would not produce the best range of educational offerings or encourage the most efficient use of resources. Another commenter noted that in some highly competitive disciplines, such as computer science, information technology, and business administration or executive management, even a 35 day head start (our stated goal for the length of time within which we will process applications for approval) constitutes a significant advantage in terms of public relations and market share.

Three commenters believed that there are many poorly performing public institutions and that such an exemption would unnecessarily put taxpayer funds at risk. One of these commenters was specifically concerned that the proposed exemption for public institutions would permit higher-risk public institutions, such as those on provisional certification or the reimbursement payment method, to open new locations and disburse title IV aid without our approval. The commenter felt that this scenario would contradict the purpose of provisional certification and reimbursement, which is to permit us to more closely monitor higher-risk institutions. The commenter felt that it was arbitrary and capricious to allow such high-risk public institutions to open additional locations without our approval, while denying this benefit to non-public institutions with strong

records of administrative capability and regulatory compliance.

Another commenter stated that there was no publicly available evidence to support the contention that all public institutions provide better oversight and control, plan better, and have more fiscal resources than institutions in other sectors. The commenter was convinced that there is evidence to the contrary, such as the placement of public institutions on provisional certification, the failure of public institutions to meet their unique financial responsibility standards, and those public institutions with high student loan default rates.

Some commenters that did not support the exemption for public institutions suggested a number of general criteria that should be used in determining whether any institution qualifies for an exemption. One commenter suggested that the criteria should reward those institutions that have demonstrated appropriate administrative capability. Another commenter felt that the Federal interest in additional locations should focus on an institution's maintenance of quality in their educational programs. The commenter stated that we seemed to acknowledge that the quality of programs is the issue by our statement in the preamble to the NPRM that, ''some non-public institutions grew so rapidly that the integrity of their educational and student aid programs was compromised''.

Other commenters offered specific ideas about criteria that should be used to determine if any institution should be granted an exemption from reporting additional locations. One commenter suggested that an exemption should be given to an institution that: satisfies the criteria we proposed in § 600.20(d)(2) for temporary locations, is fully certified, meets the general standards of financial responsibility, has no late audits or significant audit findings in the last two years, has no significant program review liabilities, and was not subject to a limitation, suspension, or termination action within the last three years. Another commenter generally agreed with the suggested criteria but instead of supporting the proposed criteria in § 600.20(d)(2), suggested the following criteria: the institution has full regional or national accreditation, would not be subject to a loss of eligibility under § 668.188 if it adds a new location, and has not added more than 10 locations at which it offered 50 percent or more of an educational program since it was last certified to participate in the title IV programs. The commenter also believed that to qualify for an exemption, an institution should have no late audits or significant audit findings in the last five years and never have been subject to a program review liability.

Another commenter believed that it is appropriate for us to learn about temporary locations that have been opened through annual compliance audits. The commenter did not feel that a separate notification would be needed.

However, another commenter representing the largest professional association of certified public accountants disagreed. In particular, the commenter stated that we should require institutions to submit information on temporary locations directly to us. The commenter noted that if we want independent third-party assurances on an institution's management's assertions regarding the institution's compliance with such a requirement, compliance objectives and associated auditor reporting could be developed as part of the annual compliance audit.

One commenter supported the provision that would exempt a non-public institution from applying for approval of licensed and accredited temporary locations if it met the proposed criteria, including the limitation on adding no more than six locations offering 50 percent or more of a program since it was last certified. Another commenter felt that it is more appropriate to focus on the number of such locations established in a short period of time rather than over the entire certification period. The commenter recommended that no more than two such locations should be added during any 12-month period, and that for any more locations an institution should be required to obtain our approval prior to disbursing any title IV funds to students attending those locations.

Another commenter suggested that the criteria for exemption of temporary locations should include a certification from the institution's Chief Executive Officer that the institution currently meets all applicable federal requirements regarding financial and administrative capability (based on the institution's most recent audited financial statement and compliance audit, recent regulatory reviews, and program participation agreement). The commenter believed that no more title IV funds should be disbursed to students at a temporary location after the end of the first year, until we have approved the location, unless the institution submitted a materially complete application for our approval at least 35 days before the end of the period.

The commenter also felt that the proposed requirement that the institution must not have acquired the assets of another institution that formerly provided programs at that site was stated in an overly broad manner. Instead, the commenter recommended that the institution must not have acquired a substantial amount of the assets of another institution that formerly provided programs at that site within the past 12 months. The commenter believed that this would address significant, recent acquisitions or transfers of assets that we need to be aware of without providing for unnecessary scrutiny of insignificant transactions that do not pose concern.

Finally, one commenter noted inconsistencies between the proposed regulatory language for § 600.20(d)(2)(ii) (which refers to locations at which more than 50 percent of a program is added) and the description of the proposed provision (which refers to locations as ''offering at least 50 percent of an educational program'' in one place and ''offered more than 50 percent of an educational program'' in another). The commenter believed that the correct wording is ''at least 50 percent''.

Discussion: We appreciate the careful analysis and consideration given to these issues by the commenters. With regard to the last comment, the commenter is correct that we inadvertently used imprecise language in describing the requirement when we published the NPRM. The correct term, and the one used in the regulations is ''50 percent or more''.

We carefully considered the comments received on both the proposal to exempt public institutions from applying for approval of an additional location where the institution will offer 50 percent or more of an eligible program, and the proposal to exempt all institutions from the requirement to apply for approval of an additional location if it will be in operation for less than 12 months.

We agree that the approach to additional locations in the NPRM had the potential to bar some high performing, non-public institutions from the benefits and incentives we desire to make available to those who administer our programs properly.

We stated in the NPRM our belief that the proposed regulations would enhance efficiency and provide administrative relief for a sizable segment of the population of eligible institutions, by not requiring them to report locations they add until the next scheduled recertification. Upon

consideration of the comments, we believe there is an opportunity to meet that objective in a manner that may benefit more schools than we initially anticipated. This is possible if we focus on reviewing and approving those institutions that give us clear reasons for special attention, while allowing others that demonstrate good compliance and stability to merely report to us of their actions. Thus, we can preserve our desire to provide regulatory and administrative relief where merited by compliance and performance. This flexibility is supported by a set of standards that identifies those schools that we should review before approving their ability to disburse title IV, HEA funds at a new location, regardless of the type of institution.

Based upon the comments received on these issues and our plans to improve the efficiency of the reporting process, we are persuaded that it is prudent and not particularly burdensome, to require all institutions report to us if they wish to disburse title IV, HEA program funds to students enrolled at a new additional location, at which 50 percent or more of an eligible program will be offered.

For the purposes of these regulations, reporting consists of submitting an electronic application which provides specific information and required supporting documentation regarding the new location.

While all institutions must report their new locations, only those that meet certain criteria are required to wait for our approval before disbursing title IV, HEA program funds to eligible students at those locations. A full explanation of those criteria follows later in this discussion. For the purposes of these regulations, approval consists of the Secretary's written response to an application, granting specific permission to an institution to disburse funds to students enrolled at the specified location. If an institution is not required to wait for our approval, it must simply report to us through the electronic application process prior to disbursing title IV, HEA program funds.

These provisions replace the proposed across-the-board exemption from reporting or approval for public institutions and the exemption for temporary locations included in the NPRM.

Under these new provisions, no distinction is made between temporary and permanent locations. All institutions are required to report to us any new location where 50 percent or more of an eligible program is offered. The report must include supporting documentation and be provided before the institution disburses title IV, HEA funds to students at that location. Those institutions that are only required to report to us before they disburse federal student aid need not wait for our approval. However, those institutions that meet any of the criteria discussed below must report to us and then wait for our approval before they can disburse title IV, HEA program funds to eligible students at the new location.

We will only require an institution to apply and wait for our approval to disburse title IV, HEA program funds at locations where they offer 50 percent or more of an eligible location if the institution: (1) Is provisionally certified, (2) is on the reimbursement or cash monitoring system of payment, (3) has acquired the assets of another institution that provided educational programs at that location during the preceding year, and the other institution participated in the title IV, HEA programs during that year, (4) would be subject to a loss of eligibility under the cohort default rate regulations at § 688.188 if it adds that location, or if (5) the Secretary previously prohibited it from disbursing title IV, HEA program funds to students enrolled at an additional location before the Secretary notifies it that the location is eligible to participate in the title IV, HEA programs.

Under the last criteria we may preclude an institution from adding locations due to financial, administrative, compliance or other concerns about an institution. In this case, the institution will receive a written notice that sets out the reason it will be required to apply for approval for additional locations. The institution may request reconsideration of that decision if it shows there are material errors in the facts we considered in making our determination.

With regard to the criteria related to provisional certification, the Secretary plans to publish a change to the provision in 34 CFR 668.16(m) that relates to placing an institution on provisional certification if it has a cohort default rate in the FFEL and/or Direct Loan programs of 25 percent or greater. That change will provide more flexibility to the Secretary in choosing whether or not to place such an institution on provisional certification.

We believe that many more institutions will benefit from the provision that they must only report to us and not await our approval, since it allows them to begin disbursing aid at these new locations immediately upon their reporting to us. We anticipate the number of institutions that qualify for this flexibility will be much greater than the number of institutions that will be required to await our approval before disbursing title IV, HEA program funds to eligible students at those locations. Also, the minimal reporting burden required of an institution enables us to maintain accurate and updated records of all locations where students who are receiving title IV, HEA funds are enrolled.

Institutions are responsible for knowing whether they need to obtain our approval to disburse title IV, HEA program funds to eligible students at the new location. If an institution is unsure whether it meets the criteria requiring it to wait for our approval, it may contact us for specific guidance. Institutions that add locations without obtaining our approval when they knew, or should have known, that they were required to wait may be subject to administrative repayments and other sanctions.

Changes: We are revising § 600.20(c) to eliminate the exemptions for public institutions and for temporary additional locations that were proposed in § 600.20(d) of the NPRM and any related references to those exemptions. Under § 600.21(a)(3), all institutions are required to report to us if they wish to add an additional location where they offer or will offer 50 percent or more of an eligible program. Section 600.20(c) provides that an institution must apply to us for approval if it has added an additional location and must await the Secretary's approval before disbursing title IV, HEA program funds at that location if it meets one or more of the conditions described above and included in the regulation at § 600.20(c)(1)(i)–(v).

Comments: One commenter, in focusing on the Secretary's possible responses to an application as proposed in § 600.20(f)—§ 600.20(e) in these final rules —, asked us to clarify the difference between a ''program in which it is eligible to participate'' versus ''programs in which it is eligible to apply for funds'' in § 600.20(f)(2) —§ 600.20(e)(2) in these final rules —. The commenter also asked for clarification of the reference to a branch campus in § 600.20(f)(4)–§ 600.20(e)(6) in these final rules.

Discussion: Section 600.20(e)(2) reflects the current regulations at § 600.21(a), which identifies the conditions and applications to which the Secretary will respond. Section 600.20(e)(2)(i) states that the Secretary will notify an institution whether it is eligible to participate in the title IV, HEA programs. Section 600.20(e)(2)(ii) states that the notification will enumerate the specific title IV, student aid programs in which the institution is

eligible to participate. Section 600.20(e)(2)(iii) states that the Secretary notifies the institution of the specific title IV, student aid programs for which the institution must submit an additional application to receive funding. For example, the campus-based programs require submission of an annual application (FISAP) before funds are allocated to an institution.

Notices sent according to § 600.20(e)(2)(iv) and 600.20(e)(2)(v) will indicate the effective dates of eligibility, and any conditions, related to that eligibility respectively.

We agree with the commenter that § 600.20(f)(4) in the NPRM does not provide a reference to § 600.20(c)(4) and (5). We will make the necessary corrections.

Changes: Section 600.20(e) has been revised to identify how the Secretary responds to applications for branch campuses.

Section 600.31—Change in Ownership Resulting in a Change in Control for Private Nonprofit and Private For-Profit Institutions

Publicly-Traded Corporations

Comments: A commenter recommended that we include a succinct definition of the term ''institutional investor'' that specifically mentions the following types of investors: investment companies, registered investment advisors, business development companies, employee benefit plans, banks, insurance companies, pension funds, and securities dealers.

Discussion: We agree that our definition of the term ''institutional investor'' should be clarified. However, we find that definitions of this industry term are often more descriptive of entities to be included, rather than exhaustive of the characteristics of such entities. Therefore, we defer to the Securities and Exchange Commission's (SEC) regulatory definition of a U.S. institutional investor, with which publicly-traded corporations and most investors can be expected to be familiar.

Changes: We have added a cross-reference from the SEC regulations in 17 CFR 240.15a–6(b)(7) to the reference ''U.S. institutional investor'' in the definitions at § 600.31(b)(2)(ii) and 600.31(c)(2)(ii)(A). Although illustrative of the entities that will be considered institutional investors under this regulation, the reference is not intended to be exhaustive.

Comments: One commenter felt that the proposed definition of a ''controlling shareholder'' equates ''voting stock'' with ''shares''. The commenter noted that voting stock is not always equivalent to the number of shares of stock an individual may own in a corporation, as in the case where non-voting stock has been issued. The commenter believed that if this definition is based on other regulatory provisions that raise the same issue, we should address all occurrences of this in the final regulations.

Another commenter suggested clarifying in proposed § 600.31(c)(2)(ii)(A) that the controlling shareholder be determined through measuring only the voting stock, by adding the phrase ''of the voting stock'' after the word ''shares'' to read: ''A controlling shareholder is a shareholder who holds or controls through agreement both 25 percent or more of the total outstanding voting stock of the corporation and more shares of the voting stock than any other shareholder.''

Discussion: We agree that the term ''share'' is not synonymous with actual voting stock. The integral element of this topic relates to a shareholder's ability to significantly impact or control the actions of a corporation, or its management. Thus, we agree that revising the regulation to focus on ownership and control of voting stock is appropriate.

Changes: Section 600.31(c)(2)(ii)(A) has been changed to add the words ''of voting stock'' after the word ''shares'', signaling that the regulation applies to stock that contains voting privileges.

Comments: A commenter believed that the proposed wording used to describe who is not a controlling shareholder in § 600.31(c)(2)(ii)(A) should be modified. The commenter suggested that the regulation should exclude from consideration all shares held in the categories listed, rather than only excluding such stock if it represents the individual's sole holdings in that corporation. The commenter recommended revising the third sentence to exclude all of the shares held in the excluded capacities in determining whether the shareholder is a controlling shareholder to read: ''Any shares of the corporation's voting stock held by a shareholder (1) as an institutional investor, (2) in mutual funds, (3) through a profit-sharing plan or (4) in an Employee Stock Ownership Plan (ESOP) are excluded for purposes of determining whether the shareholder is a controlling shareholder.''

Discussion: We disagree. When identifying those shareholders whose ability to influence a corporation's management of student assistance merits scrutiny, we believe that it is reasonable to exclude large, institutional investors whose only investment with a specific corporation exists solely for the investment value. We consider these investors generally to have investment objectives that differ from other investors who take a controlling position in a corporation. The objectives of the institutional investor normally prompt a lesser interest in influencing management policies that may affect the administration of student assistance than those of other controlling shareholders. It is reasonable to infer that a shareholder who acquires control of the voting rights of stock held by others who qualify as institutional investors does not show this same lack of interest in those management policies.

Therefore, a person who controls 25 percent or more of the outstanding voting stock of a company and more stock than any other person by a combination of personal investment ownership and representation of institutional investors uniquely classifies one as a controlling shareholder, who can reasonably be expected to exercise real influence over management and its policies. The effect of this kind of shareholder's control on the corporation deserves the same scrutiny as that of any other shareholder who can control corporate policies.

Thus, to determine whether a shareholder is a controlling shareholder under the bright-line test, the rule counts all voting stock held or controlled by a shareholder, unless all stock held by that shareholder is held as an institutional investor.

Changes: None.

Comments: One commenter disagreed with our proposal to suspend eligibility by defining a change of ownership resulting in a change of control to occur when a stockholder's ownership share crosses what he believed to be an arbitrary ''bright line''. He thought it was unfair to define a decrease in stock ownership by a controlling shareholder in a way that caused the negative result of suspending an institution's eligibility until a new application has been reviewed and approved. The commenter noted that, while the SEC and GAAP may require certain reporting activities for certain events, they do not cause immediate suspension of business activities or licenses. The commenter recommended that eligibility should be continued if financial responsibility and administrative capability has already been demonstrated and has not been downgraded by the ownership change. The commenter felt that the 25 percent threshold is arbitrary. The commenter contended that, while 25 percent may be a large enough percentage of stock to allow an individual to influence a corporation, more than 50 percent of the

stock must be owned for an individual to have control of the corporation. The commenter also noted that control does not necessarily change with purchase or sale of stock. He stated that control is exercised by a corporation's Board of Directors, which does not automatically change with purchase and sale of stock. He felt that any review or suspension of an institution's eligibility should be predicated on a precipitous change in Directors, not stock ownership.

Discussion: We disagree with the commenter's notion that the use of a clear threshold in determining ownership and control is unfair or arbitrary. Quite the contrary, we sought to avoid such treatment by referencing established standards and guidelines of the accounting industry, which are accepted and adopted by most publicly-traded corporations.

Since most financial transactions are accounted for in accordance with the established system of accounting principles, we patterned our ''bright line'' threshold directly after Accounting Principles Board Opinion No. 18, which defines for GAAP purposes the percentage of ownership that can reasonably be presumed to give an investor the ability to exercise significant influence over an investee.

GAAP provides that control of 20 percent of the voting stock of a corporation raises a rebuttable presumption of control of the corporation and conversely, that control of a smaller percentage of a corporation's stock raises a rebuttable presumption that the holder lacks control. We chose that adoption of an irrebutable ''bright line'' test was desirable both to allow institutions to plan their financial affairs with greater predictability, and to eliminate the burden of our examining the circumstances surrounding each significant diminution in ownership interest of an institution owned by a publicly-traded corporation. We believe that a higher threshold than 20 percent should be used in return for adoption of a ''bright line'' standard. The choice of 25 percent as the threshold is not compelled by statute or regulation, but is a reasonable choice. We therefore choose to retain 25 percent as the ''bright line'' measure of control.

We also disagree that while 25 percent ownership of stock may be influential, 50 percent is required to control an entity. For publicly-traded corporations, the opposite inference is compelling: The more widely held the stock of a corporation, the smaller the percentage of its stock that need be controlled by a person in order to allow that person to ''direct or cause the direction of the management and policies'' of the corporation (see, § 600.31(b) definition of ''control''). The investing public and the accounting profession recognize that a shareholder can control a corporation while owning or controlling far less than 50 percent of its stock. There is no reason that we should ignore that same conclusion.

Finally, the position that eligibility and certification lapse upon a change in ownership that results in a change in control is not a position that we arbitrarily adopted, but is required by the HEA. Section 498(i) mandates that eligibility must be reestablished after a change in ownership resulting in a change in control, and that the transfer of the controlling interest of stock of the institution is an action that results in such a change in control.

Changes: None.

Comments: Another commenter supported adding specific references to ''private nonprofit and private for-profit institutions''. The commenter believed that these terms help nonprofit institutions recognize that certain change of ownership provisions apply to them, because the words ''change of ownership'' could suggest applicability only to the for-profit sector. The commenter did not feel that the proposed changes to § 600.31(c)(7) are an appropriate recognition of differences among the sectors in postsecondary education, and believes that the change of ownership regulations for independent nonprofit institutions should be reconsidered in negotiated rulemaking in the near future. The commenter believed that some mergers between institutions should be allowed without triggering a change of ownership resulting in a change of control, such as the merger of two independent nonprofit institutions, both of which are participating in good standing in the title IV programs. The commenter believed that such a merger could serve the best interest of students and society by allowing distinctive educational programs to continue to be available to students, supported by the stronger financial and administrative base of the merged institution.

Discussion: We believe Congress considered similar arguments when it deliberated the latest reauthorization of the HEA. While the specific terminology suggested by the commenter may not appear in the statute, the very example that the commenter provides regarding a merger between institutions is specifically addressed in section 498(i)(2)(C) of the HEA. We considered suggestions that we should implement certain labels to clarify the full extent and application of this section to all institutions, regardless of unique sectors. Thus we included the terms ''private nonprofit'' and ''private for-profit'' as descriptive modifiers where appropriate. We disagree with the notion that certain entities are disadvantaged by general labels or the lack of more specific ones.

Changes: None.

Public Institutions

Comments: Nine commenters supported the proposed provision that does not regard a change in governance at a public institution as a change in ownership, if the institution's new governing body is in the same State included in the institution's program participation agreement and the new governing body has acknowledged the institution's responsibilities under its program participation agreement. The commenters felt this exemption was appropriate for the same reasons that some commenters supported exempting public institutions from applying for our approval of an additional location: sufficient oversight and systems of control by governing public entities, sufficient financial backing of the governing public entity, and monitoring by the institution's accrediting agency to ensure that the Federal government's interests are protected.

One commenter supported the provision that would provide that a change in governance at a public institution is not a change in ownership. Additionally, the commenter did not believe that it was necessary to limit this to changes in governance in the same state included in the program participation agreement. The commenter felt that the same assurances associated with the fact that public oversight of the institution exists would also apply in the rare instance that the governance of a public institution switched from one state to another. The commenter also did not believe that it would be necessary to require the new governing authority to acknowledge the institution's responsibilities under its program participation agreement. The commenter noted that the institution remains the same institution and, therefore, retains the responsibilities it acquired by signing its program participation agreement.

Five commenters did not believe that a particular form of acknowledgement should be required for institutions that must acknowledge their continuing responsibilities under the program participation agreement because the formal transfer of governing authority might not include such an acknowledgement. These commenters felt it would be more useful for

institutions to tailor their acknowledgement to reflect the specific circumstances of the transfer of governance. One commenter felt that a letter or statement from the institutional authority would be sufficient.

Three commenters did not support the proposed provision allowing a change in governance at a public institution to not be considered a change in ownership if the institution's new governing body is in the same State. The commenters contended that there are several circumstances where a public institution should be considered to have had a change in ownership.

The commenters also believed that a change in ownership has occurred when a public institution is transferred from control from a higher level of governmental authority (such as a State) to a lower one (such as a county) which may not have the same level of resources to commit to the institution. One commenter believed that in such a case there was no guarantee of continuing operational effectiveness. The commenter felt that such an exemption for all public schools would put taxpayers' funds at risk. Two of the commenters believed that, at the very least, the institution should be required to inform us of the change so that we can determine whether it meets the requirements for the exemption.

One commenter felt that new types of ''quasi public'' institutions, such as charter colleges are not likely to have the same level of oversight and financial stability as a traditional public institution, and should not be given broad regulatory exemptions. The commenter also felt that we should retain an interest in approving a change in which an institution, for the first time, will be administering the Federal financial aid programs. The commenter gave an example of several two-year colleges in a state that have been managed by four-year institutions, but may be given autonomy to operate (and presumably, participate in the title IV, HEA programs) on their own. The commenter concluded by noting that all of the public institutions in that state may have their state funding tied to meeting specific performance goals.

Discussion: We explained in the NPRM and in the earlier discussion related to additional locations that there has been a consistent history of stability, compliance and accountability in the operation of public institutions that supports the proposal to exempt certain governance changes within the State from being considered changes of ownership resulting in changes of control. Moreover, this level of accountability has been present at every level of government that operates public institutions. For that reason, we are not persuaded that the level of oversight or the systems of control that monitor the performance of these institutions will change drastically because of a transfer in control between governing public entities within a State.

We are not persuaded to extend the scope of the proposal to permit a public institution in one State to acquire a public institution in another State without having that change considered a change of ownership resulting in a change in control, and thus requiring the institution to apply for approval of a change of ownership. In such an instance, the ownership and control of the institution would be changing from one State to another, so that an entirely different public constituency would be assuming responsibility for the institution. This type of structure would also raise questions about State licensing, since the public institution owned by one State would be operating under the State licensing requirements of a different State. We have considered the suggestions from commenters that public institutions should be required to report to us when a change of governance takes place even if that change is not considered a change in ownership resulting in a change in control, and we agree. Such information will permit us to examine the transaction to ensure that it meets the definitional requirements and to determine if there are any other issues involving the institution warranting further action.

We agree with the comments that cautioned against exempting changes of governance at a public institution that is transferred to a ''quasi public'' entity such as a charter college or other hybrid entity. As we stated in the NPRM, the provision does not apply if a change in governance involves a hybrid entity, such as a corporation with limited liability, public-private partnerships, or joint ownership with out-of-State entities.

Changes: Section 600.21(a)(9) has been added to require public institutions to report to us within 10 days of when they experience a change in governance.

Comments: A commenter asked us to clarify the manner in which the institution's continuing responsibilities must be acknowledged. The commenter noted that in the preamble to the NPRM (page 49141), we stated that the acknowledgment must be written and must be a part of the documents that transfer control to the new governing body. The commenter felt that the next sentence confuses the meaning of the previous sentence by stating that the written acknowledgment, if not included in the documents transferring control, can be submitted separately to us. The commenter believed that we intended to say that notification without acknowledgment suffices if that acknowledgment is included in the official transfer documents; otherwise, notification of the change (not simply acknowledgement of its official records) is required.

Discussion: As explained above, the regulation is being changed to require public institutions to report to us within 10 days of undergoing a change in governance. If documentation transferring the governance from one public entity to another within the State explicitly acknowledges the institution's continuing responsibilities under its Program Participation Agreement, that documentation is sufficient, and no additional acknowledgment must be provided in the notice, or separately. Such an acknowledgment may be based on the circumstances of the transfer, and simply included in the official transfer documentation. If the documentation transferring control of the public institution to another in-State public entity does not acknowledge the institution's continuing responsibilities under its Program Participation Agreement, the institution must acknowledge its continuing responsibilities by separate letter or in the notice advising us of the change in governance.

Changes: None.

Section 668.5—Written Arrangements To Provide Educational Programs

Comments: One commenter from a public institution noted that the proposed flexibilities that would extend to institutions participating in study-abroad programs would eliminate many current deterrents for students trying to gain access to aid for those programs. He believed that the existing guidance regarding contractual and consortium agreements often causes confusion. The commenter stated that the proposed regulation would clarify the required procedures and effectively minimize such confusion. The commenter noted the clarification the proposed regulation makes by defining third-party providers and study-abroad organizations as appropriate constituent groups in study-abroad programs.

Another commenter representing a large, private university supported the proposed revisions, and expected a significant reduction in the administrative burden experienced, as schools currently must obtain and maintain separate agreements with each

foreign institution that its students are attending. The commenter believed that the ability to make agreements with study-abroad organizations will enhance the quality and consistency of information shared between home and host institutions, and will likely create more expedient delivery of the title IV, HEA program funds to students in these programs.

Discussion: We appreciate the positive responses to this proposal. We anticipate that these regulations will make it substantially easier for students to receive financial aid while enrolled in eligible domestic programs away from their home institutions. We believe that the ability for either home or host institutions to pay the student's title IV, HEA program funds is a significant feature that will enhance and expand diverse learning opportunities.

Changes: None.

Section 668.13—Certification Procedures

Comments: One commenter agreed with our proposal to permit the chief executive of an institution to designate another executive level officer to serve as an alternate for certification training purposes. The commenter also thought it made sense not to require schools to attend training when a participating institution was merely adding a new title IV, HEA program.

Discussion: We believe that all eligible, participating institutions should receive basic training about the federal regulations and procedural requirements that pertain to administering the title IV, HEA programs. We want to assure students and taxpayers that they can expect an accurate application of the program requirements and a consistent level of proficiency on the part of the institutions we authorize to deliver title IV assistance.

We regularly review the training requirements to ensure that relevance, accuracy, and practicality are reflected in the subject matter. We also seek to continually simplify the training requirements without diluting the core content, to encourage institutions to make use of these resources when assessing and maintaining the technical readiness of their staffs.

Changes: None.

Section 668.19—Financial Aid History

Comments: Several commenters supported the proposal to eliminate the paper financial aid transcript (FAT) requirements for all transfer students in favor of a process under which the National Student Loan Data System (NSLDS) provides financial aid history information about current-year transfer students directly to schools that need it for one or more of their transfer students.

Discussion: We appreciate the support of the commenters.

Changes: None.

Comments: One commenter asked whether the school or the student is liable for an overpayment of title IV aid based on the financial aid history information the school receives from NSLDS after the seven day timeframe.

Discussion: Once a school receives information that limits a student's eligibility, it may not disburse additional title IV, HEA aid to that student until the problem is revolved. As currently provided in Dear Colleague Letter GEN–96–13, a school that follows the procedures in obtaining financial aid history information from NSLDS may rely on that information in making eligibility and award determinations. The school is not liable for any overpayments. The same is true under this rule. A school that notifies NSLDS and either waits seven days or checks NSLDS on-line before it disburses title IV, HEA program funds is not liable for any overpayments based on information it receives from NSLDS at a later date.

However, a student may be liable for any overpayment that is the result of information the school receives after it follows the procedures in these rules. This concept is explained more fully in Dear Colleague Letter GEN–96–13.

Changes: None.

Comments: One commenter suggested that the Secretary designate this regulation as one that a school may implement as soon as it is published as a final rule instead of waiting until it normally takes effect on July 1, 2001.

Discussion: We are currently discussing with schools and other partners various administrative approaches that could be used to implement this rule. After we complete those discussions, system improvements and enhancements need to be made to NSLDS before schools can use it for this purpose. Therefore, it is unlikely that we will have the systems support needed to implement the new provisions before July 1, 2001.

Changes: None.

Comments: One commenter stated that the NSLDS information on an Institutional Student Information Record (ISIR) should be current with all financial aid transactions contained in NSLDS. This case requires no distinction between current-year and prior-year transfer students with respect to the ISIR information a school uses to make eligibility and award determinations. The commenter further stated that if the information on an ISIR is not the same as that in NSLDS, as implied in the preamble discussion, we should provide current NSLDS information to schools via the ISIR process.

Discussion: The financial aid history information on an ISIR reflects NSLDS information as of the date that the ISIR is created. Currently, an ISIR is not updated solely to reflect disbursements of title IV aid that are reported by an NSLDS data provider. This is because, under such a process, every school that a student listed on the FAFSA would be required to receive an updated ISIR every time new disbursements were reported to NSLDS, including the school that reported those disbursements. Certainly, there is no benefit in providing to schools, at considerable costs to the taxpayers and institutions, millions of updated ISIR records that contain information they do not need.

On the other hand, we agree with the commenter's general view that there should be a single process under which a school receives updated financial aid history information for all transfer students. However, in many cases (particularly for prior-year transfer students) the updated information will not affect those students' current year eligibility or award amounts. Moreover, currently we have no way of determining which school a transfer student is attending until after NSLDS receives disbursement information identifying that school.

For these reasons, we proposed a targeted approach under which a school would inform NSLDS of the transfer students that are attending (or planning to attend) their school and NSLDS would provide, directly to that school, updated information about those students. Although these rules apply only to current-year transfer students, a school may use the new NSLDS process to receive updated information for any transfer student.

Changes: None.

Section 668.165—Notices and Authorizations

Comments: Two commenters representing a large coalition in the higher education community stated that requiring confirmation and retention of electronic notices is counter-productive, and diminishing to the efficiencies inherent in constantly advancing technologies. By comparison they noted that we do not require similar tracking and confirmation of receipt for mail sent via the U.S. Postal Service (USPS).

Discussion: After many discussions regarding the practical complications of documenting receipt of electronic mail,

we agree that some schools may experience an impractical, although unintended, burden to maintain copies of the student's or parent's confirmation of a disbursement notice. Given the range and diversity of capabilities in various e-mail and other electronic applications, we believe that institutions should determine the best way for them to confirm that a student or parent received an electronic notice. Thus, the language in the NPRM, and in the final rule, allows electronic notices, while only requiring that institutions confirm that those notices reached the intended parties.

We noted in the NPRM that we support the presumption recognized in the law that mail deposited with the USPS is delivered. Certainly, there are documented cases where this presumption fails because of the potential for error that accompanies any system dependent upon human interaction. However, we see the differences between an established, federally supported, national delivery system and an electronic delivery method that operates independently and through many different private software providers without a uniform standard, as very significant.

The USPS has several proven methods and systems that it may use to track mail deposited in its system. It also utilizes uniform automated systems that process mail throughout the nation. The USPS also sets coherent operating standards and employs a system of quality assurance to monitor the application and effectiveness of those standards.

On the contrary, both the software applications and the hardware upon which they operate generally limit e-mail capabilities. There are no observed standards or mandated features inherent in all e-mail software applications that provide the quality assurance or maintain a similar level of consistency that parallels that of the USPS.

Changes: None.

Section 675.19—Fiscal Procedures and Records

Comments: One commenter strongly supported our proposal to allow electronic certification of Federal Work-Study (FWS) timesheets. The commenter believed that this option alleviates some of the inconvenience of loss, damage, forgery and other complications that may occur when using paper certifications. The commenter also felt that the proposed regulations will enhance the timeliness of the delivery of FWS funds, and will improve the security and retention of the related records.

Another commenter was also supportive of our proposal to allow electronic certification by a supervisor to approve FWS hours recorded on a student's time record. The commenter noted that many of the departments at her school have several hundred employees each. Accordingly, the commenter was aware that several of these departments have implemented electronic timekeeping systems, which have vastly improved the accuracy of the timekeeping function for such a large number of employees. The commenter also felt that being able to move the FWS payroll employees to a more technologically advanced system would be less burdensome, and would avoid having to keep a separate time system for FWS students. The commenter believed that these regulations would improve the utilization of FWS in both on-campus jobs and increasingly, in off-campus employment.

Discussion: We appreciate the support for these regulations. Just as we do with manual certification systems, we continue to urge institutions to assess the adequacy of their systems and internal controls, to assure that reasonable safeguards exist to secure certifications that will be completed electronically.

We refer those who administer the FWS Program to page 49145 of the August 10, 2000 NPRM for a full discussion of the safeguards we expect schools to include in any electronic certification process they implement.

Changes: None.

Executive Order 12866

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

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

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

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

We discussed the potential costs and benefits of these final regulations in the preamble to the NPRM under Executive Order 12866 (see page 49147 of the NPRM) Potential Costs and Benefits.

Paperwork Reduction Act of 1995

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

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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

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(Catalog of Federal Domestic Assistance Number: 84.033 Federal Work-Study Program; 84.063 Federal Pell Grant Program)

List of Subjects

34 CFR Part 600

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

34 CFR Part 668

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

34 CFR Part 675

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

34 CFR Part 690

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

Dated: October 25, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons stated in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by amending parts 600, 668, 675, and 690 as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 continues to read as follows:

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

§§ 600.9 and 600.30 [Removed and reserved]

2. Sections 600.9 and 600.30 are removed and reserved.

3. Section 600.10 is amended by removing and reserving paragraph (a)(2) and by revising paragraphs (b)(3)(i) and (b)(3)(ii) to read as follows:

§ 600.10 Date, extent, duration, and consequence of eligibility.

* * * * *

(b) * * *

(3) * * *

(i) The Secretary approves that location under § 600.20(e)(4); or

(ii) The location is licensed and accredited, the institution does not have to apply to the Secretary for approval of that location under § 600.20(c), and the institution has reported to the Secretary that location under § 600.21.

(Approved by Office of Management and Budget under control number 1845–0098)

4. Section 600.20 is revised to read as follows:

§ 600.20 Application procedures for establishing, reestablishing, maintaining, or expanding institutional eligibility and certification.

(a) *Initial eligibility application.* An institution that wishes to establish its eligibility to participate in any HEA program must submit an application to the Secretary for a determination that it qualifies as an eligible institution under this part. If the institution also wishes to be certified to participate in the title IV, HEA programs, it must indicate that intent on the application, and submit all the documentation indicated on the application to enable the Secretary to determine that it satisfies the relevant certification requirements contained in 34 CFR part 668, subparts B and L.

(b) *Reapplication.* (1) A currently designated eligible institution that is not participating in the title IV, HEA programs must apply to the Secretary for a determination that the institution continues to meet the requirements in this part if the Secretary requests the institution to reapply. If the institution wishes to be certified to participate in the title IV, HEA programs, it must submit an application to the Secretary and must submit all the supporting documentation indicated on the application to enable the Secretary to determine that it satisfies the relevant certification requirements contained in subparts B and L of 34 CFR part 668.

(2) A currently designated eligible institution that participates in the title IV, HEA programs must apply to the Secretary for a determination that the institution continues to meet the requirements in this part and in 34 CFR part 668 if the institution wishes to—

(i) Continue to participate in the title IV, HEA programs beyond the scheduled expiration of the institution's current eligibility and certification designation;

(ii) Reestablish eligibility and certification as a private nonprofit, private for-profit, or public institution following a change in ownership that results in a change in control as described in § 600.31; or

(iii) Reestablish eligibility and certification after the institution changes its status as a proprietary, nonprofit, or public institution.

(c) *Application to expand eligibility.* A currently designated eligible institution that wishes to expand the scope of its eligibility and certification and disburse title IV, HEA Program funds to students enrolled in that expanded scope must apply to the Secretary and wait for approval to—

(1) Add a location at which the institution offers or will offer 50 percent or more of an educational program if one of the following conditions applies, otherwise it must report to the Secretary under § 600.21:

(i) The institution participates in the title IV, HEA programs under a provisional certification, as provided in 34 CFR 668.13.

(ii) The institution receives title IV, HEA program funds under the reimbursement or cash monitoring payment method, as provided in 34 CFR part 668, subpart K.

(iii) The institution acquires the assets of another institution that provided educational programs at that location during the preceding year and participated in the title IV, HEA programs during that year.

(iv) The institution would be subject to a loss of eligibility under 34 CFR 668.188 if it adds that location.

(v) The Secretary previously notified the institution that it must apply for approval of an additional location.

(2) Increase its level of program offering (*e.g.*, adding graduate degree programs when it previously offered only baccalaureate degree programs);

(3) Add an educational program if the institution is required to apply to the Secretary for approval under § 600.10(c);

(4) Add a branch campus at a location that is not currently included in the institution's eligibility and certification designation; or

(5) Convert an eligible location to a branch campus.

(d) *Application format.* To satisfy the requirements of paragraphs (a), (b), and (c) of this section, an institution must apply in a format prescribed by the Secretary for that purpose and provide all the information and documentation requested by the Secretary to make a determination of its eligibility and certification.

(e) *Secretary's response to applications.* (1) If the Secretary receives an application under paragraph (a) or (b)(1) of this section, the Secretary notifies the institution—

(i) Whether the applicant institution qualifies in whole or in part as an eligible institution under the appropriate provisions in §§ 600.4 through 600.7; and

(ii) Of the locations and educational programs that qualify as the eligible institution if only a portion of the applicant qualifies as an eligible institution;

(2) If the Secretary receives an application under paragraphs (a) or (b) of this section and that institution applies to participate in the title IV, HEA programs, the Secretary notifies the institution—

(i) Whether the institution is certified to participate in those programs;

(ii) Of the title IV, HEA programs in which it is eligible to participate;

(iii) Of the title IV, HEA programs in which it is eligible to apply for funds;

(iv) Of the effective date of its eligibility to participate in those programs; and

(v) Of the conditions under which it may participate in those programs;

(3) If the Secretary receives an application under paragraph (b)(2) of this section, the Secretary notifies the institution whether it continues to be certified, or whether it reestablished its eligibility and certification to participate in the title IV, HEA programs and the scope of such approval.

(4) If the Secretary receives an application under paragraph (c)(1) of this section for an additional location, the Secretary notifies the institution whether the location is eligible or ineligible to participate in the title IV, HEA programs, and the date of eligibility if the location is determined eligible;

(5) If the Secretary receives an application under paragraph (c)(2) of this section for an increase in the level of program offering, or for an additional educational program under paragraph (c)(3) of this section, the Secretary notifies the institution whether the program qualifies as an eligible program, and if the program qualifies, the date of eligibility; and

(6) If the Secretary receives an application under paragraphs (c)(4) or (c)(5) of this section to have a branch campus certified to participate in the title IV, HEA programs as a branch campus, the Secretary notifies the institution whether that branch campus is certified to participate and the date that the branch campus is eligible to begin participation.

(f) *Disbursement rules related to applications.* (1)(i) Except as provided under paragraph (f)(1)(ii) of this section and 34 CFR 668.26, if an institution submits an application under paragraph (b)(2)(i) of this section because its participation period is scheduled to expire, after that expiration date the institution may not disburse title IV, HEA program funds to students attending that institution until the institution receives the Secretary's notification that the institution is again eligible to participate in those programs.

(ii) An institution described in paragraph (f)(1)(i) of this section may disburse title IV, HEA program funds to its students if the institution submits to the Secretary a materially complete renewal application in accordance with the provisions of 34 CFR 668.13(b)(2), and has not received a final decision from the Department on that application.

(2)(i) Except as provided under paragraph (f)(2)(ii) of this section and 34 CFR 668.26, if a private nonprofit, private for-profit, or public institution submits an application under paragraph (b)(2)(ii) or (b)(2)(iii) of this section because it has undergone or will undergo a change in ownership that results in a change of control or a change in status, the institution may not disburse title IV, HEA program funds to students attending that institution after the change of ownership or status until the institution receives the Secretary's notification that the institution is eligible to participate in those programs.

(ii) An institution described in paragraph (f)(2)(i) of this section may disburse title IV, HEA program funds to its students if the Secretary issues a provisional extension of certification under paragraph (g) of this section.

(3) If an institution must apply to the Secretary under paragraphs (c)(1) through (c)(4) of this section, the institution may not disburse title IV, HEA program funds to students attending the subject location, program, or branch until the institution receives the Secretary's notification that the location, program, or branch is eligible to participate in the title IV, HEA programs.

(4) If an institution applies to the Secretary under paragraph (c)(5) of this section to convert an eligible location to a branch campus, the institution may continue to disburse title IV, HEA program funds to students attending that eligible location.

(5) If an institution does not apply to the Secretary to obtain the Secretary's approval of a new location, program, increased level of program offering, or branch, and the location, program, or branch does not qualify as an eligible location, program, or branch of that institution under this part and 34 CFR part 668, the institution is liable for all title IV, HEA program funds it disburses to students enrolled at that location or branch or in that program.

(g) *Application for provisional extension of certification.* (1) If a private nonprofit institution, a private for-profit institution, or a public institution participating in the title IV, HEA programs undergoes a change in ownership that results in a change of control as described in 34 CFR 600.31, the Secretary may continue the institution's participation in those programs on a provisional basis, if the institution under the new ownership submits a ''materially complete application'' that is received by the Secretary no later than 10 business days after the day the change occurs.

(2) For purposes of this section, a private nonprofit institution, a private for-profit institution, or a public institution submits a materially complete application if it submits a fully completed application form designated by the Secretary supported by—

(i) A copy of the institution's State license or equivalent document that—as of the day before the change in ownership—authorized or will authorize the institution to provide a program of postsecondary education in the State in which it is physically located;

(ii) A copy of the document from the institution's accrediting association that—as of the day before the change in ownership—granted or will grant the institution accreditation status, including approval of any non-degree programs it offers;

(iii) Audited financial statements of the institution's two most recently completed fiscal years that are prepared and audited in accordance with the requirements of 34 CFR 668.23; and

(iv) Audited financial statements of the institution's new owner's two most recently completed fiscal years that are prepared and audited in accordance with the requirements of 34 CFR 668.23, or equivalent information for that owner that is acceptable to the Secretary.

(h) Terms of the extension. (1) If the Secretary approves the institution's materially complete application, the Secretary provides the institution with a provisional Program Participation Agreement (PPA). The provisional PPA extends the terms and conditions of the program participation agreement that were in effect for the institution before its change of ownership.

(2) The provisional PPA expires on the earlier of—

(i) The date on which the Secretary signs a new program participation agreement;

(ii) The date on which the Secretary notifies the institution that its application is denied; or

(iii) The last day of the month following the month in which the change of ownership occurred, unless the provisions of paragraph (h)(3) of this section apply.

(3) If the provisional PPA will expire under the provisions of paragraph (h)(2)(iii) of this section, the Secretary extends the provisional PPA on a month-to-month basis after the expiration date described in paragraph (h)(2)(iii) of this section if, prior to that expiration date, the institution provides the Secretary with—

(i) A ''same day'' balance sheet showing the financial position of the institution, as of the date of the ownership change, that is prepared in accordance with Generally Accepted Accounting Principles (GAAP) published by the Financial Accounting Standards Board and audited in accordance with Generally Accepted Government Auditing Standards (GAGAS) published by the U.S. General Accounting Office;

(ii) If not already provided, approval of the change of ownership from the State in which the institution is located by the agency that authorizes the institution to legally provide postsecondary education in that State;

(iii) If not already provided, approval of the change of ownership from the institution's accrediting agency; and

(iv) A default management plan unless the institution is exempt from providing that plan under 34 CFR 668.14(b)(15).

(Approved by the Office of Management and Budget under control number 1845–0098)

(Authority: 20 U.S.C. 1001, 1002, 1088, and 1099c)

5. Section 600.21 is revised to read as follows:

§ 600.21 Updating application information.

(a) *Reporting requirements.* Except as provided in paragraph (b) of this section, an eligible institution must report to the Secretary in a manner prescribed by the Secretary no later than 10 days after the change occurs, of any change in the following:

(1) Its name, the name of a branch, or the name of a previously reported location.

(2) Its address, the address of a branch, or the address of a previously reported location.

(3) Its establishment of an accredited and licensed additional location at which it offers or will offer 50 percent or more of an educational program if the institution wants to disburse title IV, HEA program funds to students enrolled at that location, under the provisions in paragraph (d) of this section.

(4) The way it measures program length (*e.g.*, from clock hours to credit hours, or from semester hours to quarter hours).

(5) A decrease in the level of program offering (*e.g.* the institution drops its graduate programs).

(6) A person's ability to affect substantially the actions of the institution if that person did not previously have this ability. The Secretary considers a person to have this ability if the person—

(i) Holds alone or together with another member or members of his or her family, at least a 25 percent ''ownership interest'' in the institution as defined in § 600.31(b);

(ii) Represents or holds, either alone or together with other persons, under a voting trust, power of attorney, proxy, or similar agreement at least a 25 percent ''ownership interest'' in the institution, as defined in § 600.31(b); or

(iii) Is a general partner, the chief executive officer, or chief financial officer of the institution.

(7) The individual the institution designates under 34 CFR 668.16(b)(1) as its title IV, HEA Program administrator.

(8) The closure of a branch campus or additional location that the institution was required to report to the Secretary.

(9) The governance of a public institution.

(b) *Additional reporting from institutions owned by publicly-traded corporations.* An institution that is owned by a publicly-traded corporation must report to the Secretary any change in the information described in paragraph (a)(6) of this section when it notifies its accrediting agency, but no later than 10 days after the institution learns of the change.

(c) *Secretary's response to reporting.* The Secretary notifies an institution if any reported changes affects the institution's eligibility, and the effective date of that change.

(d) *Disbursement rules related to additional locations.* When an institution must report to the Secretary about an additional location under paragraph (a)(3) of this section, the institution may not disburse title IV, HEA funds to students at that location before it reports to the Secretary about that location. Unless it is an institution that must apply to the Secretary under § 600.20(c)(1), once it reports to the Secretary about that location, the institution may disburse those funds to those students if that location is licensed and accredited.

(e) *Consequence of failure to report.* An institution's failure to inform the Secretary of a change described in paragraph (a) of this section within the time period stated in that paragraph may result in adverse action against the institution.

(f) *Definition.* The Secretary considers a member of a person's family to be his or her—

(1) Parent, sibling, spouse or child;

(2) Spouse's parent or sibling;

(3) Child's spouse; and

(4) Sibling's spouse.

(Approved by the Office of Management and Budget under control number 1845.0098)

(Authority: 20 U.S.C. 1001, 1002, 1088, and 1099c)

6. Section 600.31 is amended by:

A. Revising the section heading.

B. Revising paragraph (a)(1).

C. Redesignating paragraph (a)(2) as paragraph (a)(3) and adding a new paragraph (a)(2).

D. Removing the definition of ''ownership'' in paragraph (b) and adding, in its place, the definition of ''ownership or ownership interest''.

E. Revising paragraphs (c)(2), (c)(6), and (c)(7).

F. Revising paragraph (d)(7).

The additions and revisions read as follows:

§ 600.31 Change in ownership resulting in a change in control for private nonprofit, private for-profit and public institutions.

(a)(1) Except as provided in paragraph (a)(2) of this section, a private nonprofit, private for-profit, or public institution that undergoes a change in ownership that results in a change in control ceases to qualify as an eligible institution upon the change in ownership and control. A change in ownership that results in a change in control includes any change by which a person who has or thereby acquires an ownership interest in the entity that owns the institution or the parent corporation of that entity, acquires or loses the ability to control the institution.

(2) If a private nonprofit, private for-profit, or public institution has undergone a change in ownership that results in a change in control, the Secretary may, under the provisions of § 600.20(g) and (h), continue the institution's participation in the title IV, HEA programs on a provisional basis, provided that the institution submits, under the provisions of § 600.20(g), a materially complete application—

(i) No later than 10 business days after the change occurs; or

(ii) For an institution owned by a publicly-traded corporation, no later than 10 business days after the institution knew, or should have known of the change based upon SEC filings, that the change occurred.

* * * * *

(b) * * *

Ownership or ownership interest. (1) Ownership or ownership interest means a legal or beneficial interest in an institution or its corporate parent, or a right to share in the profits derived from the operation of an institution or its corporate parent.

(2) Ownership or ownership interest does not include an ownership interest held by—

(i) A mutual fund that is regularly and publicly traded;

(ii) A U.S. institutional investor, as defined in 17 CFR 240.15a–6(b)(7);

(iii) A profit-sharing plan of the institution or its corporate parent, provided that all full-time permanent employees of the institution or corporate parent are included in the plan; or

(iv) An Employee Stock Ownership Plan (ESOP).

* * * * *

(c) * * *

(2) *Publicly traded corporations required to be registered with the Securities and Exchange Commission (SEC).* A change in ownership and control occurs when—

(i) A person acquires such ownership and control of the corporation so that the corporation is required to file a Form 8K with the SEC notifying that agency of the change in control; or

(ii) (A) A person who is a controlling shareholder of the corporation ceases to be a controlling shareholder. A controlling shareholder is a shareholder who holds or controls through agreement both 25 percent or more of the total outstanding voting stock of the corporation and more shares of voting stock than any other shareholder. A controlling shareholder for this purpose does not include a shareholder whose sole stock ownership is held as a U.S. institutional investor, as defined in 17 CFR 240.15a–6(b)(7), held in mutual funds, held through a profit-sharing plan, or held in an Employee Stock Ownership Plan (ESOP).

(B) When a change of ownership occurs as a result of paragraph (c)(2)(ii)(A) of this section, the institution may submit its most recent quarterly financial statement as filed with the SEC, along with copies of all other SEC filings made after the close of the fiscal year for which a compliance audit has been submitted to the Department of Education, instead of the ''same day'' balance sheet.

(C) If a publicly-traded institution is provisionally certified due to a change in ownership under paragraph (c)(2)(ii) of this section, and that institution experiences another change of ownership under paragraph (c)(2)(ii) of this section, an approval of the subsequent change in ownership does not extend the original expiration date for the provisional certification provided that any current controlling shareholder was listed on the change of ownership application for which the original provisional approval was granted.

* * * * *

(6) *Nonprofit institution.* A nonprofit institution changes ownership and control when a change takes place that is described in paragraph (d) of this section.

(7) *Public institution.* The Secretary does not consider that a public institution undergoes a change in ownership that results in a change of control if there is a change in governance and the institution after the change remains a public institution, provided—

(i) The new governing authority is in the same State as included in the institution's program participation agreement; and

(ii) The new governing authority has acknowledged the public institution's continued responsibilities under its program participation agreement.

(d) * * *

(7) A change in status as a for-profit, nonprofit, or public institution.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0098)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

7. The authority citation for part 668 is revised to read as follows:

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

8. Section 668.2(b) is amended by revising paragraphs (2)(ii) and (iii) and adding paragraph (2)(iv) to the definition of the term ''academic year'' to read as follows:

§ 668.2—General definitions.

* * * * *

(b) * * *

Academic year: * * *

(2) * * *

(ii) If an institution provides an educational program using a semester, trimester, or quarter system, or in clock hours, the Secretary considers that the institution provides one week of instructional time in that program during any week the institution provides for that program—

(A) At least one day of regularly scheduled instruction or examinations; or

(B) After the last scheduled day of classes for a term, at least one day of study for initial examinations.

(iii) If an institution provides an educational program using credit hours but not a semester, trimester, or quarter system, the Secretary considers that the institution provides one week of instructional time in that program during any week the institution provides for that program—

(A) At least 12 hours of regularly scheduled instruction or examinations; or

(B) After the last scheduled day of classes for a payment period, at least 12 hours of study for final examinations.

(iv) Instructional time does not include any vacation periods, homework, or periods of orientation or counseling.

9. A new § 668.5 is added to read as follows:

§ 668.5 Written arrangements to provide educational programs.

(a) *Written arrangements between eligible institutions.* If an eligible institution enters into a written arrangement with another eligible institution, or with a consortium of eligible institutions, under which the other eligible institution or consortium provides all or part of the educational program of students enrolled in the former institution, the Secretary considers that educational program to be an eligible program if it otherwise satisfies the requirements of § 668.8.

(b) *Written arrangements for study-abroad.* Under a study abroad program, if an eligible institution enters into a written arrangement with a foreign institution, or an organization acting on behalf of a foreign institution, under which the foreign institution provides part of the educational program of students enrolled in the eligible institution, the Secretary considers that educational program to be an eligible program if it otherwise satisfies the requirements of paragraphs (c)(1) through (c)(3) of this section.

(c) *Written arrangements between an eligible institution and an ineligible institution or organization.* If an eligible institution enters into a written arrangement with an institution or organization that is not an eligible institution under which the ineligible institution or organization provides part of the educational program of students enrolled in the eligible institution, the Secretary considers that educational program to be an eligible program if—

(1) The ineligible institution or organization has not had its eligibility to participate in the title IV, HEA programs terminated by the Secretary, or has not voluntarily withdrawn from participation in those programs under a termination, show-cause, suspension, or similar type proceeding initiated by the institution's State licensing agency, accrediting agency, guarantor, or by the Secretary;

(2) The educational program otherwise satisfies the requirements of § 668.8; and

(3)(i) The ineligible institution or organization provides not more than 25 percent of the educational program; or

(ii)(A) The ineligible institution or organization provides more than 25 percent but not more than 50 percent of the educational program;

(B) The eligible institution and the ineligible institution or organization are not owned or controlled by the same individual, partnership, or corporation; and

(C) The eligible institution's accrediting agency, or if the institution is a public postsecondary vocational educational institution, the State agency listed in the **Federal Register** in accordance with 34 CFR part 603, has specifically determined that the institution's arrangement meets the agency's standards for the contracting out of educational services.

(d) *Administration of title IV, HEA programs.* (1) If an institution enters into a written arrangement as described in paragraph (a), (b), or (c) of this section, except as provided in paragraph (d)(2) of this section, the institution at which the student is enrolled as a regular student must determine the student's eligibility for title IV, HEA program funds, and must calculate and disburse those funds to that student.

(2) In the case of a written arrangement between eligible institutions, the institutions may agree in writing to have any eligible institution in the written arrangement make those calculations and disbursements, and the Secretary does not consider that institution to be a third-party servicer for that arrangement.

(3) The institution that calculates and disburses a student's title IV, HEA program assistance under paragraph (d)(1) or (d)(2) of this section must—

(i) Take into account all the hours in which the student enrolls at each institution that apply to the student's degree or certificate when determining the student's enrollment status and cost of attendance; and (ii) Maintain all records regarding the student's eligibility for and receipt of title IV, HEA program funds.

(Authority: 20 U.S.C. 1094)

10. Section 668.8 is amended by revising paragraphs (b)(3) and (b)(4) to read as follows:

§ 668.8 Eligible program.

* * * * *

(b) * * *

(3)(i) If an institution provides an educational program using a semester, trimester, or quarter system, or in clock hours, the Secretary considers that the institution provides one week of instructional time in that program during any week the institution provides—

(A) At least one day of regularly scheduled instruction or examinations; or

(B) After the last scheduled day of classes for a term, at least one day of study for final examinations.

(ii) If an institution provides an educational program using credit hours but not a semester, trimester, or quarter system, the Secretary considers that the institution provides one week of instructional time in that program during any week the institution provides—

(A) At least 12 hours of regularly scheduled instruction or examinations; or

(B) After the last scheduled day of classes for a payment period, at least 12 hours of study for final examinations.

(4) Instructional time does not include any vacation periods, homework, or periods of orientation or counseling.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0537)

§ 668.12 [Removed and reserved]

11. Section 668.12 is removed and reserved.

12. Section 668.13 is amended by revising paragraph (a) read as follows:

§ 668.13 Certification procedures.

(a) *Requirements for certification.* (1) The Secretary certifies an institution to participate in the title IV, HEA programs if the institution qualifies as an eligible institution under 34 CFR part 600, meets the standards of this subpart and 34 CFR part 668, subpart L, and satisfies the requirements of paragraph (a)(2) of this section.

(2) Except as provided in paragraph (a)(3) of this section, if an institution wishes to participate for the first time in the title IV, HEA programs or has undergone a change in ownership that results in a change in control as described in 34 CFR 600.31, the institution must require the following individuals to complete title IV, HEA program training provided or approved by the Secretary no later than 12 months after the institution executes its program participation agreement under § 668.14:

(i) The individual the institution designates under § 668.16(b)(1) as its title IV, HEA program administrator.

(ii) The institution's chief administrator or a high level institutional official the chief administrator designates.

(3)(i) An institution may request the Secretary to waive the training requirement for any individual described in paragraph (a)(2) of this section.

(ii) When the Secretary receives a waiver request under paragraph (a)(3)(i) of this section, the Secretary may grant or deny the waiver, require another institutional official to take the training, or require alternative training.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0537)

13. Section 668.19 is revised to read as follows:

§ 668.19 Financial aid history.

(a) Before an institution may disburse title IV, HEA program funds to a student who previously attended another eligible institution, the institution must use information it obtains from the Secretary, through the National Student Loan Data System (NSLDS) or its successor system, to determine—

(1) Whether the student is in default on any title IV, HEA program loan;

(2) Whether the student owes an overpayment on any title IV, HEA program grant or Federal Perkins Loan;

(3) For the award year for which a Federal Pell Grant is requested, the student's scheduled Federal Pell Grant and the amount of Federal Pell Grant funds disbursed to the student;

(4) The outstanding principal balance of loans made to the student under each of the title IV, HEA loan programs; and

(5) For the academic year for which title IV, HEA aid is requested, the amount of, and period of enrollment for, loans made to the student under each of the title IV, HEA loan programs.

(b)(1) If a student transfers from one institution to another institution during the same award year, the institution to which the student transfers must request from the Secretary, through NSLDS, updated information about that student so it can make the determinations required under paragraph (a) of this section; and

(2) The institution may not make a disbursement to that student for seven days following its request, unless it receives the information from NSLDS in response to its request or obtains that information directly by accessing NSLDS, and the information it receives allows it to make that disbursement.

(Approved by the Office of Management and Budget under control number 1845–0537)

(Authority: 20 U.S.C. 1091 and 1094)

14. Section 668.165(a)(3)(ii) is revised to read as follows:

§ 668.165 Notices and authorizations.

(a) * * *

(3) * * *

(ii) Either in writing or electronically. If the institution sends the notice electronically, it must confirm receipt by the student or parent of the electronic notification and must maintain documentation of that confirmation.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0697)

(Authority: 20 U.S.C. 1094)

* * * * *

PART 675—FEDERAL WORK-STUDY PROGRAMS

15. The authority citation for part 675 continues to read as follows:

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

16. Section 675.19 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 675.19 Fiscal procedures and records.

* * * * *

(b) * * *

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

(2) The institution must also establish and maintain program and fiscal records that—

(i) Include a certification by the student's supervisor, an official of the institution or off-campus agency, that each student has worked and earned the amount being paid. The certification must include or be supported by, for students paid on an hourly basis, a time record showing the hours each student worked in clock time sequence, or the total hours worked per day;

(ii) Include a payroll voucher containing sufficient information to support all payroll disbursements;

(iii) Include a noncash contribution record to document any payment of the institution's share of the student's earnings in the form of services and equipment (see § 675.27(a)); and

(iv) Are reconciled at least monthly.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0535)

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PART 690—FEDERAL PELL GRANT PROGRAM

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

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

§ 690.9 [Removed]

18. Section 690.9 is removed.

19. Section 690.75 is amended by removing the words ''financial aid transcript'' in paragraph (a); by removing the reference to ''34 CFR 668.7'' in paragraph (a)(1) and adding, in its place, ''34 CFR part 668, subpart C''; and by revising the OMB control number to read as follows:

§ 690.75 Determination of eligibility for payment.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0681)

[FR Doc. 00–27894 Filed 10–31–00; 8:45 am]

BILLING CODE 4000–01–P