

DEPARTMENT OF EDUCATION

34 CFR Parts 600, 602, 603, 668, 682, 685, 686, 690, and 691

[Docket ID ED-2010-OPE-0004]

RIN 1840-AD02

Program Integrity Issues

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary is improving integrity in the programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA), by amending the regulations for Institutional Eligibility Under the HEA, the Secretary's Recognition of Accrediting Agencies, the Secretary's Recognition Procedures for State Agencies, the Student Assistance General Provisions, the Federal Family Education Loan (FFEL) Program, the William D. Ford Federal Direct Loan Program, the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program in part 686, the Federal Pell Grant Program, and the Academic Competitiveness Grant (AGC) and National Science and Mathematics Access to Retain Talent Grant (National Smart Grant) Programs.

DATES: These regulations are effective July 1, 2011 with the exception of the revision of subpart E of part 668, Verification and Updating of Student Aid Application Information. Revised subpart E of part 668 is effective July 1, 2012. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of July 1, 2011.

FOR FURTHER INFORMATION CONTACT: For information related to the provisions on high school diplomas and verification of information on the Free Application for Federal Student Aid (FAFSA), Jacquelyn Butler. Telephone: (202) 502-7890 or via the Internet at: Jacquelyn.Butler@ed.gov.

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SUPPLEMENTARY INFORMATION: On June 18, 2010, the Secretary published a notice of proposed rulemaking (NPRM) for program integrity issues in the **Federal Register** (75 FR 34806).

In the preamble to the NPRM, the Secretary discussed on pages 34808 through 34848 the major regulations

proposed in that document to strengthen and improve the administration of programs authorized under the HEA. These proposed regulations included the following:

- Requiring institutions to develop and follow procedures to evaluate the validity of a student's high school diploma if the institution or the Secretary has reason to believe that the diploma is not valid or was not obtained from an entity that provides secondary school education;

- Expanding eligibility for title IV, HEA program assistance to students who demonstrate they have the ability to benefit by satisfactorily completing six credits of college work, or the equivalent amounts of coursework, that are applicable toward a degree or certificate offered by an institution;

- Amending and adding definitions of terms related to ability to benefit testing, including "assessment center," "independent test administrator," "individual with a disability," "test," "test administrator," and "test publisher";

- Consolidating into a single regulatory provision the approval processes for ability to benefit tests developed by test publishers and States;

- Establishing requirements under which test publishers and States must provide descriptions of processes for identifying and handling test score abnormalities, ensuring the integrity of the testing environment, and certifying and decertifying test administrators;

- Requiring test publishers and States to describe any accommodations available for individuals with disabilities, as well as the process a test administrator would use to identify and report to the test publisher instances in which these accommodations were used;

- Revising the test approval procedures and criteria for ability to benefit tests, including procedures related to the approval of tests for speakers of foreign languages and individuals with disabilities;

- Revising the definitions and provisions that describe the activities that constitute substantial misrepresentation by an institution of the nature of its educational program, its financial charges, or the employability of its graduates;

- Removing the "safe harbor" provisions related to incentive compensation for any person or entity engaged in any student recruitment or admission activity, including making decisions regarding the award of title IV, HEA program assistance;

- Clarifying what is required for an institution of higher education, a

proprietary institution of higher education, and a postsecondary vocational institution to be considered legally authorized by the State;

- Defining a *credit hour* and establishing procedures that certain institutional accrediting agencies must have in place to determine whether an institution's assignment of a credit hour is acceptable;

- Modifying provisions to clarify whether and when an institution must award student financial assistance based on clock or credit hours and the standards for credit-to-clock-hour conversions;

- Modifying the provisions related to written arrangements between two or more eligible institutions that are owned or controlled by the same person or entity so that the percentage of the educational program that may be provided by the institution that does not grant the degree or certificate under the arrangement may not exceed 50 percent;

- Prohibiting written arrangements between an eligible institution and an ineligible institution that has had its certification to participate in title IV, HEA programs revoked or its application for recertification denied;

- Expanding provisions related to the information that an institution with a written arrangement must disclose to a student enrolled in a program affected by the arrangement, including, for example, the portion of the educational program that the institution that grants the degree or certificate is not providing;

- Revising the definition of *unsubsidized student financial aid programs* to include TEACH Grants, Federal PLUS Loans, and Direct PLUS Loans;

- Codifying current policy that an institution must complete verification before the institution may exercise its professional judgment authority;

- Eliminating the 30 percent verification cap;

- Retaining the ability of institutions to select additional applicants for verification;

- Replacing the five verification items for all selected applicants with a targeted selection from items included in an annual **Federal Register** notice published by the Secretary;

- Allowing interim disbursements when changes to an applicant's FAFSA information would not change the amount that the student would receive under a title IV, HEA program;

- Codifying the Department's IRS Data Retrieval System Process, which allows an applicant to import income and other data from the IRS into an online FAFSA;

- Requiring the processing of changes and corrections to an applicant's FAFSA information;

- Modifying the provisions related to institutional satisfactory academic progress policies and the impact these policies have on a student's eligibility for title IV, HEA program assistance;

- Expanding the definition of *full-time student* to allow, for a term-based program, repeated coursework taken in the program to count towards a full-time workload;

- Clarifying when a student is considered to have withdrawn from a payment period or period of enrollment for the purpose of calculating a return of title IV, HEA program funds;

- Clarifying the circumstances under which an institution is required to take attendance for the purpose of calculating a return of title IV, HEA program funds;

- Modifying the provisions for disbursing title IV, HEA program funds to ensure that certain students can obtain or purchase books and supplies by the seventh day of a payment period;

- Updating the definition of the term *recognized occupation* to reflect current usage;

- Establishing requirements for institutions to submit information on students who attend or complete programs that prepare students for gainful employment in recognized occupations; and

- Establishing requirements for institutions to disclose on their Web site and in promotional materials to prospective students, the on-time completion rate, placement rate, median loan debt, program cost, and other information for programs that prepare students for gainful employment in recognized occupations.

Implementation Date of These Regulations

Section 482(c) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier and to specify the conditions under which the entity may implement the provisions early.

The Secretary has not designated any of the provisions in these final regulations for early implementation. As indicated in the **DATES** section, the regulations contained in subpart E of part 668, Verification and Updating of Student Aid Application Information are effective July 1, 2012.

While the Secretary has designated amended § 600.9(a) and (b) as being effective July 1, 2011, we recognize that a State may be unable to provide appropriate State authorizations to its institutions by that date. We are providing that the institutions unable to obtain State authorization in that State may request a one-year extension of the effective date of these final regulations to July 1, 2012, and if necessary, an additional one-year extension of the effective date to July 1, 2013. To receive an extension of the effective date of amended § 600.9(a) and (b) for institutions in a State, an institution must obtain from the State an explanation of how a one-year extension will permit the State to modify its procedures to comply with amended § 600.9.

Analysis of Comments and Changes

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, the Secretary must obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. The negotiated rulemaking committee did not reach consensus on the proposed regulations that were published on June 18, 2010. The Secretary invited comments on the proposed regulations by August 2, 2010. Approximately 1,180 parties submitted comments, a number of which were substantially similar. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not address minor, nonsubstantive changes, recommended changes that the law does not authorize the Secretary to make, or comments pertaining to operational processes. We also do not address comments pertaining to issues that were not within the scope of the NPRM.

General Comments

Comment: We received a significant number of comments that expressed support for the Secretary's proposed regulations. Many of the commenters noted that the proposed regulations would protect taxpayer investments in

only broadly applicable principles rather than responding to questions on individual compensation issues. These commenters asserted that institutions need guidance before they should be the subject of an investigation or legal action. They raised concerns about the confusion that could result without additional clarification and the attendant costs to partners in the student aid process in "today's legal environment." They believed that the Department already knows that guidance will be needed based on our pre-2002 experiences and noted that issuing guidance is a fundamental purpose of the Department and should be continued.

Discussion: The Department believes the proposed language is clear and reflective of section 487(a)(20) of the HEA. As modified, it is designed to appropriately guide institutions as they evaluate compensation practices. To the extent that ongoing questions arise on a particular aspect of the regulations, the Department will respond appropriately in a broadly applicable format and will distribute the information widely to all participating institutions. This response may include a clarification in a Department publication, such as the Federal Student Aid Handbook or a Dear Colleague Letter. The Department does not intend to provide private guidance regarding particular compensation structures in the future and will enforce the regulations as written.

Changes: None.

Satisfactory Academic Progress (§§ 668.16(e), 668.32(f), and 668.34)

General

Comment: Many commenters supported the proposed changes to the Satisfactory Academic Progress (SAP) regulations. Several commenters noted that the consolidation of the SAP requirements into § 668.34 would ease compliance and suggested that it would be helpful to revise the Federal Student Aid (FSA) Handbook to mirror the new organization of the requirements in the regulations.

Several commenters noted that they appreciated that the proposed SAP regulations retain the flexibility provided under the current regulations for institutions to establish policies that best meet the needs of their students.

Many commenters expressed support for the proposed changes to the SAP regulations because they viewed them as a means for helping hold students accountable for their academic goals earlier in their careers, which they believed would lead to lower student

debt levels. Several commenters noted that their current policy and practices either met or exceeded the requirements in the proposed regulations.

Many commenters supported, in particular, the definition of the terms *financial aid warning* and *financial aid probation* as well as the standardized definitions of other terms related to SAP. These commenters stated that this standardization would lead to a more consistent application of the SAP regulations among institutions, which, in turn, will make them more understandable to students.

Many commenters also supported the SAP regulations because they give those institutions that choose to evaluate SAP more frequently than annually the ability to use a financial aid warning status, which they viewed as being beneficial to students. They stated that such a warning would lead to early intervention for students who face academic difficulties. Commenters also noted that the financial aid warning status will allow financial aid offices to strengthen their SAP policies to encourage students to use designated support services on campus and lead to further student success.

Discussion: The Department appreciates the support of its efforts to improve program integrity through its SAP regulations. With regard to the comment recommending that we revise the FSA Handbook to align it with the changes we have made in the SAP regulations, we will take this recommendation into account during the next revision of the FSA Handbook.

Changes: None.

General

Comment: Several commenters did not support the proposed changes to the SAP regulations. Two commenters stated that the Department should delay implementation of the SAP regulations, including proposed § 668.34, so that we can resubmit these proposals for negotiation and evaluation in a future negotiated rulemaking proceeding. These commenters argued that the Department had not made a sufficient argument for what would be gained by the changes, and how these benefits would justify the additional burden imposed upon institutions by these regulations.

Two commenters stated that institutions were in the best position to design and implement a satisfactory academic progress policy that fit their institutional needs, and that the current regulations were sufficient for achieving this purpose. These commenters asserted that the proposed changes were intrusive and would lead to increased

audit exceptions. These commenters also noted that the Department should consider incentives to encourage institutions to research student success in light of their own SAP policies. One commenter stated that the proposed regulations were too prescriptive, and that institutions would require significant guidance in the FSA Handbook in order to be able to comply with the new regulations.

Two commenters stated that while they generally agreed with the Department's desire to clarify the SAP regulations and with the proposed approach reflected in the NPRM, the regulations had a number of unintended consequences. These commenters indicated that the Department's proposal would force institutions to choose whether to take on additional workload by evaluating students each term, or to take on the additional workload caused by the dramatic increase in appeals. One of the commenters noted as an example an institution that has a number of Alaskan Native students to whom it provides significant support, particularly early in their careers; in this case, the commenter stated that these students would be significantly harmed by these SAP regulations as the students often cannot remedy their academic problems in a short period of time. Both of these commenters noted that while the Department believes that it has to address abuses with the current regulations, that it should weigh this against the unintended consequences of the proposed regulations, which include increased workload for institutions and unfair impact on certain groups of students.

Discussion: The Department disagrees with the commenters who suggested that these regulations should be resubmitted for the negotiated rulemaking process. The proposed changes to the SAP regulations in §§ 668.16(e), 668.32(f), and 668.34 have already been through the negotiated rulemaking process. In fact, the negotiators reached tentative agreement on these proposed changes. During negotiations, most negotiators stated that it was appropriate for the Department to provide certain flexibilities for those institutions that chose to check on the satisfactory academic progress of students more often than was required by the statutory minimum of annually. Many of the negotiators said that they supported the proposed changes to the SAP regulations because they continued to provide significant flexibilities for institutions to craft SAP policies that met the needs of their student bodies

while still preserving program integrity. For the commenter who suggested that the Department should encourage institutions to study the consequences of their SAP policies and allow incentives for doing so, we will take this under advisement when we next have the opportunity to develop experimental site proposals.

We do not agree with the commenters who suggest that the SAP regulations are too prescriptive or intrusive. Section 484(c)(1)(A) of the HEA requires that an eligible student be making satisfactory progress towards program completion, and that institutions check at least annually for programs longer than a year, that a student is annually meeting that requirement. These regulations do not require institutions to do any more than what is required by the HEA, and are not more difficult to comply with than the current regulations. Therefore, institutions should not experience increased incidents of noncompliance. We will continue to provide any applicable and needed guidance in the FSA Handbook to assist institutions in complying with the regulations.

We do agree with the commenters who stated that an increase in SAP monitoring to a payment period by payment period basis would increase administrative burden. However, institutions are free to continue to monitor as frequently as they currently do, and are not required to change their SAP policy and monitor every payment period. As for the unintended consequences for particular groups of students, these regulations allow for institutions to craft SAP policies that best fit the needs of their students. An institution could evaluate the needs of any special student groups and find ways to work effectively with those students. For example, a specific student may need to have assistance developing an academic plan that will enable him or her to be successful.

Changes: None.

Delayed Implementation

Comment: Several commenters suggested that implementation of the proposed changes to §§ 668.16(e), 668.32(f) and 668.34 should be delayed for a couple of years to allow institutions to prepare their policies and procedures to comply with the regulatory changes. One commenter recommended that implementation be delayed until the 2012–13 award year to allow for institutions to make changes to their monitoring systems. Another commenter encouraged the Department to delay implementation of the regulations for SAP, but noted that if we do not delay implementation, then the

Department should issue guidance as to how the new regulations will affect summer crossover payment periods. This commenter expressed concern that, without this additional guidance, it will be unclear as to which SAP regulations apply to students enrolled in summer.

Discussion: While the Department appreciates that some institutions may have to make changes to computer monitoring systems, or written policies and procedures, we do not believe that the changes to the SAP regulations are extensive enough to warrant delayed implementation. Institutions that may have to adjust or change their SAP policy will have to publicize such a change to students, and let students know when any new SAP policy is effective. As such, the summer crossover payment period would be addressed by the school's new policy and would be subject to the effective date of the school's new policy. For example, a school may decide that for the purpose of this policy change, a 2011–12 summer crossover period will be subject to their current SAP policy and procedures, as part of the 2010–11 award year. This would be acceptable, and should be addressed in the school's notification to their students of the effective date of any new policy.

Changes: None.

Satisfactory Academic Progress (§ 668.34)

Comment: Two commenters stated that the term “financial aid applicants” should be substituted for the word “students” in § 668.34. The commenters indicated that students who had not applied for financial aid would be confused by notifications about eligibility under the SAP regulations. These commenters argued that institutions should only be required to send notifications to financial aid applicants, and that the proposed requirement that notifications be sent to all of an institution's students is unreasonable.

Discussion: There is no requirement in the proposed regulations for schools to notify students who are not applying or receiving title IV, HEA aid of their eligibility under SAP. These regulations do not impose such a requirement. Moreover, we do not believe it is necessary to replace the term “student” with the term “financial aid applicant” in these regulations since we are referring to general student eligibility criteria, which affect not only financial aid applicants, but recipients of title IV, HEA funds as well. There is no attempt to regulate any other students in these regulations.

Changes: None.

Consistency Among Categories of Students

Comment: One commenter noted that proposed § 668.34(a)(2) retained the language from current § 668.16(e)(3) that the institution's policy must be consistent among categories of students. This commenter questioned whether, within the categories of students, an institution could evaluate sub-categories of students differently. For example, within the group of undergraduate students, could an institution choose to evaluate freshmen and sophomore students every payment period but upperclassmen only once a year. The commenter noted that this approach might be used if the institution determined that students in the first two years needed more intervention, and that after that time students were more likely to remain enrolled until graduation. The commenter also asked if this approach is allowable, could the institution use a financial aid warning for those students who are evaluated every payment period.

One commenter noted that proposed § 668.34(a)(2) does not appear to allow for different evaluation periods based upon the type of student or program being evaluated. For example, this commenter noted that an institution may want to evaluate undergraduates each payment period and evaluate graduate students annually. The commenter proposed changes to the regulatory language that would allow for such a difference.

Discussion: These regulations retain the flexibility for an institution to evaluate different categories of students differently, as long as the policy provides for consistent application of standards within each of the categories of students. Institutions retain flexibility to create a policy within those groups of students to best meet the needs of its student body. If they wish to institute a policy that evaluates freshmen and sophomores every payment period, and juniors and seniors annually, an institution is free to do so. Such a policy would only allow for the automatic financial aid warning status to be used for those students who are evaluated every payment period. This would, however, allow for a policy that is sensitive to the needs of the institution's student body. For this reason, we do not believe that any changes are needed to respond to the commenters' concerns.

Changes: None.

Frequency of Evaluation

Comment: One commenter supported the proposed regulations, but expressed concern that an institution may not have

time prior to the start of the next term to evaluate SAP, thereby resulting in students owing a repayment of title IV, HEA funds. Several commenters noted that for some academic periods there is not enough time to evaluate students prior to the beginning of the next payment period. These commenters noted that this is particularly true for institutions with quarters and even most traditional calendar schools for the period after the summer term. One commenter stated that, in order to accommodate the realities of institutions that use the quarter system, all institutions that monitor their students' satisfactory academic progress more frequently than annually should be allowed to use the financial aid warning status.

Several commenters argued that the Department should not require institutions to evaluate more frequently than annually. Numerous commenters did not agree with the Department giving additional flexibilities to those institutions that evaluate the satisfactory academic progress of its students each payment period rather than annually.

One commenter stated that it was unfair to "pressure" institutions to check a student's satisfactory academic progress more frequently than once per year, particularly if they have stable student populations and good graduation rates. This commenter argued that these types of institutions should be allowed to use the flexibility of the financial aid warning status even if they monitored SAP less frequently than every payment period. Another commenter representing an association noted that some of its members objected to what they perceived as the Department restricting flexibility when an institution is in compliance with the minimum yearly requirement established under section 484(c)(1)(A) of the HEA. Another commenter argued that it would decrease student success to require all institutions to check satisfactory progress each payment period, as students would not know from one term to the next what their eligibility for aid might be. This commenter expressed concern that this would particularly disadvantage low income and minority students.

One commenter argued that by strengthening other parts of the SAP regulations, only one probationary period for example, abuses could be curtailed, and institutions would not be encouraged to create more lenient policies.

Discussion: The Department appreciates the fact that there could be an increased administrative burden for some institutions to change the

frequency with which they monitor the satisfactory academic progress of their students to a payment period-by-payment period basis. However, changing the frequency for monitoring satisfactory academic progress is not required under these regulations; institutions still have the flexibility to create a policy that best meets the needs of their student body. If an institution believes, for example, that evaluating SAP every payment period would create too much uncertainty for their students, then they are not required to develop such a policy.

With respect to the commenter who suggested that institutions with stable student populations and good graduation rates should be able to use the flexibility of the financial aid warning status even if they monitored SAP on an annual basis, we do not believe it is appropriate to allow extended periods of financial aid warning because this is essentially providing title IV, HEA aid to students who are not making progress towards program completion. We understand that some institutions believe that the Department is unfairly placing restrictions on institutions that choose to stay with minimum annual evaluations, or to evaluate less frequently than every payment period. However, we do not believe that it is appropriate to continue to allow a student who does not meet eligibility criteria to continue to receive title IV, HEA funds without a formal intervention by the institution in the form of an appeal approval or an academic plan.

Changes: None.

Comment: Several commenters noted that students who attend quarter schools face an inequity under proposed § 668.34 in that they could lose title IV, HEA eligibility after 20 weeks, whereas for a student at a semester school, they could lose title IV, HEA eligibility after 30 weeks, which is an academic year. These commenters asserted that this subjects the student at a quarter school to more rigorous evaluation. These commenters expressed concern that institutions might choose to evaluate the SAP of their students annually in order to level the playing field for their students, as well as relieve administrative burden.

One commenter expressed concern that the term "annually" in § 668.34 was subject to interpretation and that questions would arise as to whether this term referred to every calendar year, every 12 months, or every academic year. This commenter suggested that the Department revise § 668.34(a)(3)(ii) and

(d) to refer to "every academic year" rather than "annually".

Discussion: The Department notes that a student in a quarter program would be evaluated three times in an academic year, while the student in a semester program would be evaluated twice in an academic year. While some institutions may view this as a more rigorous evaluation, it also allows more opportunities for intervention by the institution. We would hope that an institution would develop a policy that would best serve the needs of students, and that if the institution believes that more frequent evaluations would be beneficial, that it would work with faculty and other parties to attempt to make such a review possible, for example, by shortening the amount of time that it takes grades to become available for evaluation.

The Department notes that institutions that currently review student progress annually choose to review all students at a specific point in time, such as at the end of the spring term or spring payment period. The Department agrees that this is an appropriate and reasonable institutional policy for an institution that reviews academic progress annually. We do not believe that further regulatory language is necessary to specify that the reviews happen every academic year because if the review happens annually, it necessarily will happen every academic year.

Changes: None.

Comment: Several commenters indicated that the proposed SAP regulations will not work well for nonterm and nonstandard term programs. They noted that because students in these types of programs complete payment periods at various points during the year, institutions with these types of programs would be unable to evaluate SAP at the end of each payment period. One commenter specifically asked the Department to clarify how SAP in a nonterm program could be evaluated under proposed § 668.34. Another commenter noted that institutions with 8-week terms would find it overly burdensome to evaluate academic progress every payment period. This commenter indicated that an unintended consequence of the proposed changes reflected in § 668.34 would be that institutions with nonstandard term or nonterm programs would evaluate less frequently than currently, due to the administrative burden. Several commenters suggested that to avoid this unintended consequence, the regulations should allow institutions with nonterm programs to set evaluations based upon

calendar dates rather than payment period completion. One commenter stated that these "scheduled satisfactory academic progress calculation" periods could then be used as the basis for the student's continued receipt of aid or placement on financial aid warning. This commenter also suggested that we revise § 668.34 to make the financial aid warning status available to those institutions with nonterm programs that evaluate student academic progress more frequently than annually but not in conjunction with payment periods. The commenter expressed that much confusion will result if the Department does not address how institutions with nonterm programs, where the annual review date chosen for SAP review does not coincide with a payment period, can comply with these regulations.

Another commenter stated that the Department should consider studying different instructional delivery models in order to determine how to best regulate accountability for institutions that need to evaluate SAP for students in nonstandard programs.

Discussion: The Department recognizes the complicated monitoring that institutions with nonterm and nonstandard term programs will need to implement to comply with § 668.34 for evaluating the academic progress of students in these programs, if they choose to evaluate SAP on a payment period-by-payment period bases. This is because, for these programs, institutions could have students completing payment periods on a daily basis. We understand why institutions may find it easier to set one particular calendar date to evaluate the SAP of all of their students in these programs. However, we do not believe that this approach will work because on any given date, any particular student could be at the beginning, middle, or end of a payment period. The SAP review must account for completed coursework, and students in the middle of a payment period, for example, might still have days or weeks to go to finish that work. We do believe that the institution could set a particular time period when it evaluates SAP for all of its students. For example, the institution could set a policy that SAP evaluation will occur for all students upon the completion of the payment period in a given month(s). The evaluation would then include all of the coursework that an individual student completes for the payment period completed in that month. We do not believe that evaluating students at any moment in time other than at the end of a payment period is an appropriate measure of the student's current progress towards program completion,

as it is not generally possible to evaluate the work in progress. By evaluating all of the most recently completed work, a SAP evaluation will be most accurate in portraying a student's progress, and will enable the institution to evaluate SAP prior to making the payment for the next payment period thereby insuring payments only to eligible students. We have, therefore, made a change to the proposed regulations to clarify that the evaluation must occur at the end of a payment period. With regards to the commenter who suggested that the Department should conduct a study in order to determine the best way to regulate accountability for students in nontraditional programs, we will take their recommendation under advisement.

Changes: We have revised § 668.34(a)(3)(ii) to provide that, for programs longer than an academic year in length, satisfactory academic progress is measured at the end of each payment period or at least annually to correspond to the end of a payment period.

Comment: Two commenters noted that the proposed SAP regulations do not address students with disabilities and their needs, especially during the appeals process, as such students may need several appeals.

Discussion: When evaluating a student appeal under § 668.34, an institution may take into consideration factors that could have affected the student's academic progress. These factors can include whether the student has a disability or other extenuating circumstances. Additional considerations may also be given in an academic plan for a student who has a disability as long as applicable title IV, HEA program requirements are followed. Therefore, we do not believe that it is necessary to include any additional regulatory language on evaluating the SAP of students with disabilities or the appeals process for those students.

Changes: None.

Comment: One commenter, who expressed concern that the proposed SAP regulations were cumbersome, asked whether the regulations would permit two specific types of situations. First, the commenter asked whether an institution could retain the ability to utilize the financial aid warning status if its SAP policy stated that it would begin monitoring a student's academic progress after the student's first academic year, and then continue to monitor the student's progress every payment period thereafter. Second, the commenter asked whether a student could continue to receive title IV, HEA aid without further appeal if the student is in financial aid warning status and he

or she submits, and continues to meet the terms of, an acceptable academic plan.

Discussion: The proposed regulations allow for significant flexibilities for institutions. If the institution wishes to monitor at different periods in time, such as at the end of the first year, and then by payment period after that, it is free to do so. In this situation, only those students who are evaluated each payment period may receive the automatic financial aid warning status.

With regard to the second scenario described by the commenter, a student who has appealed a determination that he or she is not meeting satisfactory academic progress and is attending his or her program under an approved academic plan because he or she is on financial aid warning status remains eligible for title IV, HEA aid as long as he or she continues to meet the conditions of that plan. In such a situation, the student's academic progress would simply be re-evaluated at the same time as the institution's other title IV, HEA aid recipients are evaluated, unless its policy called for a different review period.

Changes: None.

Comment: One commenter noted that at his institution summer is considered a trailing term, and the institution evaluates SAP at the end of the spring term. The commenter asked whether summer coursework could be used retroactively as part of the student's academic plan. The commenter also questioned whether the institution could state in its SAP policy that it reviews SAP after all work for the academic year is completed. Under this approach, the institution would review some students in the spring and others after they complete summer term. Another commenter asked how to handle an optional summer term.

Discussion: An institution may choose to state in its SAP policy that it monitors academic progress at the end of the student's completion of the academic year. These SAP regulations still leave the flexibility to the institution to determine what policy will best serve its students. We note, however, that under an institution's SAP policy, the institution must evaluate all of the student's coursework at some point, and that the financial aid warning status described in § 668.34(b) is only available to institutions that evaluate a student's academic progress every payment period.

If an institution evaluates SAP by payment period, then it would evaluate a student's academic progress at the end of each payment period that the student attends. If the institution evaluates SAP

annually, then it would evaluate all of the coursework that the student has attempted and completed since the last annual evaluation to determine whether the student is making satisfactory academic progress. There are no periods of the student's attendance that are not considered in the evaluation.

Changes: None.

Minimum GPA

Comment: One commenter noted that, under current § 668.34(b), a student must have a "C" average or its equivalent after two years in order to make satisfactory academic progress. The commenter noted that the Department's guidance in this area has been that the student must have a "C" average or its equivalent after two years of attendance, regardless of the student's enrollment status during that time. The commenter stated that proposed § 668.34(4)(ii) states that the "C" average is required at the end of two academic years. The commenter asked the Department to clarify whether the use of the phrase "two academic years" as opposed to the phrase "two years" results in any substantive change in how the Department interprets this requirement. Another commenter stated that the current regulations are sufficient in this area, because they allow institutions to interpret the phrase "two years" in the way that is best for their students.

Discussion: The term "academic year" is used in section 484(c)(1)(B) of the HEA, which states that a student is considered to be maintaining satisfactory academic progress if the student has a cumulative "C" average, or its equivalent or academic standing consistent with the requirements for graduation, as determined by the institution, at the end of the second such academic year. We changed the reference from "year" to "academic year" in § 668.34 to more closely align this regulatory language with the corresponding statutory language. This change, however, does not alter the Department's interpretation that this requirement means that a student must have a "C" average or its equivalent after two years of attendance, regardless of the student's enrollment status.

Changes: None.

Pace

Comment: Two commenters noted that proposed § 668.34(a)(5)(ii) states that an institution is not required to include remedial coursework when determining the attempted and completed hours for purposes of evaluating a student's pace toward completion of the program. Both commenters requested clarification that

an institution may, but is not required to, include remedial coursework when making its SAP determination.

Discussion: It is the Department's longstanding position that an institution is not required to include remedial courses when calculating the student's progress towards program completion. While an institution is not required to include remedial courses when calculating pace under the SAP analysis, it may do so as long as its SAP policy otherwise meets the requirements in § 668.34.

Changes: None.

Comment: One commenter, who noted that its students enter a program at multiple points during the year, asked the Department to clarify how to calculate a student's "pace" toward program completion under proposed § 668.34(a)(5)(ii). This commenter also asked whether full time or part time enrollment should be used to calculate pace toward completion under these regulations. Another commenter asked the Department to clarify how pace relates to maximum timeframe under these regulations. This commenter questioned whether a time component of weeks or months to program completion needed to be part of the pace measurement. Another commenter expressed concern that proposed § 668.34(a)(5) is less clear than a strict percentage of completion policy. This commenter, who came up with a 67 percent minimum required completion rate when applying the pace formula and the maximum timeframe requirements to the normal BA graduation requirements, argued that the Department should revise the regulations to list the minimum completion rate that would allow a student to complete his or her program in a 150 percent maximum timeframe (67 percent completion in the commenter's calculation).

This commenter also stated that any institution that had a stricter than minimum SAP policy, such as higher required completion rates, should be allowed to use the financial aid warning status, even if it only checked SAP on an annual basis. The commenter stated that this would allow those institutions with stricter policies and high completion rates to use the flexibility offered through the use of the financial aid warning status.

Discussion: Proposed § 668.34(a)(5)(i), together with the definition of *maximum timeframe* in § 668.34(b), defines "pace" for purposes of SAP evaluations; it is the pace at which a student must progress through his or her educational program to ensure that the student will complete the program

within the maximum timeframe and provides for measurement of the student's progress at each SAP evaluation. Proposed § 668.34(a)(5)(ii) provides the formula that an institution must use at each SAP evaluation to calculate pace: divide the cumulative number of hours the student has successfully completed by the cumulative number of hours the student has attempted. This calculation is to be used regardless of the student's enrollment status, as the formula is designed to measure completion appropriately for each student regardless of whether that student attends full time or part time. The Department believes that these requirements for measuring pace toward program completion provide maximum flexibility for both students and institutions. Students are free to attend at whatever enrollment status is appropriate for them, and institutions can measure the pace as appropriate for their students. Because a graduated pace standard (*i.e.*, 50 percent the first year, 60 percent the second year, and 70 percent every year thereafter) is permissible, the Department does not believe it is appropriate to regulate a specific completion rate for all students in all programs at all institutions.

Changes: None.

Transfer Credits

Comment: Several commenters stated that, for purposes of calculating pace toward program completion under § 668.34(a)(5), transfer credits should only count in the completed hours category, but not the attempted hours category, because those credits were not taken at the institution determining SAP. Another commenter stated that transfer credits should only be counted in the attempted hours category but not the completed hours category. One commenter requested clarification as to whether the requirement in § 668.34(a)(6) to count transfer credits as both attempted and completed means that institutions are required to request and evaluate all applicable transcripts.

Discussion: Whether or not an institution evaluates the transcripts of all coursework taken by a student at previous institutions is a decision left to the institution. The Department has not required institutions to request transcripts for previously completed work, and is not doing so now. However, in so much as credits taken at another institution are accepted towards the student's academic program under the institution's academic requirements, we do believe it is appropriate to include those credits in both the attempted and completed hours

category when measuring pace towards completion for each SAP evaluation period.

Changes: None.

Comment: One commenter recommended that the Department revise § 668.34(a) to require transfer credits to be considered when determining progress towards maximum timeframe, but not for purposes of determining the pace of completion for each evaluation period. This commenter stated that counting transfer credits when looking at each evaluation period would give transfer students an unfair advantage in the pace to completion calculation.

Another commenter noted that the practice of excluding courses that were not degree applicable from the pace calculation for evaluating SAP has prompted many students to change majors in order to retain financial aid eligibility. The commenter opined that this practice leaves the door open to abuse of the system. Additionally, the commenter stated that the Department should require that all courses that the student had attempted and completed in his entire career be included in the pace computation for purposes of determining the student's progress toward program completion.

Discussion: The Department acknowledges that transfer students may have a slight advantage over other students when an institution calculates their pace toward program completion. However, this inclusion of transfer credits in the calculation of pace will allow for a more level playing field for all students, and standardize treatment of completed credits in the SAP evaluation. This is because including transfer credits in the calculation of pace means we are considering all completed work for all students.

We also note that the Department has had a longstanding policy that institutions are free to set their own SAP policy that deals with major changes as they relate to measurement of maximum timeframe. Therefore, if an institution wishes to limit the number of major changes that it will allow a student, then it is free to set a policy that does so.

Changes: None.

Financial Aid Probation and Financial Aid Warning Statuses

Comment: Many commenters found the definitions of the terms *financial aid warning* and *financial aid probation* in proposed § 668.34(b) to be helpful. These commenters stated that it was very useful to have standard vocabulary to use when discussing SAP. Some commenters noted that these terms and

concepts matched their current policy while others requested slight changes to the terms or definitions so that they align more closely with their own institution's policies. Several commenters sought clarification, however, as to whether institutions are required under these regulations to use the newly defined terms of *financial aid warning* and *financial aid probation* in their consumer information and other communications with students, or whether we would allow them to continue to use their current terminology. These commenters expressed concern that their students might be confused if they changed the terminology used in this area.

Discussion: The Department intends to allow institutions to have as much flexibility as possible in developing an appropriate SAP policy for their institution as well as consumer information materials for their students. However, institutions must incorporate these regulations changes into the information that they provide to students; this includes ensuring that the information made available by the institution uses the terminology used in these regulations.

Changes: None.

Comment: Several commenters expressed support for the addition of the concept of a financial aid warning status, but believed that the use of this status should be available to all institutions, regardless of how often they performed a SAP evaluation. Some of the commenters asserted that this would allow institutions additional flexibility in administering SAP that would be beneficial for students. Some commenters also noted that it would be an administrative burden to review students more frequently. Others indicated that they had stable student populations and did not need to evaluate more often than annually. At least one commenter opined that schools with good graduation and completion rates should be able to use the financial aid warning status regardless of how often they checked SAP. Some commenters argued that the financial aid warning status should be an option for all institutions to use automatically and without intervention, and for periods as long as a year or until the next scheduled evaluation. One commenter suggested that in exchange for allowing all institutions to use the financial aid warning status regardless of how often they evaluate students' academic progress, institutions should be required to remind students of their SAP standards at the end of any payment period in which an evaluation is not done. Some commenters wanted

to know if the financial aid warning status could be used to evaluate a student's progress and to help to prepare an academic plan and appeal for the student, so that the student would not suffer a lapse in eligibility.

Discussion: While we appreciate the fact that institutions support the flexibility that the financial aid warning status provides, the Department feels strongly that this option should only be available when an institution evaluates SAP each payment period. It is important to remember that a student who is on a financial aid warning status is one who is not actually meeting SAP standards.

If an institution has a stable student population and does not believe it needs to evaluate SAP each payment period, then it is not required to do so. We recognize that there is an additional administrative burden involved for institutions to evaluate every payment period, but we also believe students benefit from the early intervention of this approach. We believe that this approach will impact favorably on student completion rates, as well as help minimize student debt levels for those that are not on track to complete a program successfully. We note that, during the negotiated rulemaking process, several negotiators had a SAP policy that required checking a student's academic progress each payment period. These negotiators related numerous student success stories that resulted from early intervention. This demonstrated success with this approach led to the negotiators supporting the proposed SAP regulations.

We believe that it is important to get students back on track as soon as possible, and not allow the continued provision of title IV, HEA aid to students who are not making progress towards program completion under the institution's SAP standards. Allowing a financial aid warning status for one payment period allows the institution to provide an alert to that student of his status, as well as provide any needed support services. The institution could use the time to meet with the student and, if the situation means that an appeal will be necessary, to help the student prepare that appeal or to prepare an academic plan. The same benefit is not realized if the student simply receives notice of the institution's SAP policy, as he may not understand his individual status with regards to the policy.

Changes: None.

Comment: Several commenters expressed support for the financial aid warning and financial aid probation

statuses proposed in § 668.34, but requested that the Department add to the SAP regulations a defined term for a student who has lost eligibility for title IV, HEA aid as a result of an institution's evaluation under the SAP regulations. Several other commenters questioned what status would be assigned to a student who was reinstated on an academic plan and was making progress under that plan. These commenters wondered whether these individuals would still be considered to be on financial aid probation status, or if the Department planned to define another term to refer to them.

Discussion: A student who is not meeting SAP is simply not eligible to receive title IV, HEA aid, as he or she does not meet one of the basic student eligibility criteria. For this reason, we do not believe it is necessary to define another term to describe this individual, just as we do not have specific terms to describe students who may not be meeting other basic student eligibility criteria.

A student who has been reinstated to eligibility under an academic plan and is making progress under that plan is considered to be an eligible student. The student is not considered to be on financial aid warning status or financial probation status, provided he or she is otherwise making satisfactory progress.

Changes: None.

Comment: A few commenters argued that proposed § 668.34(c) could be interpreted to allow an institution to place a student on financial aid warning status for more than one payment period, and that, under this interpretation, the student would be able to get title IV, HEA aid for multiple payment periods when the student is on financial aid warning status as long as the student was within range of moving into compliance with the institution's SAP standards. These commenters stated that the language in § 668.34(c) does not need to be interpreted so narrowly so as to limit the number of payment periods during which a student could be placed on financial aid status to one payment period.

Other commenters suggested that students could develop and follow an academic plan during the period of their financial aid warning and that this approach would allow for students to be put on financial aid warning status for multiple periods. These commenters all opined that there was a range of deficiencies within any category of student failure, and that students may require differing amounts of intervention to get back on track to meet the institution's SAP standards. The commenters stated that institutions

should be able to define different bands of need for assigning financial aid warning statuses. Several other commenters requested that the Department clarify that students may be placed on financial aid warning or financial aid status for multiple payment periods throughout their academic careers.

Other commenters asked the Department to clarify whether the requirements around financial aid warning or financial aid probationary statuses allow students to receive title IV, HEA aid for more than one payment period. One commenter indicated that lack of financial aid during a period in which the student is on financial aid probationary status would cause problems for students. The commenter stated that this would cause barriers for the most needy and at-risk students.

Discussion: The financial aid warning status and the financial aid probationary status are both defined in § 668.34(b). A student who has not made satisfactory academic progress and is placed under one of these statuses may continue to receive title IV HEA aid for one payment period only, under very specific circumstances. We do not intend for the language in § 668.34(b) to be interpreted in any other fashion. To respond to the commenter who believed that lack of financial support during this period would disadvantage students, it is important to note that both of these statuses provide for one payment period of title IV, HEA funds. It is possible for institutions that are able to use the financial aid warning status to do any sort of intervention with a student that they deem appropriate during the period of time the student is in that status, including help them to prepare an appeal or refer them to other student support services. We do not believe that it is appropriate, however, to continue placing students on a financial aid warning status for more than one payment period because these are students who are not making progress toward program completion. We do not believe it is appropriate to put the student on an academic plan and simply continue such a plan without an appropriate appeal. This is because we believe that a student should be required to file an appeal and explain the reason that he or she has not been able to meet the SAP standards, and what in his or her situation has changed. It is important for the student to have ownership in his or her current situation and the resulting academic plan, with an understanding of the consequences the student faces if he or she fails to follow the academic plan. We do agree with the commenters who

suggest that it is possible for a student to be subject to more than one period of financial aid warning, or to submit more than one appeal throughout an academic career, if the institution's SAP policy allows it.

Changes: None.

Comment: Numerous commenters objected to the requirement in the proposed regulations for institutions to check SAP on a payment period-by-payment period basis. They argued that it is unreasonable for the Department to impose such a requirement on institutions that do not have any history of abuse in this area and that otherwise have good SAP policies. These commenters noted that it would be overly burdensome to require institutions to change their SAP procedures to require SAP evaluations every payment period.

Discussion: Section 668.34(a)(3) is consistent with current § 668.16(e)(2)(ii)(B), which requires institutions to check academic progress for programs that are longer than an academic year at least annually. While institutions can check academic progress for these programs more frequently, they are not required to do so. Under these regulations, institutions are only required to evaluate satisfactory academic progress more frequently if the program is shorter than an academic year.

Changes: None.

Comment: A couple of commenters asked the Department to confirm that the financial aid warning and financial aid probation status would be applied to the student's next payment period (following the institution's determination that the student is not maintaining SAP) and not simply to the next payment period at the institution. These commenters argued that it was important to apply the status to the student during the next term that the student was actually in attendance.

One commenter believed that a program of an academic year in length or shorter should not be allowed to use the financial aid warning status because a student in such a program would never be denied title IV, HEA funds for not making SAP.

Discussion: Under these regulations, an institution would apply the financial aid warning or financial aid probation status to a student during the student's next period of attendance. It is not reasonable to assume that the student would be considered to be on financial aid warning, for example, if he or she were not in attendance. For shorter programs (*i.e.*, those that are an academic year or less), the definition of a payment period does not allow

disbursement of aid until the student has successfully completed the previous payment period. For such programs, if an institution places the student on financial aid warning, the student will either complete the program or withdraw. If the student completes the program, then he or she has been successful. If he or she withdraws, then the return of funds requirements in § 668.22 will apply. In either case, the student received only those funds for which he or she was eligible. We do not plan to make any changes in this area.

Changes: None.

Appeals

Comment: Many commenters agreed with allowing students who would otherwise lose eligibility for title IV, HEA aid to appeal the loss of eligibility. Some commenters expressed concern that the requirements for an appeal were too prescriptive; for example, the commenters noted that § 668.34(b) requires that students articulate what had changed in their situation and that students might not be able to comply with this requirement. Other commenters stated that the Department should make the SAP appeal regulations more prescriptive, including by specifying the type of documentation required to be submitted with an appeal. Several commenters believed that it was too burdensome on institutions to require them to address student appeals, while others stated that it was too burdensome to require institutions to develop or evaluate academic plans for students who appeal.

Discussion: These SAP regulations do not require that an institution accept or evaluate student appeals of determinations that the student is not making SAP. Moreover, the regulations do not require institutions to develop or process an academic plan for a student who appeals. These are merely offered as options for institutions who wish to allow those students who are no longer meeting the SAP standards to continue to receive title IV, HEA aid. It is important to note that an academic plan for a student may be as complicated as a course by course plan toward degree completion, or as simple as a mathematical calculation that specifies the percentage of coursework that the student must now complete. Academic plans need not be complicated or detailed; the purpose of these plans is merely to put the student on track to successful program completion. Section 668.34(a)(10) does require that an institution that does not accept appeals notify students as to how eligibility for title IV, HEA aid can be regained by those who do not meet SAP standards.

An institution is free to craft a SAP policy that allows appeals or not, and to specify when and how such appeals will be permitted as well as how often and how many times a student may appeal. Likewise, an institution may or may not allow an academic plan to be submitted for a student. The SAP policy of the institution should specify the conditions under which an academic plan might be approved, or if one will be considered at all. Because institutions have significant flexibility in this area, the Department does not believe that these regulations will impose any additional burden.

Changes: None.

Comment: Some commenters requested clarification as to when students on an academic plan would be evaluated. Several commenters requested that we clarify that a student may submit more than one appeal during the course of his or her academic career. A couple of commenters inquired whether students could appeal the 150 percent completion requirement, and exceed this maximum timeframe if they are progressing under an approved academic plan.

One commenter also asked the Department to clarify what is meant by the requirement in § 668.34(c)(3)(iii)(B) and (d)(2)(iii)(B) that an academic plan ensure that the student meet the SAP standards at a specific point in time. The commenter noted that the student could actually be able to graduate the following term, and questioned whether an appeal could be approved at that point.

Discussion: Under these regulations, the institution has the flexibility to specify whether students on an academic plan would have their academic progress evaluated at the same time as other students, or whether they would be subject to more frequent SAP evaluations. They should determine what is best for students and make their policy clear in their SAP standards.

As noted earlier in this preamble, an institution also retains flexibility under these SAP regulations to allow multiple appeals by an individual student. Alternatively, an institution could decide not to allow appeals at all. We note, however, that because pace to program completion within 150 percent of the published length of the educational program is required to be evaluated each SAP evaluation period, it would be reasonable to assume that a student who is not meeting the institution's SAP standards is not on schedule to complete the program within the required maximum timeframe. Therefore, this component of the SAP standards would be subject to

appeal, if the institution chooses to permit appeals. Finally, we expect institutions to assist a student who appeals on this basis to plot a course to successful completion within a new maximum timeframe and to then monitor this pace toward completion. Any academic plan would need to take into account the student's progression to completion of his or her program, which could, in fact, be the next term.

Changes: None.

Maximum Timeframe

Comment: Several commenters stated that the Department should clarify the 150 percent maximum timeframe requirement. One of the commenters noted that § 668.34(b) did not define maximum timeframe, as applied to programs that are a combination of credit and clock hours or a combination of undergraduate and graduate work. One of the commenters argued that the final regulations should reinforce the 150 percent maximum timeframe requirement for all programs. Another commenter stated that we should clarify that the 150 percent maximum timeframe only applies to determining title IV, HEA eligibility. This commenter suggested that this maximum timeframe should not be used for other purposes. For example, the commenter stated that it was not appropriate for the Government to determine whether or not a student should be allowed to complete a degree simply because title IV, HEA eligibility had run out. Another commenter asked whether the 150 percent maximum timeframe applied to the student's entire academic career or only to the student's current academic program. The commenter gave the example of a student who had one degree, and asked if an institution would include those earned credits when evaluating whether the student was progressing in his or her program within the maximum timeframe.

Discussion: The Department believes in allowing institutions the flexibility to define the 150 percent maximum timeframe in the most appropriate way for the program in question. In particular, individual institutions are in the best position to determine whether their combined programs, such as those noted by the commenters, should be evaluated as the sum of its parts (*i.e.*, part clock hour and part credit for example) or as one type of program based on the structure of the majority of the program.

The 150 percent maximum timeframe only applies to the student's eligibility to receive title IV, HEA aid. The Department has never regulated whether or not a student is able to continue on

to degree completion under an institution's academic criteria. The Department also wishes to clarify that the 150 percent maximum timeframe applies only to the student's current program of study. Under these regulations, institutions retain flexibility to define their programs of study in their SAP policy, as well as how they will determine how previously taken coursework applies to the student's current program of study.

Changes: None.

Notification

Comment: Several commenters requested clarification of the notification requirement in § 668.34(a)(11). Specifically, these commenters questioned whether this provision would require institutions to notify all students or only those who were not making SAP.

Discussion: Proposed § 668.34(a)(11) only requires institutions to notify students of the results of their SAP evaluation if the results affect the student's eligibility to receive title IV, HEA aid. Institutions are not required to notify students who are making SAP of the results of the evaluation.

Changes: None.

Evaluating the Validity of High School Diplomas (§ 668.16(p))

High School Diploma (§ 668.16(p))

The Department received over 100 submissions about the new high school diploma regulation. Most of these supported our proposed changes, either with little or no qualification, or with suggested modifications and concerns. Others offered suggestions and concerns without explicitly supporting the proposed regulation.

We noted in the preamble to the NPRM that the Department intends to add questions on the Free Application for Federal Student Aid (FAFSA) asking for the name of the high school the student graduated from and the State where the school is located. The 2011–2012 FAFSA will have one question with three fields. Students who indicate that they will have a high school diploma when they begin college for the 2011–2012 year are instructed to provide the name of the high school where they received or will receive that diploma and the city and state where the school is located. In the online application, FAFSA on the Web, students will not be allowed to skip this question, though for 2011–2012 it will only be presented to first-time undergraduate students. There will be a drop-down list of both public and private high schools, populated by the

National Center for Education Statistics (NCES), within the Department of Education, from which most students will be able to select the high school that awarded them a diploma. Students who cannot find their school and those who complete a paper FAFSA will write in the name, city, and State of their high school. It is important to note that the absence of a high school on the drop-down list does not mean that the high school the student indicated he or she graduated from is not legitimate. It just means that the school was not included in the NCES list. Similarly, the inclusion of a high school on the drop-down list does not necessarily mean that the high school is legitimate.

In addition to the information in the following discussions, we will provide more guidance on implementing § 668.16(p), as necessary, in Dear Colleague Letters, electronic announcements, and the Federal Student Aid Handbook.

Comment: Several commenters observed that many institutions already perform some kind of high school evaluation as part of their admission process, and one noted that because of this, it is appropriate for the Department to establish regulations requiring the validation of high school diplomas. One commenter appreciated that proposed § 668.16(p) would help institutions when they are challenged by students or high school diploma mills for looking into the validity of high school diplomas. Another commenter noted that a list of "good" high schools would be valuable for students in deciding whether they would want to obtain a diploma from a given source. Another commenter opined that the identification of suspect schools benefits students.

Discussion: We appreciate the support of these commenters. The list of schools that will appear on FAFSA on the Web is meant only as an aid for students in completing the FAFSA. It is not a list of "good" schools, and it may happen that an institution will need to evaluate the diploma from one of these schools. Also, a school that does not appear on the list should not be inferred to be "bad." The intent of new § 668.16(p) is to have institutions develop a process for evaluating the legitimacy of a student's claim to have completed high school and not to have simply purchased a document that purports they completed a high school curriculum. Under this provision, institutions must develop and follow procedures to evaluate the validity of a student's high school completion if the institution or the Secretary has reason to suspect the legitimacy of the diploma.

Changes: None.

Comment: Many commenters requested that the Department provide institutions with clear guidance on how to review the validity of high school diplomas and that it provide this guidance as soon as possible. Although, as noted previously, many institutions review high school credentials, one large college noted that there are no common practices for these types of reviews and asked that the Department delay the effective date of this regulatory requirement if it is unable to release the needed guidance far enough in advance of July 1, 2011. This commenter stated that such a delay would be needed for schools to have enough time to create their procedures and train their employees on following the procedures. One commenter asked what the effect of this requirement would be on the student's eligibility for title IV, HEA program assistance when an institution is unable to determine whether a given diploma is valid.

Discussion: There is no plan to delay the implementation of § 668.16(p). As noted earlier in this discussion, more guidance will be forthcoming about evaluating the validity of high school diplomas, and many institutions have been evaluating the validity of high school diplomas for years. We encourage financial aid administrators (FAAs) to consult with each other in this matter, which can be especially useful for similar types of institutions in the same State, where differing levels of oversight by State departments of education will have a significant effect on what procedures an institution might establish.

With respect to the comment asking about student eligibility for title IV, HEA program assistance when an institution is unable to determine whether the student's diploma is valid, we note that there are alternatives for the student to establish aid eligibility under § 668.32(e), such as passing an ATB test, or completing six credits of college coursework that apply to a program at the current school.

Changes: None.

Comment: Various commenters either requested that we create a list of fraudulent or "bad" high schools or asked if we planned to do so. Many commenters asked that we make available both a list of "bad" high schools and a list of acceptable schools and that we update them frequently, some suggesting at least quarterly. Some commenters requested that the effective date for this regulatory provision be delayed until at least 2012–2013 so the Department can have a complete list of acceptable schools and can address

(e) * * *

(5) Has been determined by the institution to have the ability to benefit from the education or training offered by the institution based on the satisfactory completion of 6 semester hours, 6 trimester hours, 6 quarter hours, or 225 clock hours that are applicable toward a degree or certificate offered by the institution.

(f) Maintains satisfactory academic progress in his or her course of study according to the institution's published standards of satisfactory academic progress that meet the requirements of § 668.34.

* * * * *

■ 21. Section 668.34 is revised to read as follows:

§ 668.34 Satisfactory academic progress.

(a) *Satisfactory academic progress policy.* An institution must establish a reasonable satisfactory academic progress policy for determining whether an otherwise eligible student is making satisfactory academic progress in his or her educational program and may receive assistance under the title IV, HEA programs. The Secretary considers the institution's policy to be reasonable if—

(1) The policy is at least as strict as the policy the institution applies to a student who is not receiving assistance under the title IV, HEA programs;

(2) The policy provides for consistent application of standards to all students within categories of students, e.g., full-time, part-time, undergraduate, and graduate students, and educational programs established by the institution;

(3) The policy provides that a student's academic progress is evaluated—

(i) At the end of each payment period if the educational program is either one academic year in length or shorter than an academic year; or

(ii) For all other educational programs, at the end of each payment period or at least annually to correspond with the end of a payment period;

(4)(i) The policy specifies the grade point average (GPA) that a student must achieve at each evaluation, or if a GPA is not an appropriate qualitative measure, a comparable assessment measured against a norm; and

(ii) If a student is enrolled in an educational program of more than two academic years, the policy specifies that at the end of the second academic year, the student must have a GPA of at least a "C" or its equivalent, or have academic standing consistent with the institution's requirements for graduation;

(5)(i) The policy specifies the pace at which a student must progress through his or her educational program to ensure that the student will complete the program within the maximum timeframe, as defined in paragraph (b) of this section, and provides for measurement of the student's progress at each evaluation; and

(ii) An institution calculates the pace at which the student is progressing by dividing the cumulative number of hours the student has successfully completed by the cumulative number of hours the student has attempted. In making this calculation, the institution is not required to include remedial courses;

(6) The policy describes how a student's GPA and pace of completion are affected by course incompletes, withdrawals, or repetitions, or transfers of credit from other institutions. Credit hours from another institution that are accepted toward the student's educational program must count as both attempted and completed hours;

(7) Except as provided in paragraphs (c) and (d) of this section, the policy provides that, at the time of each evaluation, a student who has not achieved the required GPA, or who is not successfully completing his or her educational program at the required pace, is no longer eligible to receive assistance under the title IV, HEA programs;

(8) If the institution places students on financial aid warning, or on financial aid probation, as defined in paragraph (b) of this section, the policy describes these statuses and that—

(i) A student on financial aid warning may continue to receive assistance under the title IV, HEA programs for one payment period despite a determination that the student is not making satisfactory academic progress. Financial aid warning status may be assigned without an appeal or other action by the student; and

(ii) A student on financial aid probation may receive title IV, HEA program funds for one payment period. While a student is on financial aid probation, the institution may require the student to fulfill specific terms and conditions such as taking a reduced course load or enrolling in specific courses. At the end of one payment period on financial aid probation, the student must meet the institution's satisfactory academic progress standards or meet the requirements of the academic plan developed by the institution and the student to qualify for further title IV, HEA program funds;

(9) If the institution permits a student to appeal a determination by the

institution that he or she is not making satisfactory academic progress, the policy describes—

(i) How the student may reestablish his or her eligibility to receive assistance under the title IV, HEA programs;

(ii) The basis on which a student may file an appeal: The death of a relative, an injury or illness of the student, or other special circumstances; and

(iii) Information the student must submit regarding why the student failed to make satisfactory academic progress, and what has changed in the student's situation that will allow the student to demonstrate satisfactory academic progress at the next evaluation;

(10) If the institution does not permit a student to appeal a determination by the institution that he or she is not making satisfactory academic progress, the policy must describe how the student may reestablish his or her eligibility to receive assistance under the title IV, HEA programs; and

(11) The policy provides for notification to students of the results of an evaluation that impacts the student's eligibility for title IV, HEA program funds.

(b) *Definitions.* The following definitions apply to the terms used in this section:

Appeal. Appeal means a process by which a student who is not meeting the institution's satisfactory academic progress standards petitions the institution for reconsideration of the student's eligibility for title IV, HEA program assistance.

Financial aid probation. Financial aid probation means a status assigned by an institution to a student who fails to make satisfactory academic progress and who has appealed and has had eligibility for aid reinstated.

Financial aid warning. Financial aid warning means a status assigned to a student who fails to make satisfactory academic progress at an institution that evaluates academic progress at the end of each payment period.

Maximum timeframe. Maximum timeframe means—

(1) For an undergraduate program measured in credit hours, a period that is no longer than 150 percent of the published length of the educational program, as measured in credit hours;

(2) For an undergraduate program measured in clock hours, a period that is no longer than 150 percent of the published length of the educational program, as measured by the cumulative number of clock hours the student is required to complete and expressed in calendar time; and

(3) For a graduate program, a period defined by the institution that is based on the length of the educational program.

(c) *Institutions that evaluate satisfactory academic progress at the end of each payment period.* (1) An institution that evaluates satisfactory academic progress at the end of each payment period and determines that a student is not making progress under its policy may nevertheless disburse title IV, HEA program funds to the student under the provisions of paragraph (c)(2), (c)(3), or (c)(4) of this section.

(2) For the payment period following the payment period in which the student did not make satisfactory academic progress, the institution may—

(i) Place the student on financial aid warning, and disburse title IV, HEA program funds to the student; or

(ii) Place a student directly on financial aid probation, following the procedures outlined in paragraph (d)(2) of this section and disburse title IV, HEA program funds to the student.

(3) For the payment period following a payment period during which a student was on financial aid warning, the institution may place the student on financial aid probation, and disburse title IV, HEA program funds to the student if—

(i) The institution evaluates the student's progress and determines that student did not make satisfactory academic progress during the payment period the student was on financial aid warning;

(ii) The student appeals the determination; and

(iii)(A) The institution determines that the student should be able to meet the institution's satisfactory academic progress standards by the end of the subsequent payment period; or

(B) The institution develops an academic plan for the student that, if followed, will ensure that the student is able to meet the institution's satisfactory academic progress standards by a specific point in time.

(4) A student on financial aid probation for a payment period may not receive title IV, HEA program funds for the subsequent payment period unless the student makes satisfactory academic progress or the institution determines that the student met the requirements specified by the institution in the academic plan for the student.

(d) *Institutions that evaluate satisfactory academic progress annually or less frequently than at the end of each payment period.* (1) An institution that evaluates satisfactory academic progress annually or less frequently

than at the end of each payment period and determines that a student is not making progress under its policy may nevertheless disburse title IV, HEA program funds to the student under the provisions of paragraph (d)(2) or (d)(3) of this section.

(2) The institution may place the student on financial aid probation and may disburse title IV, HEA program funds to the student for the subsequent payment period if—

(i) The institution evaluates the student and determines that the student is not making satisfactory academic progress;

(ii) The student appeals the determination; and

(iii)(A) The institution determines that the student should be able to meet the institution's satisfactory academic progress standards during the subsequent payment period and meet the institution's satisfactory academic progress standards at the end of that payment period; or

(B) The institution develops an academic plan for the student that, if followed, will ensure that the student is able to meet the institution's satisfactory academic progress standards by a specific point in time.

(3) A student on financial aid probation for a payment period may not receive title IV, HEA program funds for the subsequent payment period unless the student makes satisfactory academic progress or the institution determines that the student met the requirements specified by the institution in the academic plan for the student.

(Authority: 20 U.S.C. 1091(d))

■ 22. Section 668.43 is amended by:

■ A. In paragraph (a)(10)(ii), removing the word “and” that appears after the punctuation “;”;

■ B. In paragraph (a)(11)(ii), removing the punctuation “.” and adding, in its place, the punctuation and word “; and”.

■ C. Adding paragraph (a)(12).

■ D. Revising paragraph (b).

The addition and revision read as follows:

§ 668.43 Institutional information.

(a) * * *

(12) A description of written arrangements the institution has entered into in accordance with § 668.5, including, but not limited to, information on—

(i) The portion of the educational program that the institution that grants the degree or certificate is not providing;

(ii) The name and location of the other institutions or organizations that are providing the portion of the educational program that the institution that grants the degree or certificate is not providing;

(iii) The method of delivery of the portion of the educational program that the institution that grants the degree or certificate is not providing; and

(iv) Estimated additional costs students may incur as the result of enrolling in an educational program that is provided, in part, under the written arrangement.

(b) The institution must make available for review to any enrolled or prospective student upon request, a copy of the documents describing the institution's accreditation and its State, Federal, or tribal approval or licensing. The institution must also provide its students or prospective students with contact information for filing complaints with its accreditor and with its State approval or licensing entity and any other relevant State official or agency that would appropriately handle a student's complaint.

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■ 23. Subpart E of part 668 is revised to read as follows:

Subpart E—Verification and Updating of Student Aid Application Information

Sec.

668.51 General.

668.52 Definitions.

668.53 Policies and procedures.

668.54 Selection of an applicant's FAFSA information for verification.

668.55 Updating information.

668.56 Information to be verified.

668.57 Acceptable documentation.

668.58 Interim disbursements.

668.59 Consequences of a change in an applicant's FAFSA information.

668.60 Deadlines for submitting documentation and the consequences of failing to provide documentation.

668.61 Recovery of funds from interim disbursements.

Subpart E—Verification and Updating of Student Aid Application Information

§ 668.51 General.

(a) *Scope and purpose.* The regulations in this subpart govern the verification by institutions of information submitted by applicants for student financial assistance under the subsidized student financial assistance programs.

(b) *Applicant responsibility.* If the Secretary or the institution requests documents or information from an applicant under this subpart, the applicant must provide the specified documents or information.

(c) *Foreign schools.* The Secretary exempts from the provisions of this subpart participating institutions that are not located in a State.

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