

**DEPARTMENT OF EDUCATION**

**34 CFR Parts 668, 674, 675, 676, 682, 685, 690, and 691**

RIN 1840-AC86

**Student Assistance General Provisions; Federal Perkins Loan Program; Federal Work-Study Programs; Federal Supplemental Educational Opportunity Grant Program; Federal Family Education Loan Program; William D. Ford Federal Direct Loan Program; Federal Pell Grant Program; Academic Competitiveness Grant Program; and National Science and Mathematics Access to Retain Talent Grant Program**

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Interim final regulations; request for comments.

**SUMMARY:** The Secretary amends title 34 to establish regulations for the Academic Competitiveness Grant (ACG) and National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) programs. The Secretary also amends the regulations related to the Student Assistance General Provisions, Federal Perkins Loan Program, Federal Work-Study Programs, Federal Supplemental Educational Opportunity Grant Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Federal Pell Grant Program. These interim final regulations and amendments are needed to implement provisions of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Reconciliation Act of 2005 (HERA).

The interim final regulations for the ACG and National SMART Grant programs specify the eligibility requirements for a student to apply for and receive an award under these programs for the 2006–2007 award year. These interim final regulations also identify the roles of institutions of higher education (institutions), State educational agencies (SEAs), and local educational agencies (LEAs) in administering the programs. These interim final regulations will be effective for the 2006–2007 award year. The Secretary is, however, soliciting comments on all aspects of these interim final regulations and may, for the 2007–2008 award year, amend and finalize them as appropriate in response to comments received. For regulations that would take effect for the 2008–2009 award year and subsequent award years, the Secretary intends to conduct

negotiated rulemaking, as required under section 492 of the HEA.

**DATES:** These regulations are effective August 2, 2006. The Department must receive any comments on or before August 17, 2006. Affected parties do not have to comply with the information collection requirements in §§ 691.12, 691.15, and 691.83 until the Department of Education publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

**ADDRESSES:** Address all comments about these interim final regulations to: Fred Sellers, U.S. Department of Education, P.O. Box 33184, Washington, DC 20033–3184.

If you prefer to deliver your comments by hand or by using a courier service or commercial carrier, address your comments to: Fred Sellers, 1990 K Street NW., room 8039, Washington, DC 20006–8542

If you prefer to send your comments through the Internet, you may address them to us at the U.S. Government Web site: <http://www.regulations.gov>.

Or you may send your Internet comments to us at the following address: [ACG.NSG@ed.gov](mailto:ACG.NSG@ed.gov).

You must include the term “Academic Competitiveness and National SMART Grants” in the subject line of your electronic message.

**FOR FURTHER INFORMATION CONTACT:** Jacquelyn Butler, U.S. Department of Education, 1990 K Street, NW., room 8053, Washington, DC 20006–8544. Telephone: (202) 502–7890. Sophia McArdle, U.S. Department of Education, 1990 K Street, NW., room 8019, Washington, DC 20006–8544. Telephone: (202) 219–7078.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:**

**Background**

These interim final regulations implement certain provisions of the Higher Education Reconciliation Act of 2005 (Pub. L. 109–171), enacted on

February 8, 2006, 20 U.S.C. 1070a–1 (HERA), amending the Higher Education Act of 1965, as amended (HEA).

Section 8003 of HERA amended the HEA by adding a new section 401A establishing the ACG and National SMART Grant programs to assist eligible students in paying their college education expenses and appropriating funds for these programs starting with the 2006–2007 award year, beginning on July 1, 2006. The ACG Program awards grants to eligible financially needy students who complete a rigorous secondary school program of study. An ACG is available during a student’s first and second academic years of undergraduate education in an eligible undergraduate program. The National SMART Grant Program awards grants to eligible financially needy students who are pursuing majors in the physical, life, or computer sciences, mathematics, technology, engineering, or foreign languages critical to the national security of the United States. A National SMART Grant is available to students during the third and fourth academic years of undergraduate education in an eligible undergraduate program.

Under its principles for regulating, the Department of Education (Department) regulates only when absolutely necessary. The Department regulates in a way to improve the quality and equality of services to its customers and in the most flexible and least burdensome way possible. These interim final regulations are necessary to implement the ACG and National SMART Grant programs.

**Significant Regulations**

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 regulatory provisions that are technical or otherwise minor in effect.

*Relationship Between the Federal Pell Grant Program and the ACG and National SMART Grant Programs*

The ACG and National SMART Grant program interim final regulations duplicate those of the Federal Pell Grant Program to the extent practicable given the similar nature of these programs. Like the Federal Pell Grant Program, the ACG and National SMART Grant programs provide for direct grants from the Federal Government to students to assist in paying their college expenses. In addition, a student must be receiving a Federal Pell Grant to be eligible for an ACG or National SMART Grant.

The Secretary will be administering the ACG and National SMART Grant

programs using the same delivery system that the Secretary uses for the Federal Pell Grant Program. The Secretary expects that this coordination of administrative requirements will assist participating institutions in administering these programs, reduce the amount of additional institutional administrative burden and paperwork, and simplify the process for students to apply for assistance under these programs.

Accordingly, the following definitions are repeated in the ACG and National SMART Grant program interim final regulations without changes from the Federal Pell Grant Program regulations:

- Institutional Student Information Record (ISIR).
- Payment Data.
- Student Aid Report (SAR).
- Undergraduate Student.
- Valid Institutional Student Information Record (valid ISIR).
- Valid Student Aid Report (valid SAR).

In addition, §§ 691.61, 691.71, 691.78, 691.79, 691.81, 691.82, and 691.83 of the ACG and National SMART Grant program interim final regulations do not reflect any substantive changes from the corresponding sections in the Federal Pell Grant Program regulations (34 CFR part 690). These sections are repeated in these interim final regulations to provide a complete description in part 691 of the program-specific requirements for the ACG and National SMART Grant programs. Other sections that implement specific ACG and National SMART Grant program requirements reflect Federal Pell Grant Program requirements to the extent practicable.

#### *Part 668—Student Assistance General Provisions*

The following sections in 34 CFR part 668 are being amended to reflect specific requirements applicable to the ACG and National SMART Grant programs.

#### Section 668.33 Citizenship and Residency Requirements

*Statute:* Section 401A(c)(1) of the HEA requires that a student be a citizen of the United States to be eligible for the ACG and National SMART Grant programs. The HEA continues to provide that permanent residents and certain other categories of noncitizens may be eligible for the other title IV, HEA programs, including the Federal Pell Grant Program.

*Regulations:* This section provides that only students who are United States citizens are eligible to receive ACG and National SMART Grants.

*Reason:* The regulations implement the statutory requirement that an eligible student for the ACG and National SMART Grant Programs must be a United States citizen.

#### Section 668.35 Student Debts Under the HEA and to the U.S.

*Regulations:* This section provides that a student is not liable for an ACG or National SMART Grant overpayment in an award year if the institution can eliminate the overpayment by adjusting subsequent title IV, HEA program payments, excluding Federal Pell Grant, ACG, or National SMART Grant monies, in that same award year. If the overpayment cannot be eliminated by adjusting subsequent title IV, HEA program payments, a student is still not liable for an ACG or National SMART Grant overpayment if the overpayment can be eliminated by adjusting subsequent ACG or National SMART Grant payments, as appropriate, in that same award year.

*Reason:* These regulations detail the requirements for institutions to follow when resolving overpayments to students under the ACG and National SMART Grant programs. These requirements are similar to the requirements in the Federal Pell Grant Program but also account for the requirement in section 401A(d) of the HEA that the amount of an ACG or National SMART Grant award to a student must be adjusted in relation to other aid received and the student's expected family contribution.

#### *Part 691—Academic Competitiveness Grant (ACG) and National Science and Mathematics Access To Retain Talent Grant (National SMART Grant) Programs*

##### *Subpart A—Scope, Purpose and General Definitions*

#### Section 691.2 Definitions

##### Eligible Major

*Statute:* Section 401A(c)(3)(C)(i) of the HEA requires a student to pursue a major in the physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language in order to be eligible for a National SMART Grant.

*Regulations:* Section 691.2(d) provides a definition of *eligible major* for purposes of the National SMART Grant Program. An *eligible major*, as determined by the Secretary under § 691.17, is a major in one of the physical, life, or computer sciences, mathematics, technology, engineering or a critical foreign language.

*Reason:* This section implements the statutory requirement that, to qualify as

an eligible student for a National SMART Grant, a student must major in one of the physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language.

##### Eligible Program

*Statute:* Section 401A(c)(3) of the HEA requires that an eligible student be enrolled or accepted for enrollment in an undergraduate program at a two- or four-year degree-granting institution of higher education to be eligible for an ACG or in a four-year degree-granting institution of higher education to be eligible for a National SMART Grant.

*Regulations:* This section adds a definition of *eligible program* in § 691.2(d). An *eligible program* is an eligible program as defined in 34 CFR 668.8 that, for the ACG Program, leads to an associate's or bachelor's degree, is a two-academic-year program acceptable for full credit toward a bachelor's degree, or is a graduate degree program that includes at least three academic years of undergraduate education or, for the National SMART Grant Program, leads to a bachelor's degree in an eligible major or is a graduate degree program in an eligible major that includes at least three academic years of undergraduate education.

*Reason:* These provisions are necessary to implement the statute and to ensure eligibility for students enrolled in combined undergraduate/graduate programs with at least three years of undergraduate study.

#### Section 691.6 Duration of Student Eligibility—Undergraduate Course of Study

*Statute:* Under section 401A(d)(2)(B) of the HEA, an eligible student may only receive one ACG for each of the first two academic years of an undergraduate program and one National SMART Grant for each of the third and fourth academic years of a bachelor's degree program.

*Regulations:* This section sets forth the duration of student eligibility for the ACG and National SMART Grant programs by academic year and restricts a student to one grant for each of his or her first, second, third, or fourth academic years of enrollment in an eligible program.

*Reason:* Unlike the Federal Pell Grant Program, student eligibility under the ACG and National SMART Grant programs is based on the specific academic years of the student's eligible program rather than award years or completion of a bachelor's degree.

### Section 691.7 Institutional Participation

*Statute:* Section 401A(c)(2) of the HEA provides that a student must be eligible for a Federal Pell Grant to qualify for an ACG or National SMART Grant.

*Regulations:* In general, the interim final regulations mirror the Federal Pell Grant program participation requirements. In addition, the interim final regulations require an institution that participates in the Federal Pell Grant Program and offers an educational program that is an eligible program for the ACG or National SMART Grant programs, to participate in the ACG and National SMART Grant programs, as applicable. A coordinating technical amendment is also being made to 34 CFR 690.7 of the Federal Pell Grant Program regulations to require that an institution may not participate in the Federal Pell Grant Program if it has at least one eligible program under § 691.2(d) and does not participate in the ACG or National SMART Grant programs, as applicable.

*Reason:* An otherwise eligible student must be eligible for a Federal Pell Grant to receive an ACG or National SMART Grant. The Secretary believes that mandating institutional participation in all three programs when eligible programs are offered at an institution is consistent with the statute's requirement that the Secretary award grants to Pell-eligible students.

### Section 691.8 Enrollment Status for Students Taking Regular and Correspondence Courses

*Statute:* Section 401A(c) of the HEA provides that a student must be a full-time student to be eligible for an ACG or National SMART Grant.

*Regulations:* This section sets forth the circumstances under which correspondence courses may be applied toward a student's full-time enrollment status in a noncorrespondence study program. The interim final regulations in § 691.8(a) and (b) duplicate the Federal Pell Grant Program regulations with respect to correspondence work that can be included in determining a student's enrollment status. Section 691.8(c), however, provides that a student taking correspondence courses is considered a full-time student if the student is taking coursework that is commensurate with the institution's standard for full-time students and the student's noncorrespondence coursework constitutes at least one-half of the institution's required minimum coursework for full-time students.

*Reason:* These provisions are necessary to clarify what is required for

determining whether a student taking correspondence courses is considered full-time. The Secretary believes these provisions are consistent with 34 CFR 690.8 of the Federal Pell Grant Program regulations under which the enrollment status of a student taking only correspondence study is never greater than half-time. Section 691.8(c) of these interim final regulations is consistent with 34 CFR 690.8(b)(3) of the Federal Pell Grant Program regulations in that it ensures that a student is enrolled in noncorrespondence coursework that is at least one-half of the minimum coursework to qualify as a full-time student.

### Section 691.11 Payments From More Than One Institution

*Regulations:* This section addresses the situation in which a student attends more than one institution and requires a student to receive an ACG or National SMART Grant from the same institution that awards the student his or her Federal Pell Grant.

*Reason:* Under the Federal Pell Grant Program, a student cannot receive payments from more than one institution or from the Secretary and an institution at the same time. To ensure coordination with the Federal Pell Grant Program, these regulations provide that a student can only receive an ACG or National SMART Grant from the same institution that awards the student's Federal Pell Grant.

### Subpart B—Application Procedures

#### Section 691.12 Application

*Statute:* Section 401A(c) of the HEA provides the student eligibility requirements for the ACG and National SMART Grants. Section 401A(c)(3)(A) and (B) of the HEA requires that a student successfully complete a rigorous secondary school program of study to receive an ACG.

*Regulations:* This section specifies the procedures that a student must follow when applying for an ACG or National SMART Grant, and in particular, requires that a student must submit a Free Application for Federal Student Aid (FAFSA). The interim final regulations provide that a student may be required to provide additional information in the application, including information about the rigorous secondary school program of study that the student completed to qualify for an ACG.

*Reason:* Under section 483(a) of the HEA, the FAFSA is the standard form used by all students applying for title IV, HEA program aid, including Federal Pell Grants and these programs. Use of

this form and procedures that are similar to the Federal Pell Grant Program will facilitate students' completion and institutions' use of the FAFSA for the ACG and National SMART Grant programs.

### Section 691.15 Eligibility To Receive a Grant

#### General Requirements

*Statute:* Section 401A(c) of the HEA provides student eligibility requirements for the ACG and National SMART Grant programs.

*Regulations:* Section 691.15(a) of these interim final regulations sets forth the ACG and National SMART Grant student eligibility requirements common to both programs including United States citizenship, full-time enrollment, and receipt of a Federal Pell Grant in the payment period that a student receives an ACG or National SMART Grant.

*Reason:* This section implements the statutory provision that, to be eligible to receive an ACG or National SMART Grant, a student must establish eligibility for assistance under the title IV, HEA programs and establish that he or she is a United States citizen, is enrolled full-time, and is eligible for a Federal Pell Grant. The Secretary believes that the institution's determination that a student will receive a Federal Pell Grant is the best way to demonstrate that a student is Pell-eligible for purposes of the ACG and National SMART Grant programs.

#### Academic Year in College

*Statute:* Section 401A(c)(3)(A), (B), and (C) of the HEA ties a student's eligibility for a grant to the student's enrollment in the first, second, third, and fourth academic years of a program of undergraduate education.

*Regulations:* The interim final regulations provide that a student may receive an ACG during the first and second academic years of an eligible program of undergraduate education and may receive a National SMART Grant during the third and fourth academic years of an eligible program of undergraduate education. Section 691.15(b)(1)(iii)(B) further provides that, for an eligible student to receive an ACG for the student's second academic year, the student must have successfully completed the first academic year. There is a parallel provision for eligibility for the fourth academic year of the National SMART Grant program in § 691.15(c)(5). Thus, for a student to receive a second-year ACG, for example, a student must be enrolled in the second academic year of the student's eligible

program, after successfully completing the credit or clock hours and weeks of instructional time of the first academic year, consistent with 34 CFR 668.3.

*Reason:* The interim final regulations implement the statutory requirement that a student's eligibility for an ACG or National SMART Grant is based, in part, on the student's academic year of enrollment. The term "academic year" as used in these interim final regulations is the title IV, HEA program academic year as defined by the institution for an eligible program under the Student Assistance General Provisions regulations (34 CFR 668.3) and in accordance with section 481(a) of the HEA as amended by the HERA. In addition to being consistent with the other title IV, HEA programs, using this definition will allow the Secretary to provide assistance to qualified Federal Pell Grant recipients as early as possible as they progress through their educational program.

The Secretary is specifying in the interim final regulations that a student applying for an ACG in his or her second academic year or a student applying for a National SMART Grant in his or her fourth academic year must have successfully completed the first and third academic years, respectively. The Secretary believes that a student should not be considered to have completed the credit or clock hours of an academic year for an ACG or National SMART Grant unless the student successfully completes, *i.e.*, passes and earns, the credits or hours in the title IV, HEA academic year.

#### Grade Point Average (GPA)

*Statute:* Section 401A(c)(3)(B) and (C) of the HEA provides that a student's eligibility for a grant is based, in part, on the student obtaining a cumulative GPA of at least 3.0 (or the equivalent as determined by the Secretary) in his or her first academic year of an educational program for a second-year ACG and in the coursework required for the student's major for a National SMART Grant.

*Regulations:* Under § 691.15(b)(1)(iii)(C), to receive an ACG in the second academic year, a student must successfully complete the first academic year of his or her eligible program and obtain a cumulative GPA of at least a 3.0 on a 4.0 scale, or the equivalent, as determined by the institution for other academic and title IV, HEA program purposes. Similarly, to receive a National SMART Grant, under § 691.15(c)(3), a student must maintain at least a 3.0 on a 4.0 scale, or the equivalent, cumulative GPA through the most recently completed payment

period in the coursework required for a student's eligible program. For both programs, calculation of a student's GPA for purposes of eligibility for an ACG or National SMART Grant must be done consistent with other institutional measures for academic and title IV, HEA program purposes.

In the case of a transfer student, § 690.15(e) of the interim final regulations provides that an institution must rely on the grades of the courses from the prior institution that the institution accepts toward the student's eligible program for the first payment period. Use of grades from any prior institution to determine a student's GPA will be optional for the second and subsequent payment periods.

*Reason:* The Secretary believes that, in general, a student's GPA used to determine eligibility for an ACG or National SMART Grant should be determined by the institution under the same standards as are used to calculate a GPA for other academic and title IV, HEA program purposes at the institution. This requirement provides consistency and reduces the administrative burden on institutions. In the case of a National SMART Grant, the Secretary has determined that a student must meet the GPA requirement based on all the courses required for the student's eligible program, not just those courses required for the eligible major. The Secretary believes this is appropriate because this approach will minimize the burden on institutions when determining whether a student meets the GPA requirement.

To ensure that a transfer student may qualify for a grant in his or her first payment period at an institution to which the student has transferred, the institution to which the student transfers must take into account the grades in coursework taken at any prior institution that the institution accepts on transfer towards the student's eligible program in calculating a GPA to determine the student's eligibility. The Secretary believes it is appropriate to make consideration of transfer credits optional in the second and subsequent payment periods at the institution to which the student has transferred because the student will then have established a GPA with coursework taken at the institution to which the student transferred after the first payment period. The institution may then follow its standards for academic and title IV, HEA program purposes without any further exceptional treatment for the transfer student.

Prior Enrollment in a Postsecondary Educational Program

*Statute:* Section 401A(c)(3)(A)(ii) of the HEA provides that a student is not eligible for an ACG in the student's first academic year of enrollment in an eligible program if the student previously enrolled in a program of undergraduate education.

*Regulations:* Under § 691.15(b)(1)(ii)(B) of the interim final regulations, a student is not eligible for an ACG in the student's first academic year if the student previously enrolled as a regular student in a program of undergraduate education.

*Reason:* The Secretary believes that it is appropriate to clarify that a student is considered to have been enrolled in an undergraduate program if the student was admitted into the program as a regular student, as defined in 34 CFR 660.2. The term "regular student" is defined as "a person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution." A student is not disqualified from eligibility for a first-year ACG based on his or her enrollment in college courses while in high school if that student had not been enrolled by the college for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by the college. A student who was enrolled in a postsecondary program leading to a degree, certificate, or other recognized educational credential while enrolled in high school is not eligible for a first-year ACG. Under §§ 101 and 102 of the HEA, a postsecondary institution that enrolls high school students who are not beyond the age of compulsory school attendance as regular students is not eligible for title IV, HEA aid. Thus, an institution that admits students as regular students who are in high school and are not beyond the age of compulsory school attendance endangers both its institutional eligibility and the eligibility of all students at the institution for aid under all title IV, HEA programs.

A student's enrollment in a payment period during his or her first academic year of enrollment in an eligible program does not render that student ineligible for an ACG during a subsequent payment period during the first academic year if the student is otherwise eligible for an ACG. For example, a student graduates from high school in May 2006. In September 2006, the student enrolls for the fall semester as a half-time student but is otherwise

eligible for an ACG. In January 2007, the student begins the second semester as a full-time student. The student would not be considered to have been previously enrolled in another postsecondary program under this provision and would be eligible in the second semester for an ACG payment from the student's first-year ACG Scheduled Award.

#### Documenting Completion of a Rigorous Secondary School Program of Study

*Statute:* Section 401A(c)(3)(A)(i) and (B)(i) of the HEA requires that, to receive an ACG, a student must have successfully completed a rigorous secondary school program of study, as recognized by the Secretary.

*Regulations:* Under § 691.15(b)(2) of the interim final regulations, an institution is required to document a student's completion of a rigorous secondary school program of study using documentation from the appropriate cognizant authority provided by that authority or the student. Section 691.15(b)(3) of the interim final regulations provides that for a home-schooled student, the student's parent or guardian is the cognizant authority for purposes of providing documentation of the student's completion of a rigorous program of study. Such documentation would include a transcript or its equivalent or, alternatively, a detailed course description listing the secondary school courses completed by the student. In the case of a transfer student, § 691.15(b)(4) of the interim final regulations provides that an institution may rely on documentation of a prior institution's determination that a student completed a rigorous secondary school program of study. Such determination can be documentation of a student's receipt of an ACG from a prior institution.

*Reason:* The Secretary believes that, in determining a student's eligibility under the rigorous secondary school program of study requirement, the institution must obtain documentation that the student has completed such a course of study from the cognizant authority. The student or the cognizant authority may provide the documentation. To maintain the integrity of the application process, the Secretary is requiring that, if an institution has reason to believe that documentation provided by a student is incomplete or inaccurate, an institution must use documentation provided to it directly from the cognizant authority.

With respect to home-schooled students, the Secretary is aware that parents or a student's guardian are the

cognizant authority for home-schooled students and is providing for this circumstance in § 691.15(b)(3) of these interim final regulations.

In the case of a transfer student, the Secretary believes that an institution's reliance on a prior institution's determination and documentation of the student's rigorous secondary school program of study provides sufficient assurance of the student's eligibility and reduces institutional burden. This documentation may be documentation of the student's receipt of an ACG at a prior eligible institution.

#### Declaring an Eligible Major

*Statute:* Section 401A(c)(3)(C)(i) of the HEA requires that a student must major in one of the physical, life, or computer sciences, mathematics, technology, engineering, or in a critical foreign language to be eligible for a National SMART Grant.

*Regulations:* To be eligible for a National SMART Grant, § 691.15(c)(2) of the interim final regulations requires that a student must formally declare his or her eligible major in accordance with the institution's academic requirements. However, if under an institution's procedures, a student would not be able to formally declare a major in time to qualify for a National SMART Grant, the student must demonstrate his or her intent to declare an eligible major as documented by the institution. As soon as the student is able to formally declare a major, the student must do so in order to remain eligible for a National SMART Grant. In all cases, the student must enroll in the courses necessary to complete the degree program and to fulfill the major requirements.

*Reason:* The Secretary believes the best assurance that a student is pursuing an eligible major is obtained by a student formally declaring his or her eligible major in accordance with the institution's academic requirements. The Secretary is aware, however, that in some instances, under institutional academic policies, a student is not allowed to declare his or her major early enough to qualify for a National SMART Grant. The Secretary is, therefore, providing an alternative means for students to qualify as having an eligible major. Under this alternative approach, a student may demonstrate his or her intent to declare an eligible major in accordance with the institution's academic requirements. However, to ensure the integrity of the program, the Secretary believes that it is important that the student formally declare an eligible major as soon as the student is allowed. Whether the student has formally declared a major or is covered

by the alternative approach, the student also must enroll in the courses needed both to complete the student's eligible program and to fulfill the intended eligible major's requirements. The Secretary believes this additional requirement fulfills the statutory requirement because it further documents the student's pursuit of an eligible major.

#### Section 691.16 Recognition of a Rigorous Secondary School Program of Study

*Statute:* Section 401A(f) of the HEA requires the Secretary to recognize at least one rigorous secondary school program of study in each State to determine student eligibility for an ACG. Section 401A(c)(3)(A) and (B) provides that a rigorous secondary school program of study is established by an SEA or LEA.

*Regulations:* The interim final regulations provide that, for an award year, the Secretary recognizes at least one rigorous secondary school program of study in each State identified by an SEA or by an LEA that can document that it is legally authorized by the State to establish a separate secondary school program of study. In identifying secondary school programs of study that it considers rigorous, an SEA or LEA must consider programs that are offered at public, charter, private, tribal, and home schools, prepare students to succeed in postsecondary education, and are not General Education Development (GED) Certificate programs. The Secretary believes that GED programs do not ensure the necessary academic achievement to be considered rigorous secondary school programs of study.

In these interim final regulations, the Secretary is recognizing certain secondary school programs of study as rigorous that are in addition to any that may subsequently be explicitly identified by SEAs and LEAs and recognized by the Secretary. These additional programs include existing advanced and honors programs established by States and a set of courses identified under the State Scholars Initiative sponsored by the Western Interstate Commission for Higher Education (WICHE). In addition, an individual student may be considered to have completed a rigorous secondary school program of study, regardless of the school or program attended, if the individual student successfully completes a set of courses similar to those required under the State Scholars Initiative. An individual student may also be considered to have completed a rigorous secondary school

program of study, regardless of the school or program attended, if the individual student completes courses in the International Baccalaureate Diploma Program or the College Board's Advanced Placement Program and attains at least a minimum score, consistent with § 691.16(d)(4) and (5), respectively, on the examinations for those courses. The interim final regulations also provide for publication by the Secretary of a list of recognized rigorous secondary school programs of study for each award year.

*Reason:* The interim final regulations in this section are necessary to implement the statutory requirement that the Secretary recognizes at least one rigorous secondary school program of study in each State. While SEAs and LEAs may submit secondary school programs of study for the Secretary to recognize as rigorous, there is no requirement that SEAs or LEAs take such action. The Secretary, however, is under a mandate to recognize at least one program in each State as rigorous. To fulfill this mandate, the Secretary has identified several programs that the Secretary recognizes as rigorous secondary school programs of study in addition to any that may subsequently be explicitly identified by SEAs and LEAs and recognized by the Secretary. Recognizing these programs as rigorous in these interim final regulations will ensure that deserving students will be able to establish their eligibility for an ACG. The Secretary has made an initial determination that these particular programs indicate that a student is adequately prepared to pursue postsecondary education successfully. With respect to existing advanced or honors programs established by States, the Secretary has determined that, based on their composition, these programs inherently qualify as rigorous secondary school programs of study. Both the set of courses identified under the State Scholars Initiative and the set of similar courses prescribed in § 691.16(d)(2) of these interim final regulations are patterned after the recommendations for the essentials of a strong curriculum in the National Commission on Excellence in Education's report *A Nation at Risk: The Imperative for Educational Reform*, available on the Department's Web site at <http://www.ed.gov/pubs/NatAtRisk/index.html>. As a result, the Secretary has determined that completing the courses of these secondary programs of study establishes that a student has completed a rigorous secondary school program of study.

With respect to completing courses in the International Baccalaureate Diploma Program or the College Board's

Advanced Placement Program and attaining at least a minimum score, the Secretary has determined that completing these courses with the prescribed minimum score establishes that a student has attained a level of ability in completing his or her secondary school program that is commensurate with completing a rigorous secondary school program of study.

To ensure a wide distribution of the list of recognized programs for each award year, the Secretary will make the list available through a number of means, including to students applying using FAFSA on the Web, the Department's websites, and through Dear Colleague letters and other appropriate media.

#### Section 691.17 Determination of Eligible Majors

*Statute:* Section 401A(c)(3)(C)(i) of the HEA provides that a student may receive a National SMART Grant if the student is pursuing a major, as determined by the Secretary, in the physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language.

*Regulations:* Section 691.17(a) of the interim final regulations provides that, for each award year, the Secretary identifies the eligible majors in the physical, life, or computer sciences, mathematics, technology, engineering, and, after consulting with the Director of National Intelligence, critical foreign languages.

*Reason:* This section implements the statutory provision that the Secretary determine eligible majors in the physical, life, and computer sciences, mathematics, technology, engineering, and, after consulting with the Director of National Intelligence, critical foreign languages. The Secretary will publish a list of eligible majors by Classification of Instructional Program (CIP) codes to provide a standardized method of identifying eligible majors. The Secretary believes that no significant additional burden will be imposed on institutions because they already use CIP codes.

To ensure wide distribution of the list of eligible majors for each award year, the Secretary will make the list available on the Department's Web Sites, through Dear Colleague letters, and through other appropriate media.

#### Duration of Eligible Major

*Statute:* Section 401A(c)(3)(C)(i) of the HEA provides that a student may receive a National SMART Grant if the

student is pursuing a major, as determined by the Secretary, in the physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language.

*Regulations:* Section 691.17(c) of the interim final regulations provides that an eligible major for an award year remains an eligible major in subsequent award years for a student who majored in that eligible major and received a National SMART Grant in the award year in which the major was an eligible major, even if that major is no longer listed as an eligible major in subsequent award years during which the student is otherwise eligible for a National SMART Grant.

*Reason:* The Secretary believes that a student who started a third academic year, or a portion of a fourth academic year, in an eligible major that ceases to be listed as an eligible major during a later award year should not be penalized for this change. The regulations provide that a student in this situation remains eligible to receive a National SMART Grant, provided he or she continues to meet the other eligibility requirements.

#### Subpart F—Determination of Awards

##### Section 691.62 Calculation of a Grant Maximum Award

*Statute:* Section 401A(d)(1)(A) of the HEA establishes the grant amount that an eligible student can receive for each academic year of eligibility for an ACG or National SMART Grant. Section 401A(d)(1)(B)(ii) of the HEA authorizes the Secretary to ratably reduce the maximum grant amounts for both programs when the funds available for a given fiscal year are less than the amount needed to fund full awards for all eligible students.

*Regulations:* The interim final regulations provide that the Secretary establishes and announces the ACG and National SMART Grant Scheduled Awards each award year and sets forth the maximum grant amounts for each program for each academic year of eligibility for a student as set forth in the statute. The interim final regulations also provide that the Secretary may revise the maximum award during an award year based on the availability of funds.

*Reason:* The Secretary establishes the ACG and National SMART Grant Scheduled Awards based on the availability of funds appropriated and the anticipated number of eligible students. If funds are insufficient to support these amounts, the ACG and National SMART Grant Scheduled Awards are ratably reduced from the

statutory maximums for both programs for all academic years of enrollment. To ensure that all eligible students receive an award, we also are providing that the Secretary may further revise the ACG and National SMART Grant Scheduled Awards during an award year.

#### Treatment in Relation to Other Aid Received

*Statute:* Section 401A(d)(1)(B)(i) of the HEA provides that the grant amount may not exceed the student's cost of attendance when combined with the student's Federal Pell Grant and other student financial assistance.

*Regulations:* Section 691.62(c) of the interim final regulations provides that a student's ACG or National SMART Grant, when combined with a student's expected family contribution determined under title IV, part F of the HEA and estimated financial assistance as defined in 34 CFR 673.5(c), 682.200(b), and 685.102(b), may not exceed a student's cost of attendance under section 472 of the HEA.

*Reason:* ACG and National SMART Grants are need-based grants. Need-based grant assistance cannot replace a family's expected contribution toward a student's postsecondary expenses.

#### Section 691.63 Calculation of a Grant for a Payment Period

##### General

*Statute:* Section 401A(d)(1)(A) of the HEA specifies the amount of a grant a student may receive for an academic year.

*Regulations:* The interim final regulations detail how an institution calculates an ACG or National SMART Grant payment for a payment period for an eligible student depending on the academic calendar of the eligible program and the amount of the student's ACG or National SMART Grant Scheduled Award.

*Reason:* As is the case with the Federal Pell Grant Program, a student's award for an ACG or National SMART Grant is considered to be awarded across a title IV, HEA academic year. The interim final regulations for this section follow the corresponding Federal Pell Grant Program regulations in 34 CFR 690.63 for calculating payments for payment periods to distribute a student's award across a title, IV HEA academic year. Because students enrolled in a program of study offered by correspondence are not eligible for ACG or National SMART Grants because these students are not full-time, the Secretary is not including in part 691 the Federal Pell Grant Program provisions in 34 CFR 690.66,

regarding calculation of a payment for a payment period for programs of study offered by correspondence.

#### Calculation of a Grant for a Payment Period That Applies to Two Academic Years

*Regulations:* Under the interim final regulations, if a student is completing the remaining portion of an academic year in a payment period, the student's payment is calculated using the ACG or National SMART Grant Scheduled Award of the academic year being completed.

*Reason:* In certain circumstances, a student may be completing in a payment period the coursework for an academic year while also beginning to take coursework applicable to the next academic year for which the student may qualify for another ACG or National SMART Grant Scheduled Award. These interim final regulations provide that the student's payment for a payment period is calculated based on the ACG or National SMART Grant Scheduled Award for the academic year that the student is completing. The Secretary believes this provision is necessary to provide guidance to institutions in calculating a student's payment for the payment period in this circumstance and to ensure that eligible students receive their awards.

#### Section 691.64 Calculation of a Grant for a Payment Period Which Occurs in Two Award Years

*Regulations:* This section addresses how an institution calculates an ACG or National SMART Grant payment for an eligible student's payment period when the student is enrolled in a payment period that overlaps two award years. These interim final regulations are the same as in 34 CFR 690.64 of the Federal Pell Grant Program regulations, except for § 691.64(a)(6), which provides that a student's ACG or National Smart Grant must be assigned to the same award year as the student's Federal Pell Grant and § 691.64(b), which prohibits a student from receiving more than his or her ACG or National SMART Grant Scheduled Award for an academic year.

*Reason:* The requirement in § 691.64(a)(6) is necessary to coordinate these provisions with the student eligibility requirement in § 691.15(a)(2) that a student be receiving a Federal Pell Grant in a payment period in order to be eligible for an ACG or National SMART Grant payment. The institution must assign a payment period for an ACG or National SMART Grant that occurs in two award years to the same award year that it assigns to the student's Federal Pell Grant. In

addition, § 691.64(b) clarifies that, unlike the Federal Pell Grant Program, a student's ACG or National SMART Grant Scheduled Award is based only on completing an academic year of the student's eligible program, rather than completing an academic year within an award year, as in the Federal Pell Grant Program.

#### Section 691.65 Transfer Student: Attendance at More Than One Institution During an Academic Year

*Regulations:* This section specifies how an institution calculates an ACG or National SMART Grant payment for an eligible student who transfers from another postsecondary institution within the same award year. The interim final regulations are similar to the corresponding provisions in 34 CFR 690.65 under the Federal Pell Grant Program regulations with one exception. The Secretary is adding paragraph (a)(2) to provide that a transfer student must receive a Federal Pell Grant in the same payment period to be an eligible ACG or National SMART Grant recipient at the second institution.

*Reason:* This provision coordinates these interim final regulations with the student eligibility requirement in § 691.15(a)(2) that a student be receiving a Federal Pell Grant in a payment period in order to be eligible for an ACG or National SMART Grant payment.

#### Subpart G—Administration of Grant Payments

#### Section 691.75 Determination of Eligibility for Payment GPA and Declaration of a Major

*Statute:* Section 401A(c) of the HEA provides the student eligibility requirements for the ACG and National SMART Grants.

*Regulations:* This section specifies the requirements that govern an institution's determination of a student's eligibility for a disbursement of an ACG or National SMART Grant. These interim final regulations are similar to those in 34 CFR 690.75 of the Federal Pell Grant Program to the extent practicable. Similar to the Federal Pell Grant Program requirements for determinations of a student's satisfactory academic progress, these interim final regulations add provisions for the treatment of institutional determinations for a payment period regarding changes in a student's GPA and, for National SMART Grants, a student's major.

*Reason:* A student's GPA may change during the course of a payment period, depending on when grades are earned or posted. Similarly, a student may declare

an eligible major during a payment period. These provisions provide institutions the flexibility to reconsider a student's eligibility for an ACG or National SMART Grant payment during a payment period.

#### Payments for Nonterm Self-Paced Programs

*Regulations:* Section 691.75(a)(3) provides that a student enrolled in a nonterm self-paced program may not receive a disbursement for a payment period until the student completes at least 50 percent of the credit or clock hours, or the academic coursework, in the payment period at the rate of academic progress of a full-time student. Section 691.75(e) describes a self-paced program for purposes of this section as one that allows a student to complete coursework without a defined academic schedule or to enroll in courses within a program at either defined dates or optional start dates without a defined schedule for completing the program.

*Reason:* Unlike term-based programs and nonterm programs with defined academic schedules, a student's enrollment status in a self-paced program may vary from that of other students in that program depending on the rate of academic progress the individual student is making in completing the credit or clock hours in the program.

This varying rate of academic progress is already addressed in the Federal Pell Grant Program regulations governing calculation of payments for payment periods, 34 CFR 690.63(e), and § 691.63(e) of these interim final regulations. For the numerator of the fraction in 34 CFR 690.63(e)(2)(i) and § 691.63(e)(3)(i) of these interim final regulations, an institution must determine the weeks of instructional time for full-time students in a program, using credit hours without terms or clock hours, to complete the lesser of the credit or clock hours in the program or the title IV, HEA academic year. For nonterm self-paced programs, institutions must distinguish between part-time students and full-time students to arrive at a proper value for the numerator in this fraction and determine the number of weeks of instructional time necessary for most full-time students enrolled in the program to complete the lesser of the credit or clock hours in the program or the academic year. Although an institution, to calculate a payment for the payment period, must determine this value based on the behavior of full-time students enrolled in the program, this value is used for the payment period calculations for all students in an

eligible program regardless of each student's enrollment status. Thus, the calculations of payments for payment periods for clock-hour and nonterm credit-hour programs do not provide any assurance regarding an individual student's enrollment status.

Under the definition of a payment period in 34 CFR 668.4(b) and (c), a student may not progress to the next payment period unless the student completes the clock hours in the payment period or, for a credit-hour program, the credit hours and the weeks of instructional time in the payment period. There is no requirement that the student be progressing at the rate of a particular enrollment status to move to the next payment period. Thus, progressing to the next payment period does not ensure that a student would be considered full-time.

Because the existing Federal Pell Grant Program regulations governing payment periods and calculations of payments for payment periods do not ensure that a student is progressing at a full-time enrollment status, the Secretary believes it is necessary for an institution to determine that a student enrolled in a nonterm self-paced program is progressing as a full-time student on or after the midpoint of the payment period in hours or coursework before making a disbursement to the student for that payment period. The Secretary believes this requirement ensures that ACG and National SMART Grant funds will be awarded only to full-time students.

To clarify the programs that the Secretary believes should fall under these requirements, the Secretary is adding paragraph (e) to this section to describe nonterm programs that the Secretary considers to be offered in a self-paced academic calendar.

#### Payment Prior to Receipt of GPA

*Regulations:* Under § 691.75(d), an institution may make one disbursement for a payment period to a student whose GPA is not yet available as required under § 691.15(b)(1)(iii)(C) and (c)(3). By making the disbursement, the institution assumes liability for the disbursement if it subsequently determines that the student's GPA was not eligible.

*Reason:* The Secretary recognizes that a student's grades for a prior payment period are not always promptly available to determine the student's eligibility for an ACG or National SMART Grant disbursement for the next payment period. This provision provides the institution the authority to make a disbursement to a student whom it anticipates would be eligible, but

when the student's grades for the prior payment period are available, if ineligible, the grant must be rescinded.

#### Section 691.76 Frequency of Payment

*Regulations:* This section specifies how often an institution may pay a student. These interim final regulations are the same as the Federal Pell Grant Program regulations in 34 CFR 690.76 to the extent practicable but add that a student must have completed a prior payment period as a full-time student in order to receive payment in one lump sum for prior payment periods.

*Reason:* The purpose of this section is to detail when institutions may disburse a payment within a payment period. These interim final regulations also ensure that a student has met the full-time status requirement, and is therefore eligible for disbursement of an ACG or National SMART Grant payment for a prior payment period.

#### Regulatory Impact Analysis

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

Pursuant to the terms of the Executive Order, it has been determined that this regulatory action will have an annual effect on the economy of more than \$100 million. Therefore, this action is "economically significant" and subject to OMB review under section 3(f)(4) of Executive Order 12866. The Secretary accordingly has assessed the potential costs and benefits of this regulatory action and has determined that the benefits justify the costs.



**Need for Federal Regulatory Action**

As noted above, these interim final regulations are needed to implement two programs created in the HERA. The ACG program provides need-based grants to encourage students to complete a rigorous secondary school program of study. The National SMART Grant Program provides need-based grants to encourage students to major in certain scientific and technical fields or foreign languages deemed vital to national security. Section 401A(c)(3)(B)(ii) and (3)(C)(ii) of the HEA specifically requires the Secretary of Education to issue regulations implementing these programs.

The Secretary had limited discretion in implementing these grant programs; the number of recipients and aid awarded is largely driven by statutory eligibility requirements such as that students be eligible to receive a Federal Pell Grant, be United States citizens, attend two-or four-year degree-granting institutions on a full-time basis, and, in some cases, maintain a 3.0 GPA. The Secretary has exercised discretion in the areas of program eligibility relating to

the definition of a rigorous secondary school program of study in the case of the ACG Program and, for the National SMART Grant Program, the definition of qualifying fields of study. In both these cases, the Secretary has regulated to reflect clear congressional intent.

**Benefits**

By facilitating the implementation of these new programs, these interim final regulations will support the provision of over \$4 billion in need-based student aid over the next five years. The ACG Program will benefit society by providing an incentive for students to complete a rigorous secondary school program of study, which research indicates increases the likelihood of successfully completing postsecondary education. The National SMART Grant Program will encourage students to major in technical fields or critical foreign languages. In the case of technical fields, these majors will benefit both national and individual competitiveness, increasing the nation's economic security. For foreign languages, increases in the number of fluent speakers of Arabic, Farsi, Uzbek,

and other critical languages would broaden understanding of important cultures and contribute significantly to ongoing efforts to combat international terrorism. In addition, awards under both programs serve to reduce a student's net cost of education. Research indicates that reduction in a student's cost of education correlates with increased student persistence and degree attainment. Data consistently show that postsecondary degree holders have substantially higher lifetime earnings than high school graduates.

**Costs**

These programs are supported with \$4.5 billion in mandatory appropriations: \$790 million for fiscal year 2006, \$850 million for fiscal year 2007, \$920 million for fiscal year 2008, \$960 million for 2009, and \$1,010 million for 2010. Funds not expended in one year may be carried forward to support awards in the subsequent year. If the estimated number of recipients exceeds the available funding for a given fiscal year, award levels would be ratably reduced.

TABLE 1.—ESTIMATED PROGRAM PARTICIPATION

	Estimated number of recipients	Estimated avg. award	Total amount of aid awarded (Expected in millions)
<b>Award Year 2006–2007</b>			
AC Grants—1st year .....	310,000	\$657	\$200
AC Grants—2nd year .....	110,000	1,245	140
National SMART Grants—3rd year .....	40,000	3,718	150
National SMART Grants—4th year .....	40,000	3,875	160
<b>Award Year 2007–2008</b>			
AC Grants—1st year .....	330,000	682	230
AC Grants—2nd year .....	130,000	1,255	160
National SMART Grants—3rd year .....	40,000	3,718	150
National SMART Grants—4th year .....	40,000	3,875	160

The average awards displayed in Table 1 are less than the statutory maximum awards due to the cost of attendance limit on ACG and National SMART Grant awards. In addition, average awards also reflect students who are eligible for an ACG or National SMART Grant for less than the full award year. Figures in Table 1 may not add due to rounding.

Because these programs are title IV, HEA programs and eligibility for these programs is linked to Federal Pell Grant eligibility, participating institutions must already meet Federal student aid institutional eligibility requirements. In addition, the delivery system and many program operational requirements for

the new programs are patterned after those institutions are already using for Federal Pell Grants. Accordingly, institutions wishing to participate in the new programs have already absorbed most of the administrative costs related to implementing these interim final regulations. Marginal costs over this baseline are primarily related to initial, and ongoing eligibility determinations are minimal. Most data needed to make these determinations, such as student citizenship, full-time status, major, and GPA, are generally already available to institutions. The Department is particularly interested in comments on possible administrative burdens the new

programs could impose on some institutions, especially related to the process of identifying cognizant authorities, documenting student eligibility, and verifying documentation considered incomplete or inaccurate.

**Assumptions, Limitations, and Data Sources**

Because these interim final regulations largely restate statutory requirements that would be self-implementing in the absence of regulatory action, cost estimates provided above reflect a prestatutory baseline in which the ACG and National SMART Grant programs do not exist. Given the limited data available,

estimates for 2007–2008 do not assume program benefits will induce increased student participation. In general, these estimates should be considered preliminary; they will be reevaluated as actual program data becomes available. Costs have been quantified for only two years because the Secretary plans to revise these interim final regulations through negotiated rule-making, after which more comprehensive cost analyses for subsequent years will be developed.

In developing these estimates, data from the 2004 National Postsecondary Student Aid Survey was used to derive the percentage of students meeting initial eligibility requirements for ACG and National SMART Grant awards, including enrollment status, Federal Pell Grant eligibility, citizenship, academic major, and GPA. The 1994 National Education Longitudinal Study, 1996 Beginning Postsecondary Student Survey, and 2000 National Assessment of Educational Progress High School Transcript Study were used to derive the percentage of students otherwise eligible for an ACG who had successfully completed a rigorous secondary school program of study. All these studies were conducted by the National Center for Education Statistics.

**Regulatory Alternatives Considered**

In defining eligibility requirements, particularly those related to rigorous secondary school programs of study, these interim final regulations strike a balance between complete State discretion, which could create

confusion and regional inequalities and result in overly generous criteria that dramatically reduce award levels, and an overly prescriptive national determination that would significantly alter the traditional State role in determining secondary school curricula.

More specifically, in considering the definition of a rigorous secondary school program of study, the Secretary looked at a variety of combinations of coursework and other possible measures. For example, at the time of the release of the President’s fiscal year 2007 budget, preliminary estimates assumed a rigorous program of study would consist of four English, three social science, three science, three mathematics, and two foreign language courses. Under this scenario, an estimated 439,000 students would receive \$400 million in ACG awards in 2006–2007—compared with \$340 million to 420,000 students under these interim final regulations. In subsequently considering the recognition of rigorous secondary school programs, the Secretary determined it would be more appropriate to include as one option secondary school programs of study with specific coursework requirements, such as, for mathematics, algebra I and a higher level course such as algebra II, geometry, or data analysis and statistics, and for science, at least two years with one year each of biology, chemistry or physics, as well as an advanced or honors program. In addition, the Secretary included students who complete a secondary school program and receive specified

scores on the Advanced Placement or International Baccalaureate examinations. The latter provisions offer additional flexibility to individual students attending private or home schools.

This approach is consistent with the programs’ statutory purpose of creating incentives for certain student behaviors. To achieve this purpose, the grant level must be large enough to provide a meaningful incentive, yet at the same time, program flexibility must be sufficient to allow States and participating institutions to recognize broad differences in secondary school and higher education academic structures.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

**Accounting Statement**

As required by OMB Circular A–4 (available at <http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf>), in Table 2 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these interim final regulations. This table provides our best estimate of the increase in Federal student aid payments as a result of these interim final regulations. All expenditures are classified as transfers to postsecondary students.

**TABLE 2.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES**  
[In millions]

Category	Transfers
Annualized Monetized Transfers .....	\$666.
From Whom To Whom? .....	Federal Government To Postsecondary Students.

**Waiver of Proposed Rulemaking**

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department is generally required to publish a notice of proposed rulemaking and provide the public with an opportunity to comment on proposed regulations prior to establishing a final rule. In addition, all Department regulations for programs authorized under the title IV, HEA programs are subject to the negotiated rulemaking requirements of section 492 of the HEA.<sup>1</sup> However, both the APA and the

HEA provide for exemptions from these rulemaking requirements. The APA provides that an agency is not required to conduct notice and comment rulemaking when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. Similarly, section 492 of the HEA provides that the Secretary is not required to conduct negotiated rulemaking for a title IV, HEA program if the Secretary determines that applying that requirement is

impracticable, unnecessary, or contrary to the public interest within the meaning of the APA.

Although these regulations are subject to the APA’s notice-and-comment and the HEA’s negotiated rulemaking requirements, the Secretary has determined that it would be impracticable to conduct either negotiated rulemaking or notice-and-comment rulemaking to implement the ACG and National SMART Grant programs for the 2006–2007 award year. Waiver of rulemaking under the impracticability exemption in the APA and HEA is warranted because it would not be possible for the Department to

<sup>1</sup> Section 492 provides specifically that any regulations issued for the title IV, HEA programs shall be subject to negotiated rulemaking to obtain

the advice of and recommendations from individuals and groups involved in the student financial assistance programs.

comply with the APA's and HEA's rulemaking mandates and execute its statutory duties under the HERA.<sup>2</sup> The Department cannot both implement the ACG and National SMART Grant programs, including making awards to eligible students, by the beginning of the 2006–2007 award year, and conduct negotiated or notice-and-comment rulemaking for the regulations for these programs.

In the HERA, enacted on February 8, 2006, Congress appropriated \$790 million for the Department to use in awarding ACG and National SMART Grants to students for the 2006–2007 award year, which begins on July 1, 2006. The Department therefore had a very short, less than five-month window to issue regulations, plan the administration of these programs, and begin the process of making awards for the 2006–2007 award year.

Even on an extremely expedited timeline, the Department could not feasibly conduct negotiated or notice-and-comment rulemaking and then promulgate final regulations in time to make awards for the 2006–2007 award year. Negotiated rulemaking requires the Department to solicit nominations for negotiators to participate in the negotiated rulemaking sessions, select a committee of negotiators, conduct a series of negotiating sessions, publish a notice of proposed rulemaking, review public comments, and issue final regulations. Normally, this process would take at least 12 months and possibly longer.

In addition to developing and issuing these regulations, there are a number of other steps necessary for the Department to implement the ACG and National SMART Grant programs for the 2006–2007 award year that make rulemaking impracticable. Implementation requires the Department to make a number of changes to the FAFSA and the Department's financial aid systems so that students can apply for and receive ACG and National SMART Grants. For the ACG Program, the Secretary also must recognize at least one rigorous secondary school program of study in each State, which will include considerations of State proposals for the recognition of their programs. To implement the National SMART Grant

Program, the Secretary must consult with the Director of National Intelligence to establish a list of critical foreign languages. The process of completing all of these steps and developing program regulations through negotiated or notice-and-comment rulemaking requires far more time than that available to the Department in order to make awards to students for the upcoming 2006–2007 award year.

Based upon this information, and in order to make timely grant awards for the 2006–2007 award year, the Secretary is issuing these interim final regulations without first conducting negotiated rulemaking or publishing proposed regulations for public comment.

Although the Department is adopting these regulations on an interim final basis for the 2006–2007 award year, the Department requests public comment on these regulations for the 2007–2008 award year. After consideration of public comments, the Secretary will publish final regulations for the 2007–2008 award year.

Section 482 of the HEA requires that any title IV regulations that have not been published in final form by November 1 prior to the start of an award year cannot become effective until the beginning of the second award year following the November 1 date. Therefore, the Secretary has determined that although it is feasible to conduct notice-and-comment rulemaking for the 2007–2008 award year, it would be impracticable to conduct negotiated rulemaking.

As discussed above, the negotiated rulemaking process can take at least 12 months, if not longer, to complete final regulations. Therefore, it would not be feasible for the Department both to conduct a negotiated rulemaking process and have amended regulations for the 2007–2008 award year in place by November 1, 2006, as would be required under section 482 of the HEA. The Secretary does intend to begin the negotiated rulemaking process later this year. The negotiated rulemaking process could further amend the regulations as appropriate for the 2008–2009 award year and subsequent years.

#### Regulatory Flexibility Act Certification

The Secretary certifies these regulations will not have a significant economic impact on a substantial number of small entities. Entities that would be affected by these regulations are States, SEAs, LEAs, and institutions of higher education. States, SEAs, and LEAs are not defined as “small entities” in the Regulatory Flexibility Act. The small entities affected by these regulations are institutions of higher

education receiving Federal funds under these programs. Roughly 1,000 institutions of higher education eligible to participate in ACG and National SMART Grant Programs meet the definition of a “small entity” in that they have annual revenues of \$6.5 million or less. The regulations will not have a significant economic impact on these institutions of higher education; these institutions must already comply with the eligibility requirements related to participating in the Federal Pell Grant program in order to participate in the ACG and National SMART Grant Programs. Additional, program-specific requirements included in these regulations will impose only minimal additional requirements to ensure the proper expenditure of program funds.

#### Paperwork Reduction Act of 1995

Sections 691.12, 691.15, 691.16, 691.82, and 691.83 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

*Collection of Information:* Academic Competitiveness Grant (ACG) Program and National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program.

#### Section 691.12—Student Application

This new section will be included for approval under OMB control number 1845–0001. These interim final regulations allow a student to provide information that he or she completed a rigorous secondary school program of study to qualify for an ACG. The Secretary expects to collect this information when the student applies for assistance under the title IV, HEA programs using an addendum to the FAFSA. Potentially eligible students completing the FAFSA will be directed to a Web site that allows the student to select the applicable rigorous secondary school programs of study from a list of programs recognized by the Secretary. The student's information is then transmitted on the student's SAR and the ISIR to the institutions listed on the student's FAFSA. There is additional burden associated with a student going to the Web site and responding to a few additional FAFSA questions to select their rigorous secondary school programs of study from a list of programs recognized by the Secretary. The public is invited to comment on the burden associated with this collection.

<sup>2</sup> See *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1484, n.2 (9th Cir. 1992). The term “impracticable” has also been described as meaning “a situation in which the due and required execution of the agency functions would be unavoidably prevented by its undertaking rulemaking proceedings. *Zhang v. Slattery*, 55 F.3d 732, 746 (2d Cir. 1995) citing *National Nutritional Foods Ass'n v. Kennedy*, 572 F.2d 377, 385 (2d Cir. 1978) citing S. Rep. No. 752, 79th Cong., 1st Sess. (1945).

*Section 691.15—Documenting a Student's Completion of a Rigorous Secondary School Program of Study*

Burden on student applicants who apply for an ACG or National SMART Grant under this new section will be included for approval under OMB control number 1845-0001. Burden on institutions for collecting documentation and evaluating a student's eligibility for an ACG or National SMART Grant under this new section will be included for approval under OMB control number 1845-0039. Under these interim final regulations, an institution must document a student's completion of a rigorous secondary school program of study using documentation from the cognizant authority for qualifying secondary school program of study. The documentation from the cognizant authority may be provided to the institution by the student or directly to the institution by the cognizant authority. Most institutions likely to enroll ACG and National SMART Grant recipients already have the necessary documentation of a student's completion of a rigorous secondary school program of study as part of their admissions process. A small number of institutions will need to collect additional documentation. Similarly, existing academic evaluations performed by most institutions will suffice to determine a student's completion of a rigorous secondary school program of study. However, some institutions will need to perform more extensive evaluations. The public is invited to comment on the burden associated with this collection.

*Section 691.16—Recognition of a Rigorous Secondary School Program of Study*

This new section will be included for approval under a new OMB information collection control number. These interim final regulations allow States to propose additional rigorous secondary school programs of study for recognition by the Secretary. The Secretary expects to collect this information and recognize additional rigorous secondary school programs of study annually prior to the commencement of the next award year for each State that submits a proposal.

*Section 691.82—Maintenance and Retention of Records*

This new section will be included for approval under OMB control number 1845-0039. Under these interim final regulations, an institution must include in its maintenance and retention of records, documentation collected to

determine the eligibility of a student for an ACG or National SMART Grant. Most institutions already maintain the required documentation (e.g., high school transcripts) that they use for other purposes. However, for a limited number of institutions that do not normally collect documentation sufficient for the purposes of these programs, additional collection and maintenance will be required.

*Section 691.83—Submission of Reports*

This new section will be included for approval under OMB control number 1845-0039. The interim final regulations provide that institutions requesting funds from the Secretary under the ACG and National SMART Grant programs must submit Payment Data. We expect some additional burden to institutions. However, because institutions will be reporting Payment Data in the same process as is used for the Federal Pell Grant Program and for the same students, the increased burden is expected to be minimal.

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

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

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

OMB is required to make a decision concerning the collections of information contained in these regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB

receives the comments within 30 days of publication.

**Intergovernmental Review**

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

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

**Assessment of Educational Impact**

Based on our own review, we have determined that these interim 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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**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

(Catalog of Federal Domestic Assistance Numbers: 84.375 Academic Competitiveness Grants; 84.376 SMART Grants)

**List of Subjects in 34 CFR Parts 668, 674, 675, 676, 682, 685, 690, and 691**

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

Dated: June 27, 2006.

**Margaret Spellings**,  
*Secretary of Education.*

■ For the reasons discussed in the preamble, the Secretary amends parts 668, 674, 675, 676, 682, 685, and 690 of, and adds a new part 691 to, title 34 of

the Code of Federal Regulations as follows:

**PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS**

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

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

■ 2. Section 668.1 is amended by:

■ A. Revising paragraph (c)(2).

■ B. In paragraph (c)(9), removing the word “and”.

■ C. In paragraph (c)(10), removing the punctuation “.” at the end of the paragraph and adding, in its place, the words “; and”.

■ D. In paragraph (c), adding new paragraph (11) to read as follows:

**§ 668.1 Scope.**

\* \* \* \* \*

(c) \* \* \*

(2) The Academic Competitiveness Grant (ACG) Program (20 U.S.C. 1070a–1; 34 CFR part 691);

(11) The National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program (20 U.S.C. 1070a–1; 34 CFR part 691).

■ 3. Section 668.2(b) is amended by adding, in alphabetical order, definitions of “Academic Competitiveness Grant (ACG) Program” and “National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program” and revising the definition of “Federal Pell Grant Program” to read as follows:

**§ 668.2 General definitions.**

\* \* \* \* \*

(b) \* \* \*

*Academic Competitiveness Grant (ACG) Program:* A grant program authorized by Title IV–A–1 of the HEA under which grants are awarded during the first and second academic years of study to eligible financially needy undergraduate students who successfully complete rigorous secondary school programs of study.

(Authority: 20 U.S.C. 1070a–1)

\* \* \* \* \*

*Federal Pell Grant Program:* A grant program authorized by Title IV–A–1 of the HEA under which grants are awarded to help financially needy students meet the cost of their postsecondary education.

(Authority: 20 U.S.C. 1070a)

\* \* \* \* \*

*National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program:* A grant

program authorized by Title IV–A–1 of the HEA under which grants are awarded during the third and fourth academic years of study to eligible financially needy undergraduate students pursuing eligible majors in the physical, life, or computer sciences, mathematics, technology, or engineering, or foreign languages determined to be critical to the national security of the United States.

(Authority: 20 U.S.C. 1070a–1)

\* \* \* \* \*

■ 4. Section 668.8 is amended by:

■ A. Revising the introductory text to paragraph (h) and paragraph (h)(2).

■ B. Revising the authority citation following paragraph (l).

The revisions read as follows:

**§ 668.8 Eligible programs.**

\* \* \* \* \*

(h) *Eligibility for Federal Pell Grant, ACG, National SMART Grant, and FSEOG Programs.* In addition to satisfying other relevant provisions of the section—

\* \* \* \* \*

(2) An educational program qualifies as an eligible program for purposes of the ACG, National SMART Grant, and FSEOG programs only if the educational program is an undergraduate program.

\* \* \* \* \*

(l) \* \* \*

\* \* \* \* \*

(Authority: 20 U.S.C. 1070a, 1070a–1, 1070b, 1070c–1, 1070c–2, 1085, 1087aa–1087hh, 1088, 1091, and 42 U.S.C. 2753)

■ 5. Section 668.19(a)(3) is revised to read as follows:

**§ 668.19 Financial aid history.**

(a) \* \* \*

(3) For the award year for which a Federal Pell Grant, an ACG, or a National SMART Grant is requested, the student’s Scheduled Federal Pell Grant, ACG, or National SMART Grant Award and the amount of Federal Pell Grant, ACG, or National SMART Grant funds disbursed to the student;

\* \* \* \* \*

■ 6. Section 668.21 is amended by revising the section heading and paragraph (a)(1) to read as follows:

**§ 668.21 Treatment of Federal Perkins Loan, FSEOG, Federal Pell Grant, ACG, and National SMART Grant program funds if the recipient withdraws, drops out, or is expelled before his or her first day of class.**

(a)(1) If a student officially withdraws, drops out, or is expelled before his or her first day of class of a payment period, all funds paid to the student for that payment period for institutional or

noninstitutional costs under the Federal Pell Grant, ACG, National SMART Grant, FSEOG, and Federal Perkins Loan programs are an overpayment.

\* \* \* \* \*

■ 7. Section 668.24 is amended by:

■ A. In paragraph (e)(1) introductory text, removing the word “or”; and by removing the word “Program” and adding, in its place, the words “, ACG, or National SMART Grant Program”; and

■ B. Revising the authority citation to read as follows:

**§ 668.24 Record retention and examinations.**

\* \* \* \* \*

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

**§ 668.26 [Amended]**

■ 8. Section 668.26 is amended by:

■ A. In paragraph (d)(1) introductory text, removing the words “or PAS” and adding, in their place, the words “, ACG, or National SMART Grant”.

■ B. In paragraph (e)(1), removing the words “and PAS programs” and adding, in their place, the words “, ACG, and National SMART Grant programs”.

■ 9. Section 668.32 is amended by:

■ A. In paragraph (c)(1), removing the words “FSEOG Program” and adding, in their place, the words “ACG, National SMART Grant, and FSEOG programs”.

■ B. In paragraph (k)(6), removing the word “and”.

■ C. Redesignating paragraph (k)(7) as paragraph (k)(8) and adding a new paragraph (k)(7) to read as follows:

**§ 668.32 Student eligibility—general.**

\* \* \* \* \*

(k) \* \* \*

(7) 34 CFR 691.75 for the ACG and National SMART Grant programs; and

\* \* \* \* \*

■ 10. Section 668.33 is amended by:

■ A. In the introductory text to paragraph (a), removing the words “paragraph (b)” and adding, in their place, the words “paragraphs (b) and (c)”.

■ B. Redesignating paragraphs (c)(1) and (c)(2) as paragraphs (d)(1) and (d)(2), respectively, and adding a new paragraph (c) to read as follows:

**§ 668.33 Citizenship and residency requirements.**

\* \* \* \* \*

(c) Only a student who is a citizen of the United States is eligible to receive

funds under the ACG and National SMART Grant programs.

\* \* \* \* \*

■ 11. Section 668.35 is amended by redesignating paragraph (g)(2) as paragraph (g)(4) and adding new paragraphs (g)(2) and (g)(3) to read as follows:

**§ 668.35 Student debts under the HEA and to the U.S.**

\* \* \* \* \*

(g) \* \* \*

(2) A student is not liable for an ACG overpayment received in an award year if—

(i) The institution can eliminate that overpayment by adjusting subsequent title IV, HEA program (other than Federal Pell Grant, ACG, or National SMART Grant) payments in that same award year; or

(ii) The institution cannot eliminate the overpayment under paragraph (g)(2)(i) of this section but can eliminate that overpayment by adjusting subsequent ACG payments in that same award year.

(3) A student is not liable for a National SMART Grant overpayment received in an award year if—

(i) The institution can eliminate that overpayment by adjusting subsequent title IV, HEA program (other than Federal Pell Grant, ACG, or National SMART Grant) payments in that same award year; or

(ii) The institution cannot eliminate the overpayment under paragraph (g)(3)(i) of this section but can eliminate that overpayment by adjusting subsequent National SMART Grant payments in that same award year.

\* \* \* \* \*

**§ 668.138 [Amended]**

■ 12. Section 668.138 is amended in paragraph (a) by removing the word “or” the first time it appears, and adding the words “, ACG, or National SMART Grant” immediately after the words “Federal Pell Grant”.

**§ 668.139 [Amended]**

■ 13. Section 668.139 is amended in paragraph (c) by adding the words “ACG, National SMART Grant, FSEOG” immediately after the words “Federal Pell Grant,”; and removing the words “Federal SEOG”.

**§ 668.161 [Amended]**

■ 14. Section 668.161(a)(3)(i) is amended by adding the words “ACG, National SMART Grant,” immediately after the words “Federal Pell Grant,”.

**§ 668.162 [Amended]**

■ 15. Section 668.162(d)(1) is amended by adding the words “ACG, National SMART Grant,” immediately after the words “Federal Pell Grant,”.

**§ 668.163 [Amended]**

■ 16. Section 668.163 is amended by:

■ A. In paragraph (c)(2), adding the words “ACG, National SMART Grant,” immediately after the words “Federal Pell Grant,”.

■ B. In paragraph (c)(3) introductory text, adding the words “ACG, National SMART Grant,” immediately after the words “Federal Pell Grant,”.

■ C. In paragraph (c)(4), adding the words “ACG, National SMART Grant,” immediately after the words “Federal Pell Grant,”.

**§ 668.164 [Amended]**

■ 17. Section 668.164 is amended by:

■ A. In paragraph (g)(1)(ii), adding the words “ACG, National SMART Grant,” immediately after the words “Federal Pell Grant,”.

■ B. In paragraph (g)(4)(iv), adding the words “, an ACG, or a National SMART Grant” immediately after the words “Federal Pell Grant”.

**PART 674—FEDERAL PERKINS LOAN PROGRAM**

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

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

**§ 674.2 [Amended]**

■ 19. Section 674.2(a) is amended by adding, in alphabetical order, the terms “Academic Competitiveness Grant (ACG) Program” and “National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program”.

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

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

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

**§ 675.2 [Amended]**

■ 21. Section 675.2(a) is amended by adding, in alphabetical order, the terms “Academic Competitiveness Grant (ACG) Program” and “National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program”.

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

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

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

**§ 676.2 [Amended]**

■ 23. Section 676.2(a) is amended by adding, in alphabetical order, the terms “Academic Competitiveness Grant (ACG) Program” and “National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program”.

**PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM**

■ 24. The authority citation for part 682 continues to read as follows:

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

**§ 682.200 [Amended]**

■ 25. Section 682.200 is amended by in paragraph (a)(1), adding, in alphabetical order, the terms “Academic Competitiveness Grant (ACG) Program” and “National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program”.

**PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM**

■ 26. The authority citation for part 685 continues to read as follows:

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

**§ 685.102 [Amended]**

■ 27. Section 685.102 is amended by in paragraph (a)(1), adding, in alphabetical order, the terms “Academic Competitiveness Grant (ACG) Program” and “National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program”.

**PART 690—FEDERAL PELL GRANT PROGRAM**

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

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

■ 29. Section 690.2 is amended by:

■ A. In paragraph (a), removing the terms “Accredited”, “Educational program”, “Eligible institution”, “Recognized equivalent of high school diploma”, and “Regular student”.

■ B. In paragraph (b), adding, in alphabetical order, the terms “Academic Competitiveness Grant (ACG) Program”,

“Federal Family Education Loan (FFEL) Program”, “National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program”, and “William D. Ford Federal Direct Loan Program”.

■ C. In paragraph (b), removing the term “Student eligibility”.

■ D. In paragraph (c), adding, in alphabetical order, a definition of “Eligible student” to read as follows:

§ 690.2 General definitions.

\* \* \* \* \*

(c) \* \* \*

Eligible student: An eligible student as described in 34 CFR part 668, subpart C.

\* \* \* \* \*

■ 30. Section 690.7 is amended by redesignating paragraphs (a), (b), (c), and (d) as paragraphs (b), (c), (d), and (e) respectively, and adding a new paragraph (a) to read as follows:

§ 690.7 Institutional participation.

(a) An institution may not participate in the Federal Pell Grant Program if the institution—

(1) Offers at least one eligible program for purposes of the ACG Program, as defined in 34 CFR 691.2(d), but does not participate in the ACG Program; or

(2) Offers at least one eligible program for purposes of the National SMART Grant Program, as defined in 34 CFR 691.2(d), but does not participate in the National SMART Grant Program.

\* \* \* \* \*

§ 690.8 [Amended]

■ 31. Section 690.8 is amended by capitalizing the first word in paragraph (b)(3).

■ 32. Section 690.63 is amended by:

■ A. In paragraph (c)(3), revising the first equation as set forth below.

■ B. In paragraph (d)(2), adding the word “and” after the punctuation “;”.

■ C. In paragraph (d)(3), removing “; and” following the equation.

■ D. Removing paragraph (d)(4).

■ E. In paragraph (e)(2), after the words “the lesser of—”, adding “(i)” immediately before the equation.

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

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

The number of weeks of instructional time offered in the program in the fall and spring semesters or trimesters

The number of weeks in the program’s academic year

\* \* \* \* \*

■ 33. Section 690.83 is amended by:

■ A. In paragraph (a)(2), removing the word “contain” and adding, in its place, the word “contains”.

■ B. Revising paragraphs (b)(1) and (b)(2) to read as set forth below.

■ C. In paragraph (c), adding a comma after “668.84”.

§ 690.83 Submission of reports.

\* \* \* \* \*

(b)(1) An institution shall report to the Secretary any change in the amount of a grant for which a student qualifies including any related Payment Data changes by submitting to the Secretary the student’s Payment Data that discloses the basis and result of the change in award for each student. The institution shall submit the student’s Payment Data reporting any change to the Secretary by the reporting deadlines published by the Secretary in the Federal Register.

(2) An institution shall submit, in accordance with deadline dates established by the Secretary, through publication in the Federal Register, other reports and information the Secretary requires and shall comply with the procedures the Secretary finds necessary to ensure that the reports are correct.

\* \* \* \* \*

■ 34. A new part 691 is added to read as follows:

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

Subpart A—Scope, Purpose, and General Definitions

Sec.

691.1 Scope and purpose.

691.2 Definitions.

691.3–691.5 [Reserved]

691.6 Duration of student eligibility— undergraduate course of study.

691.7 Institutional participation.

691.8 Enrollment status for students taking regular and correspondence courses.

691.9–691.10 [Reserved]

691.11 Payments from more than one institution.

Subpart B—Application Procedures

691.12 Application.

691.13–691.14 [Reserved]

691.15 Eligibility to receive a grant.

691.16 Recognition of a rigorous secondary school program of study.

691.17 Determination of eligible majors.

Subparts C–E [Reserved]

Subpart F—Determination of Awards

691.6 1 Submission process and deadline for a Student Aid Report or Institutional Student Information Record.

691.62 Calculation of a grant.

691.63 Calculation of a grant for a payment period.

691.64 Calculation of a grant for a payment period which occurs in two award years.

691.65 Transfer student: attendance at more than one institution during an academic year.

Subpart G—Administration of Grant Payments

691.71 Scope.

691.72–691.74 [Reserved]

691.75 Determination of eligibility for payment.

691.76 Frequency of payment.

691.77 [Reserved]

691.78 Method of disbursement—by check or credit to a student’s account.

691.79 Liability for and recovery of grant overpayments.

691.80 Redetermination of eligibility for a grant award.

691.81 Fiscal control and fund accounting procedures.

691.82 Maintenance and retention of records.

691.83 Submission of reports.

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

Subpart A—Scope, Purpose, and General Definitions

§ 691.1 Scope and purpose.

(a) The ACG Program awards grants to help eligible financially needy first- and second-year undergraduate students, who complete rigorous secondary school programs of study, meet the cost of their postsecondary education.

(b) The National SMART Grant Program awards grants to help eligible financially needy third- and fourth-year undergraduate students who are pursuing eligible majors in the physical, life, or computer sciences, mathematics, technology, or engineering or a critical foreign language meet the cost of their postsecondary education.

(Authority: 20 U.S.C. 1070a–1)

§ 691.2 Definitions.

(a) The following definitions used in this part are in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Award year

Clock hour

Correspondence course

Eligible institution

Regular student

Secretary

State

Title IV, HEA program

(b) The following definitions used in this part are in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

Academic year  
Enrolled  
Expected family contribution  
Federal Pell Grant Program  
Full-time student  
HEA  
Payment period

(c) The following definitions used in this part are in 34 CFR part 77:

Local educational agency (LEA)  
State educational agency (SEA)

(d) Other terms used in this part are:  
*ACG Scheduled Award*: The amount of an ACG that would be paid to a full-time student for a full academic year.

*Eligible major*: A major, as identified by the Secretary under § 691.17, in one of the physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language.

*Eligible program*: An eligible program as defined in 34 CFR 668.8 that—

(1) For purposes of the ACG Program, leads to an associate's degree or a bachelor's degree; is a two-academic-year program acceptable for full credit toward a bachelor's degree; or is a graduate degree program that includes at least 3 academic years of undergraduate education; or

(2) For purposes of the National SMART Grant Program, leads to a bachelor's degree in an eligible major or is a graduate degree program in an eligible major that includes at least 3 academic years of undergraduate education.

*Institutional Student Information Record (ISIR)*: An electronic record that the Secretary transmits to an institution that includes an applicant's—

(1) Personal identification information;

(2) Application data used to calculate the applicant's EFC; and

(3) EFC.

*National SMART Grant Scheduled Award*: The amount of a National SMART Grant that would be paid to a full-time student for a full academic year.

*Payment Data*: An electronic record that is provided to the Secretary by an institution showing student disbursement information.

*Student Aid Report (SAR)*: A report provided to an applicant by the Secretary showing the amount of his or her expected family contribution.

*Undergraduate student*: A student enrolled in an undergraduate course of study at an institution of higher education who—

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first 4 academic years of that program.

*Valid Institutional Student Information Record (valid ISIR)*: An ISIR on which all the information used in calculating the applicant's expected family contribution is accurate and complete as of the date the application is signed.

*Valid Student Aid Report (valid SAR)*: A Student Aid Report on which all of the information used in calculating the applicant's expected family contribution is accurate and complete as of the date the application is signed.

(Authority: 20 U.S.C. 1070a-1)

#### §§ 691.3–691.5 [Reserved]

#### § 691.6 Duration of student eligibility—undergraduate course of study.

(a) A student is eligible to receive up to one ACG Scheduled Award during each of the student's first and second academic years of eligible program.

(b) A student is eligible to receive up to one National SMART Grant Scheduled Award during each of the student's third and fourth academic years of eligible program.

(c) A student may not receive more than two ACG Scheduled Awards and two National SMART Grant Scheduled Awards.

(d) For an eligible student enrolled in a summer term of an eligible program for which the institution determines payments under § 691.63(b) and (c), the student's summer term is considered to be—

(1) For an eligible program offered in semesters or trimesters with a single summer term that provides at least 12 semester or trimester hours of coursework, one-half of an academic year in weeks of instructional time under § 691.63(b)(3)(i) and (c)(4)(i), or one-third of an academic year in weeks of instructional time under § 691.63(b)(3)(ii) and (c)(4)(ii); or

(2) For an eligible program offered in quarters with a single summer term that provides at least 12 quarter hours of coursework, one-third of an academic year in weeks of instructional time under § 691.63(b)(3)(i) and (c)(4)(i), or one-fourth of an academic year in weeks of instructional time under § 691.63(b)(3)(ii) and (c)(4)(ii).

(Authority: 20 U.S.C. 1070a-1)

#### § 691.7 Institutional participation.

(a) An institution that offers one or more eligible programs, as defined in § 691.2(d), for purposes of the ACG Program, and that participates in the Federal Pell Grant Program under 34 CFR part 690 must participate in the ACG Program.

(b) An institution that offers one or more eligible programs, as defined in § 691.2(d), for purposes of the National SMART Grant Program, and that participates in the Federal Pell Grant Program under 34 CFR part 690 must participate in the National SMART Grant Program.

(c) If an institution begins participation in the ACG or National SMART Grant Program during an award year, a student enrolled and attending that institution is eligible to receive a grant under this part for the payment period during which the institution begins participation and any subsequent payment period.

(d) If an institution becomes ineligible to participate in the ACG or National SMART Grant Program during an award year, a student who was eligible for a grant under § 691.15 who was attending the institution and who submitted a valid SAR to the institution, or for whom the institution obtained a valid ISIR, before the date the institution became ineligible is paid a grant for that award year for—

(1) The payment periods that the student completed before the institution became ineligible; and

(2) The payment period in which the institution became ineligible.

(e)(1) If an institution loses its eligibility to participate in the Federal Pell Grant Program under the provisions of subpart M of 34 CFR part 668, it also loses its eligibility to participate in the ACG or National SMART Grant Program for the same period of time.

(2) That loss of eligibility must be in accordance with the provisions of 34 CFR 668.187.

(f) An institution that becomes ineligible shall, within 45 days after the effective date of loss of eligibility, provide to the Secretary—

(1) The name of each eligible student under § 691.15 who, during the award year, submitted a valid SAR to the institution or for whom it obtained a valid ISIR before it became ineligible;

(2) The amount of funds paid to each grant recipient for that award year;

(3) The amount due each student eligible to receive a grant through the end of the payment period during which the institution became ineligible; and

(4) An accounting of the ACG or National SMART Grant Program



expenditures for that award year to the date of termination.

(Authority: 20 U.S.C. 1070a-1)

**§ 691.8 Enrollment status for students taking regular and correspondence courses.**

(a) If, in addition to regular coursework, a student takes correspondence courses from either his or her own institution or another institution having an agreement for this purpose with the student's institution, the correspondence work may be included in determining the student's enrollment status to the extent permitted under paragraph (b) of this section.

(b) Except as noted in paragraph (c) of this section, the correspondence work that may be included in determining a student's enrollment status is that amount of work that—

(1) Applies toward a student's degree or is remedial work taken by the student to help in his or her eligible program;

(2) Is completed within the period of time required for regular coursework; and

(3) Does not exceed the amount of a student's regular coursework for the payment period for which the student's enrollment status is being calculated.

(c) A student taking correspondence courses is considered a full-time student if—

(1) The student is taking coursework that is commensurate with the institution's standard for full-time students; and

(2) The student's noncorrespondence coursework constitutes at least one-half of the institution's required minimum coursework for full-time students.

(Authority: 20 U.S.C. 1070a-1)

**§§ 691.9–691.10 [Reserved]**

**§ 691.11 Payments from more than one institution.**

A student is not entitled to receive grant payments under this part concurrently from more than one institution. A student may only receive an ACG or a National SMART Grant at the same institution from which the student receives his or her Federal Pell Grant award.

(Authority: 20 U.S.C. 1070a-1)

**Subpart B—Application Procedures**

**§ 691.12 Application.**

(a) As the first step to receiving a grant under this part, a student shall apply on an approved application form to the Secretary to have his or her expected family contribution calculated and to determine the student's Federal

Pell Grant eligibility. A copy of this form is not acceptable.

(b)(1) The student shall provide any information requested by the Secretary in addition to the information necessary to establish eligibility for a Federal Pell Grant.

(2) The additional information may include, but is not limited to, information about the rigorous secondary school program of study completed by a student applying for an ACG.

(c) The student shall submit an application to the Secretary by—

(1) Providing the application form, signed by all appropriate family members, to the institution which the student attends or plans to attend so that the institution can transmit the application information to the Secretary electronically; or

(2) Sending an approved application form to the Secretary.

(d) The student shall provide the address of his or her residence unless the student is incarcerated and the educational institution has made special arrangements with the Secretary to receive relevant correspondence on behalf of the student. If such an arrangement is made, the student shall provide the address indicated by the institution.

(e) For each award year, the Secretary, through publication in the **Federal Register**, establishes deadline dates for submitting this application and additional information and for making corrections to the information provided.

(Authority: 20 U.S.C. 1070a-1)

**§§ 691.13–691.14 [Reserved]**

**§ 691.15 Eligibility to receive a grant.**

(a) *General.* A student who meets the requirements of 34 CFR part 668, Subpart C, is eligible to receive an ACG or a National SMART Grant if the student—

(1) Is a U.S. citizen;

(2) Is receiving a Federal Pell Grant disbursement for the same payment period; and

(3) Is enrolled full-time.

(b) *ACG Program.* (1) A student is eligible to receive an ACG if the student—

(i) Meets the eligibility requirements in paragraph (a) of this section;

(ii) For the first academic year of his or her eligible program—

(A) Has successfully completed, after January 1, 2006, a rigorous secondary school program of study recognized by the Secretary under § 691.16; and

(B) Has not previously been enrolled as a regular student in a program of undergraduate education;

(iii) For the second academic year of his or her eligible program—

(A) Has successfully completed, after January 1, 2005, a rigorous secondary school program of study recognized by the Secretary under § 691.16; and

(B) Has successfully completed the first academic year of his or her eligible program; and

(C) For the first academic year of his or her eligible program, obtained a grade point average (GPA) of at least 3.0 or higher on a 4.0 scale, or the equivalent, consistent with other institutional measures for academic and title IV, HEA program purposes.

(2)(i) An institution must document a student's completion of a rigorous secondary school program of study under paragraphs (b)(1)(ii)(A) and (b)(1)(iii)(A) of this section using—

(A) Documentation provided directly to the institution by the cognizant authority; or

(B) Documentation from the cognizant authority provided by the student.

(ii) If an institution has reason to believe that the documentation provided by the student under paragraph (b)(2)(i)(B) of this section is inaccurate or incomplete, the institution shall confirm the student's completion of a rigorous secondary school program of study by using documentation provided directly to the institution by the cognizant authority.

(3) For purposes of paragraph (b)(2) of this section—

(i) A cognizant authority includes, but is not limited to—

(A) An LEA;

(B) An SEA or other State agency;

(C) A public or private high school; or

(D) A testing organization such as the College Board or State agency; or

(ii) For a home-schooled student, the student's parent or guardian is the cognizant authority for purposes of providing the documentation required under paragraph (b)(2)(i) of this section, of a rigorous secondary school program under § 691.16(d)(2), including a transcript or the equivalent or a detailed course description listing the secondary school courses completed by the student.

(4) For a student who transfers from an eligible program at one institution to an eligible program at another institution, the institution to which the student transfers may rely upon the prior institution's determination that the student completed a rigorous secondary school program of study in accordance with paragraphs (b)(1)(ii)(A) and (b)(1)(iii)(A) of this section based on documentation that the prior institution may provide, or based on

documentation of the receipt of an ACG disbursement at the prior institution.

(c) *National SMART Grant Program.*

A student is eligible to receive a National SMART Grant for the third or fourth academic year of his or her eligible program if the student'

(1) Meets the eligibility requirements in paragraph (a) of this section;

(2)(i)(A) In accordance with the institution's academic requirements, formally declares an eligible major; or

(B) If the institution's academic requirements do not allow a student to declare an eligible major in time to qualify for a National SMART Grant on that basis—

(1) Demonstrates his or her intention to declare an eligible major as documented by the institution; and

(2) Formally declares an eligible major as soon as allowed under the institution's academic requirements; and

(ii) Enrolls in the courses necessary both to complete the degree program and to fulfill the requirements of the intended eligible major;

(3) Has a cumulative GPA through the most recently completed payment period of at least 3.0 or higher on a 4.0 scale, or the equivalent, consistent with other institutional measures for academic and title IV, HEA program purposes, in the student's eligible program;

(4) For the third academic year, has successfully completed the second academic year of his or her eligible program; and

(5) For the fourth academic year, has successfully completed the third academic year of his or her eligible program.

(d) *Transfer student's grade point average.* Under the ACG and National SMART Grant programs, if a student transfers from another institution, the institution to which the student transfers—

(1) Must calculate the student's GPA for the student's first payment period of enrollment using the grades earned by the student in the coursework from any prior institution that it accepts towards the student's eligible program; or

(2) If the institution accepts no credits towards the student's eligible program, must consider the student to be ineligible until the student completes at least one payment period in an eligible program with a qualifying GPA.

(Authority: 20 U.S.C. 1070a–1)

**§ 691.16 Recognition of a rigorous secondary school program of study.**

(a) For an award year, the Secretary recognizes in each State at least one

rigorous secondary school program of study as established by an SEA or, if legally authorized by the State to establish a separate secondary school program of study, an LEA.

(b) For each award year, the Secretary establishes a deadline for SEAs and LEAs to submit information about the secondary school program or programs that the SEA or LEA identifies as a rigorous secondary school program of study, and, in the case of an LEA, documentation that the LEA is legally authorized by the State to establish a separate secondary school program of study.

(c) In identifying a rigorous secondary school program of study, the SEA, or the LEA if applicable, must consider separate identifiable secondary programs that—

(1) Are offered by secondary schools in the State, including public, charter, private, tribal, and home schools;

(2) Are considered by the SEA, or by the LEA if applicable, to prepare a student to pursue postsecondary education successfully; and

(3) Are not General Education Development (GED) Certificate programs.

(d) In addition to those programs identified by States or LEAs and recognized by the Secretary as rigorous under paragraphs (b) and (c) of this section, the Secretary recognizes the following secondary school programs of study as rigorous:

(1) Advanced or honors secondary school programs established by States and in existence for the 2004–2005 or 2005–2006 school year, as identified by the Secretary.

(2) Any secondary school program in which a student completes at a minimum the following courses:

(i) Four years of English.

(ii) Three years of mathematics, including algebra I and a higher-level class such as algebra II, geometry, or data analysis and statistics.

(iii) Three years of science, including one year each of at least two of the following courses: biology, chemistry, and physics.

(iv) Three years of social studies.

(v) One year of a language other than English.

(3) A secondary school program identified by a State—level partnership that is recognized by the State Scholars Initiative of the Western Interstate Commission for Higher Education (WICHE), Boulder, Colorado.

(4) Any secondary school program for a student who completes at least two courses in the International Baccalaureate Diploma Program sponsored by the International

Baccalaureate Organization, Geneva, Switzerland, and receives a score of “4” or higher on the examinations for at least two of those courses.

(5) Any secondary school program for a student who completes at least two Advanced Placement courses and receives a score of “3” or higher on the College Board's Advanced Placement Program Exams for at least two of those courses.

(e) For each award year, the Secretary publishes a list of rigorous secondary school programs of study that the Secretary recognizes.

(Authority: 20 U.S.C. 1070a–1)

**§ 691.17 Determination of eligible majors.**

(a) *Eligible major.* For each award year, the Secretary identifies the eligible majors in the physical, life, or computer sciences, mathematics, technology, engineering, or, as determined under paragraph (b) of this section, critical foreign languages.

(b) *Critical foreign languages.* For each award year, the Secretary identifies the foreign languages that are critical to the national security of the United States after consulting with the Director of National Intelligence.

(c) *Duration of eligible major.* A major that ceases to be listed as an eligible major under paragraph (a) of this section for an award year remains an eligible major in subsequent award years for a student who pursues that major and receives a National SMART Grant in the award year in which the major was an eligible major.

(Authority: 20 U.S.C. 1070a–1)

**Subparts C–E [Reserved]**

**Subpart F—Determination of Awards**

**§ 691.61 Submission process and deadline for a Student Aid Report or Institutional Student Information Record.**

(a) *Submission process.* (1) Except as provided in paragraph (a)(2) of this section, an institution must disburse an ACG or a National SMART Grant to a student who is eligible under § 691.15 and is otherwise qualified to receive that disbursement and electronically transmit disbursement data to the Secretary for that student if—

(i) The student submits a valid SAR to the institution; or

(ii) The institution obtains a valid ISIR for the student.

(2) In determining a student's eligibility to receive a grant under this part, an institution is entitled to assume that the SAR information or ISIR information is accurate and complete except under the conditions set forth in 34 CFR 668.16(f) and 668.60.

(b) *Student Aid Report or Institutional Student Information Record deadline.* Except as provided in the verification provisions of 34 CFR 668.60 and the late disbursement provisions of 34 CFR 668.164(g) of this chapter, for a student to receive a grant under this part in an award year, the student must submit the relevant parts of the valid SAR to his or her institution or the institution must obtain a valid ISIR by the earlier of—

(1) The last date that the student is still enrolled and eligible for payment at that institution; or

(2) By the deadline date established by the Secretary through publication of a notice in the **Federal Register**.

(Authority: 20 U.S.C. 1070a–1)

#### **§ 691.62 Calculation of a grant.**

(a)(1) For each award year, the Secretary establishes and announces the ACG and National SMART Grant Scheduled Awards depending on the availability of funds for all students who are eligible for a grant under § 691.15.

(2) The Secretary may revise the ACG and National SMART Grant Scheduled Awards in an award year depending on the availability of funds for all students who are eligible for a grant under § 691.15.

(b)(1) The maximum ACG Scheduled Award for an eligible student may be up to—

(i) \$750 for the first academic year of the student's eligible program; and

(ii) \$1,300 for the second academic year of the student's eligible program.

(2) The maximum National SMART Grant Scheduled Award for an eligible student may be up to \$4,000 for each of the third and fourth academic years of the student's eligible program.

(c) The amount of a student's grant under this part for an academic year, in combination with the student's EFC and other student financial assistance available to the student, including the student's Federal Pell Grant, may not exceed the student's cost of attendance. Other student financial assistance is estimated financial assistance as defined in 34 CFR 673.5(c), 682.200(b), and 685.102(b).

(Authority: 20 U.S.C. 1070a–1)

#### **§ 691.63 Calculation of a grant for a payment period.**

(a)(1) *Programs using standard terms with at least 30 weeks of instructional time.* A student's payment for a payment period is calculated under paragraphs (b) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters;

(C) Requires the student to enroll for at least 12 credit hours in each term in the award year to qualify as a full-time student; and

(D) Is not offered with overlapping terms; and

(ii) The institution offering the program—

(A) Provides the program using an academic calendar that includes two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring; and

(B) Provides at least 30 weeks of instructional time in the terms specified in paragraph (a)(1)(ii)(A) of this section.

(2) *Programs using standard terms with less than 30 weeks of instructional time.* A student's payment for a payment period is calculated under paragraph (c) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters;

(C) Requires the student to enroll in at least 12 credit hours in each term in the award year to qualify as a full-time student; and

(D) Is not offered with overlapping terms; and

(ii) The institution offering the program—

(A) Provides the program using an academic calendar that includes two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring; and

(B) Does not provide at least 30 weeks of instructional time in the terms specified in paragraph (a)(2)(ii)(A) of this section.

(3) *Other programs using terms and credit hours.* A student's payment for a payment period is calculated under paragraph (d) of this section if the student is enrolled in an eligible program that—

(i) Measures progress in credit hours; and

(ii) Is offered in academic terms other than those described in paragraphs (a)(1) and (a)(2) of this section.

(4) *Programs not using terms or using clock hours.* A student's payment for any payment period is calculated under paragraph (e) of this section if the student is enrolled in an eligible program that—

(i) Is offered in credit hours but is not offered in academic terms; or

(ii) Is offered in clock hours.

(5) *Programs for which an exception to the academic year definition has been granted under 34 CFR 668.3.* If an institution receives a waiver from the

Secretary of the 30 weeks of instructional time requirement under 34 CFR 668.3, an institution may calculate a student's payment for a payment period using the following methodologies:

(i) If the program is offered in terms and credit hours, the institution uses the methodology in—

(A) Paragraph (b) of this section provided that the program meets all the criteria in paragraph (a)(1) of this section, except that in lieu of paragraph (a)(1)(ii)(B) of this section, the program provides at least the same number of weeks of instructional time in the terms specified in paragraph (a)(1)(ii)(A) of this section as are in the program's academic year; or

(B) Paragraph (d) of this section.

(ii) The institution uses the methodology described in paragraph (e) of this section if the program is offered in credit hours without terms or clock hours.

(b) *Programs using standard terms with at least 30 weeks of instructional time.* The payment for a payment period, i.e., an academic term, for a student in a program using standard terms with at least 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(1)(ii)(A) of this section, is calculated by—

(1) Confirming his or her full-time enrollment status for the term;

(2) Determining his or her ACG or National SMART Grant Scheduled Award; and

(3) Dividing the amount described under paragraph (b)(2) of this section by—

(i) Two at institutions using semesters or trimesters or three at institutions using quarters; or

(ii) The number of terms over which the institution chooses to distribute the student's ACG or National SMART Grant Scheduled Award if—

(A) An institution chooses to distribute all of the student's ACG or National SMART Grant Scheduled Award determined under paragraph (b)(2) of this section over more than two terms at institutions using semesters or trimesters or more than three quarters at institutions using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms, equals the weeks of instructional time in the program's academic year.

(c) *Programs using standard terms with less than 30 weeks of instructional time.* The payment for a payment period, i.e., an academic term, for a student in a program using standard terms with less than 30 weeks of

instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(2)(ii)(A) of this section, is calculated by—

(1) Confirming his or her full-time enrollment status for the term;

(2) Determining his or her ACG or National SMART Grant Scheduled Award;

(3) Multiplying his or her ACG or National SMART Grant Scheduled Award determined under paragraph (c)(2) of this section by the following fraction as applicable:

In a program using semesters or trimesters—

The number of weeks of instructional time offered in the program in the fall and spring semesters or trimesters

—  
The number of weeks in the program's academic year

; or

In a program using quarters—

The number of weeks of instructional time offered in the program in the fall, winter, and spring quarters

—  
The number of weeks in the program's academic year

; and

(4)(i) Dividing the amount determined under paragraph (c)(3) of this section by two for programs using semesters or trimesters or three for programs using quarters; or

(ii) Dividing the student's ACG or National SMART Grant Scheduled Award determined under paragraph (c)(2) of this section by the number of terms over which the institution chooses to distribute the student's ACG or National SMART Grant Scheduled Award if—

(A) An institution chooses to distribute all of the student's ACG or National SMART Grant Scheduled Award determined under paragraph (c)(2) of this section over more than two terms for programs using semesters or trimesters or more than three quarters for programs using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms, equals the weeks of instructional time in the program's academic year definition.

(d) *Other programs using terms and credit hours.* The payment for a payment period, i.e., an academic term, for a student in a program using terms and credit hours, other than those described in paragraphs (a)(1) or (a)(2) of this section, is calculated by—

(1)(i) For a student enrolled in a semester, trimester, or quarter, determining his or her full-time enrollment status for the term; or

(ii) For a student enrolled in a term other than a semester, trimester, or quarter, determining his or her full-time enrollment status for the term by—

(A) Dividing the number of weeks of instructional time in the term by the number of weeks of instructional time in the program's academic year;

(B) Multiplying the fraction determined under paragraph (d)(1)(ii)(A) of this section by the number of credit hours in the program's academic year to determine the number of hours required to be enrolled to be considered a full-time student; and

(C) Determining a student's enrollment status by comparing the number of hours in which the student enrolls in the term to the number of hours required to be considered full-time under paragraph (d)(1)(ii)(B) of this section for that term;

(2) Based upon that full-time enrollment status, determining his or her ACG or National SMART Grant Scheduled Award; and

(3) Multiplying his or her ACG or National SMART Grant Scheduled Award determined under paragraph (d)(2) of this section by the following fraction:

The number of weeks of instructional time in the term

—  
The number of weeks of instructional time in the program's academic year

(e) *Programs using clock hours or credit hours without terms.* The payment for a payment period for a student in a program using credit hours without terms or using clock hours is calculated by—

(1) Determining that the student is attending at least full-time;

(2) Determining the student's ACG or National SMART Grant Scheduled Award;

(3) Multiplying the amount determined under paragraph (e)(2) of this section by the lesser of—

(i)

The number of weeks of instructional time required for a full-time student to complete the lesser of the clock or credit hours in the program or the academic year

—  
The number of weeks of instructional time in the program's academic year

; or

(ii) One; and

(4) Multiplying the amount determined under paragraph (e)(3) of this section by—

The number of credit or clock hours in the payment period

—  
The number of credit or clock hours in the program's academic year

(f) *Maximum disbursement.* A single disbursement may not exceed 50 percent of any award determined under paragraph (d) or (e) of this section. If a payment for a payment period calculated under paragraphs (d) or (e) of this section would require the disbursement of more than 50 percent of a student's ACG or National SMART Grant Scheduled Award in that payment period, the institution shall make at least two disbursements to the student in that payment period. The institution may not disburse an amount that exceeds 50 percent of the student's ACG or National SMART Grant Scheduled Award until the student has completed the period of time in the payment period that equals, in terms of weeks of instructional time, 50 percent of the weeks of instructional time in the program's academic year.

(g) *Definition of academic year.* For purposes of this section, an institution must define an academic year for each of its eligible programs in terms of the number of credit or clock hours and weeks of instructional time in accordance with the requirements of 34 CFR 668.3.

(h) *Payment period with two academic years.* In a payment period, if a student is completing the remaining portion of the first academic year or second academic year for an ACG or the third academic year for a National SMART Grant Scheduled Award, the student's payment for the payment period—

(1) Is from the ACG or National SMART Grant Scheduled Award of the academic year being completed; and

(2) Is calculated based on the total credit or clock hours, and, for a credit-hour program, weeks of instructional time, in the payment period.

(Authority: 20 U.S.C. 1070a-1)

**§ 691.64 Calculation of a grant for a payment period which occurs in two award years.**

(a) If a student enrolls in a payment period that is scheduled to occur in two award years—

(1) The entire payment period must be considered to occur within one award year;

(2) The institution shall determine for each ACG or National SMART Grant recipient the award year in which the payment period will be placed subject to the restrictions set forth in paragraphs (a)(3) and (a)(6) of this section;

(3) The institution shall place a payment period with more than six months scheduled to occur within one award year in that award year;

(4) If the institution places the payment period in the first award year, it shall pay a student with funds from the first award year;

(5) If the institution places the payment period in the second award year, it shall pay a student with funds from the second award year; and

(6) The institution must assign the payment period for both the ACG or National SMART Grant and the Federal Pell Grant to the same award year.

(b) An institution may not make a payment that results in the student receiving more than his or her ACG or National SMART Grant Scheduled Award for an academic year of the student's eligible program.

(Authority: 20 U.S.C. 1070a-1)

**§ 691.65 Transfer student: Attendance at more than one institution during an academic year.**

(a) If a student who receives a grant under this part at one institution subsequently enrolls at a second institution in the same award year, the student may receive a grant at the second institution only if—

(1)(i) The student submits a valid SAR to the second institution; or

(ii) The second institution obtains a valid ISIR; and

(2) The student is receiving a Federal Pell Grant for the same payment period.

(b) The second institution shall calculate the student's award according to § 691.63.

(c) The second institution may pay a grant only for that portion of the academic year of the student's eligible program in which a student is enrolled at that institution. The grant amount must be adjusted, if necessary, to ensure that the grant does not exceed the student's ACG or National SMART Grant Scheduled Award for that academic year.

(d) If a student transfers between award years and the student's ACG or National SMART Grant Scheduled Award at the second institution differs from the ACG or National SMART Grant Scheduled Award at the first institution for that academic year of the student's eligible program, the grant amount at the second institution is calculated as follows—

(1) The amount received at the first institution is compared to the ACG or National SMART Grant Scheduled Award at the first institution to determine the percentage of the ACG or National SMART Grant Scheduled Award that the student has received.

(2) That percentage is subtracted from 100 percent.

(3) The remaining percentage is the percentage of the ACG or National SMART Grant Scheduled Award at the second institution to which the student is entitled.

(e) The student's ACG or National SMART Grant payment for each payment period is calculated according to the procedures in § 691.63 unless the remaining percentage of the ACG or National SMART Grant Scheduled Award at the second institution, referred to in paragraph (d)(3) of this section, is less than the amount the student would normally receive for that payment period. In that case, the student's payment is equal to that remaining percentage.

(f) A transfer student shall repay any amount received that exceeds his or her ACG or National SMART Grant Scheduled Award for an academic year in accordance with § 691.79.

(Authority: 20 U.S.C. 1070a-1)

**Subpart G—Administration of Grant Payments**

**§ 691.71 Scope.**

This subpart deals with program administration by an eligible institution.

(Authority: 20 U.S.C. 1070a-1)

**§§ 691.72–691.74 [Reserved]**

**§ 691.75 Determination of eligibility for payment.**

(a) For each payment period, an institution may pay a grant under this part to a student only after it determines that the student—

(1) Qualifies as a student who is eligible under § 691.15;

(2) Is enrolled as an undergraduate student in an eligible program;

(3) If enrolled in a self-paced credit-hour program without terms or a self-paced clock-hour program, as described in paragraph (e), is progressing as a full-time student after completing at least—

(i) Fifty percent of the credit or clock hours of the payment period for which the student is being paid; or

(ii) For a credit-hour program, 50 percent of the academic coursework of the payment period for which the student is being paid if the institution is unable to determine when the student has completed one-half of the credit hours of the payment period; and

(4) If enrolled in a credit-hour program without terms or a clock-hour program, has completed the payment period as defined in 34 CFR 668.4 for which he or she has been paid a grant.

(b)(1) If an institution determines at the beginning of a payment period that

a student is not maintaining satisfactory progress, but reverses that determination before the end of the payment period, the institution may pay a grant under this part to the student for the entire payment period.

(2) For purposes of the ACG Program, if an institution determines at the beginning of a payment period that a student enrolled in the second academic year of his or her eligible program is not maintaining the necessary GPA for an ACG under § 691.15(b)(1)(iii)(C), but reverses that determination before the end of the payment period, the institution may pay an ACG to the student for the entire payment period.

(3) For purposes of the National SMART Grant Program, if an institution determines at the beginning of a payment period that a student is not maintaining the necessary GPA for a National SMART Grant under § 691.15(c)(3) or is no longer pursuing a required major under § 691.15(c)(2), but reverses that determination before the end of the payment period, the institution may pay a National SMART Grant to the student for the entire payment period.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress or the necessary GPA for an ACG under § 691.15(b)(1)(iii)(C), a National SMART Grant under § 691.15(c)(3), or, in the case of a National SMART Grant is no longer pursuing a required major under § 691.15(c)(2), but reverses that determination after the end of the payment period, the institution may neither pay the student an ACG or a National SMART Grant for that payment period nor make adjustments in subsequent payments to compensate for the loss of aid for that period.

(d) Subject to the requirement of paragraph (d)(2), an institution may make one disbursement for a payment period to an otherwise eligible student if—

(1)(i) For the first payment period of the student's ACG for the second academic year, a student's GPA for the first academic year under § 691.15(b)(1)(iii)(C) is not yet available; or

(ii) For a payment period for a National SMART Grant, a student's cumulative GPA through the prior payment period under § 691.15(c)(3) for the student's enrollment in the eligible program through the prior payment period under § 691.15(c)(3) is not yet available; and

(2) The institution assumes liability for any overpayment as a result of the

student failing to meet the required GPA to qualify for the disbursement.

(e) For purposes of this section, a self-paced program is an educational program without terms that allows a student—

(1) To complete courses without a defined schedule for completing the courses; or

(2) At the student's discretion, to begin courses within a program either at any time or on specific dates set by the institution for the beginning of courses without a defined schedule for completing the program.

(Authority: 20 U.S.C. 1070a-1)

#### **§ 691.76 Frequency of payment.**

(a) In each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student's needs.

(b) The institution may pay funds in one lump sum for all the prior payment periods for which the student was eligible under § 691.15 within the award year. The student must have completed the prior payment period as a full-time student.

(Authority: 20 U.S.C. 1070a-1)

#### **§ 691.77 [Reserved]**

#### **§ 691.78 Method of disbursement—by check or credit to a student's account.**

(a) An institution shall disburse funds to a student or the student's account in accordance with the provisions in 34 CFR 668.164.

(b) The institution shall return to the ACG or National SMART Grant account any funds paid to a student who, before the first day of classes—

(1) Officially or unofficially withdraws; or

(2) Is expelled.

(c)(1) An institution that intends to pay a student directly must notify the student in accordance with 34 CFR 668.165(a).

(2) If a student does not pick up the check on time, the institution shall still pay the student if he or she requests payment within 20 days after the last date that his or her enrollment ends in that award year.

(3) If the student has not picked up his or her payment at the end of the 20-day period, the institution may credit the student's account only for any outstanding charges for tuition and fees and room and board for the award year incurred by the student while he or she was eligible.

(4) A student forfeits the right to receive the payment if he or she does not pick up a payment by the end of the 20-day period.

(5) Notwithstanding paragraph (c)(4) of this section, the institution may, if it chooses, pay a student who did not pick up his or her payment, through the next payment period.

(6) An institution shall make a late disbursement to an ineligible student in accordance with the provisions in 34 CFR 668.164(g).

(Authority: 20 U.S.C. 1070a-1)

#### **§ 691.79 Liability for and recovery of grant overpayments.**

(a)(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, a student is liable for any grant overpayment made to him or her under this part.

(2) The institution is liable for a grant overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part or 34 CFR part 668. The institution must restore an amount equal to the overpayment to its ACG or National SMART Grant account, as applicable.

(3) A student is not liable for, and the institution is not required to attempt recovery of or refer to the Secretary, a grant overpayment under this part if the amount of the overpayment is less than \$25 and is not a remaining balance.

(b)(1) Except as provided in paragraph (a)(3) of this section, if an institution makes an overpayment under this part for which it is not liable, it must promptly send a written notice to the student requesting repayment of the overpayment amount. The notice must state that failure to make that repayment, or to make arrangements satisfactory to the holder of the overpayment debt to repay the overpayment, makes the student ineligible for further title IV, HEA program funds until final resolution of the overpayment.

(2) If a student objects to the institution's overpayment determination on the grounds that it is erroneous, the institution must consider any information provided by the student and determine whether the objection is warranted.

(c) Except as provided in paragraph (a)(3) of this section, if the student fails to repay an overpayment under this part or make arrangements satisfactory to the holder of the overpayment debt to repay the overpayment, after the institution has taken the action required by paragraph (b) of this section, the institution must refer the overpayment to the Secretary for collection purposes in accordance with procedures required by the Secretary. After referring the overpayment to the Secretary under this section, the institution need make no

further efforts to recover the overpayment.

(Authority: 20 U.S.C. 1070a-1)

#### **§ 691.80 Redetermination of eligibility for a grant award.**

(a) *Change in receipt of Federal Pell Grant.* If, after the beginning of a payment period, a student otherwise eligible for an ACG or a National SMART Grant begins or ceases to receive a Federal Pell Grant for that payment period, the institution must redetermine the student's eligibility for an ACG or a National SMART Grant for that payment period.

(b) *Change in enrollment status.* (1) If the student's enrollment status changes from one payment period to another within the same award year, the institution shall determine whether the student qualifies for an ACG or a National SMART Grant for the new payment period.

(2)(i) If the student's projected enrollment status changes during a payment period after the student has begun attendance in all of his or her classes for that payment period, the institution may (but is not required to) establish a policy under which the institution may redetermine eligibility for the student's award for the payment period. If such a policy is established, it must apply to all students and be the same as the policy established for the Federal Pell Grant Program.

(ii) If a student's projected enrollment status changes to less-than-full-time during a payment period before the student begins attendance in all of his or her classes for that payment period, the institution shall determine that the student is ineligible for a grant under this part for that payment period.

(Authority: 20 U.S.C. 1070a-1)

#### **§ 691.81 Fiscal control and fund accounting procedures.**

(a) An institution shall follow provisions for maintaining general fiscal records in this part and in 34 CFR 668.24(b).

(b) An institution shall maintain funds received under this part in accordance with the requirements in 34 CFR 668.164.

(Authority: 20 U.S.C. 1070a-1)

#### **§ 691.82 Maintenance and retention of records.**

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

(b) For any disputed expenditures in any award year for which the institution cannot provide records, the Secretary

determines the final authorized level of expenditures.

(Authority: 20 U.S.C. 1070a-1, 1232f)

**§ 691.83 Submission of reports.**

(a)(1) An institution may receive either a payment from the Secretary for an award to an ACG or a National SMART Grant recipient, or a corresponding reduction in the amount of Federal funds received in advance for which it is accountable, if—

(i) The institution submits to the Secretary the student's Payment Data for that award year in the manner and form prescribed in paragraph (a)(2) of this section by September 30 following the end of the award year in which the grant is made, or, if September 30 falls on a weekend, on the first weekday following September 30; and

(ii) The Secretary accepts the student's Payment Data.

(2) The Secretary accepts a student's Payment Data that is submitted in accordance with procedures established through publication in the **Federal Register**, and that contains information the Secretary considers to be accurate in light of other available information including that previously provided by the student and the institution.

(3) An institution that does not comply with the requirements of this paragraph may receive a payment or reduction in accountability only as provided in paragraph (d) of this section.

(b)(1) An institution shall report to the Secretary any change in the amount of a grant for which a student qualifies including any related Payment Data changes by submitting to the Secretary

the student's Payment Data that discloses the basis and result of the change in award for each student. The institution shall submit the student's Payment Data reporting any change to the Secretary by the reporting deadlines published by the Secretary in the **Federal Register**.

(2) An institution shall submit, in accordance with deadline dates established by the Secretary, through publication in the **Federal Register**, other reports and information the Secretary requires and shall comply with the procedures the Secretary finds necessary to ensure that the reports are correct.

(3) An institution that timely submits, and has accepted by the Secretary, the Payment Data for a student in accordance with this section shall report a reduction in the amount of an award that the student received when it determines that an overpayment has occurred, unless that overpayment is one for which the institution is not liable under § 691.79(a).

(c) In accordance with 34 CFR 668.84, the Secretary may impose a fine on the institution if the institution fails to comply with the requirements specified in paragraphs (a) or (b) of this section.

(d)(1) Notwithstanding paragraph (a) or (b) of this section, if an institution demonstrates to the satisfaction of the Secretary that the institution has provided ACGs or National SMART Grants in accordance with this part but has not received credit or payment for those grants, the institution may receive payment or a reduction in accountability for those grants in accordance with paragraphs (d)(4) and either (d)(2) or (d)(3) of this section.

(2) The institution must demonstrate that it qualifies for a credit or payment by means of a finding contained in an audit report of an award year that was the first audit of that award year and timely submitted to the Secretary under 34 CFR 668.23(a).

(3) An institution that timely submits the Payment Data for a student in accordance with paragraph (a) of this section but does not timely submit to the Secretary, or have accepted by the Secretary, the Payment Data necessary to document the full amount of the award to which the student is entitled, may receive a payment or reduction in accountability in the full amount of that award, if—

(i) A program review demonstrates to the satisfaction of the Secretary that the student was eligible to receive an amount greater than that reported in the student's Payment Data timely submitted to, and accepted by the Secretary; and

(ii) The institution seeks an adjustment to reflect an underpayment for that award that is at least \$100.

(4) In determining whether the institution qualifies for a payment or reduction in accountability, the Secretary takes into account any liabilities of the institution arising from that audit or program review or any other source. The Secretary collects those liabilities by offset in accordance with 34 CFR part 30.

(Authority: 20 U.S.C. 1070a-1, 1094, 1226a-1)

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