Under § 690.8	Number of credit hours regular work	Number of credit hours correspondence work	Total course load in credit hours to determine enrollment status	Enrollment status
(b)(3)	3	3	6	Half-time.
(b)(3)	3	6	6	Half-time.
(b)(3)	3	9	6	Half-time.
(b)(3)	6	3	9	Three-quarter-time.
(b)(3)	6	6	12	Full-time.
(b)(3) and (c)	2	6	6	Half-time.

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

§ 690.10 [Amended]

21. In § 690.10(b), revise "and National Direct Student Loan" to read "Perkins Loan, and ICL".

§§ 690.31–690.39 (Subpart C)—[Removed]

22. Subpart C, consisting of §§ 690.31–690.39, is removed and reserved.

§§ 690.41–690.48 (Subpart D)—[Removed]

23. Subpart D, consisting of §§690.41–690.48, is removed and reserved.

§§ 690.51–690.57 (Subpart E)—[Removed]

24. Subpart E, consisting of §§ 690.51–690.57, is removed and reserved.

§ 690.61 [Amended]

25. In § 690.61(a)(3), revise "§§ 668.16(f)" to read "668.14(f)".

§ 690.65 [Amended]

26. In § 690.65(a), revise "34 CFR 668.14" to read "34 CFR 668.19".

27. Section 690.75 is revised to read as follows:

§ 690.75 Determination of eligibility for payment.

(a) For each payment period, an institution may pay a Pell Grant to an eligible student only after it determines that the financial aid transcript requirements of 34 CFR 668.19 have been met, and the student—

(1) Qualifies as an eligible student under 34 CFR 668.7;

(2) Is enrolled as at least a half-time undergraduate student; and

(3) Has completed required clock hours for which he or she has been paid a Pell Grant, if the student is enrolled in an eligible program that is measured in clock hours.

(b) If an eligible student submits an SAR to the institution and becomes ineligible before receiving a payment, the institution may pay the student only the amount that it determines could have been used for educational purposes before the student became ineligible.

(c) 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 Pell Grant to the student for the entire payment period.

(d) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses that determination after the end of the payment period, the institution may neither pay the student a Pell Grant for that payment period nor make adjustments in subsequent Pell Grant payments to compensate for the loss of aid for that period.

(e) A member of a religious order, community, society, agency of or organization who is pursuing a course of study in an institution of higher education is considered to have an expected family contribution of at least $3,000 if that religious order—

(1) Has as a primary objective the promotion of ideals and beliefs regarding a Supreme Being; and

(2) Provides subsistence support to its members, or has directed the member to pursue the course of study.

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

§ 690.82 [Amended]

28. In § 690.82(a) introductory text, revise "34 CFR 668.20" to read "34 CFR 668.23".

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Tuesday
December 1, 1987

Part III

Department of Education

34 CFR Parts 674, 675, and 676

Perkins Loan Program, College Work-Study Program, and Supplemental Educational Opportunity Grant Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 675, and 676

Perkins Loan Program, College Work-Study Program, and Supplemental Educational Opportunity Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Perkins Loan (formerly named the National Direct Student Loan (NDSL)), College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) programs. These programs are known collectively as the campus-based programs and are authorized by the Higher Education Act of 1965 (HEA).

These regulations simplify and clarify requirements governing the campus-based programs and incorporate changes made to the HEA by the Higher Education Amendments of 1986, Public Law 99–498, and the Higher Education Technical Amendments Act of 1987, Public Law 100–50.

DATES: *Effective Date:* These regulations become effective either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments, with the exception of §§ 674.10, 675.10, 674.34, 674.35, 674.37, 674.52, 674.58, 675.16, 674.8, 674.16, 674.19, 674.31, 674.38, 675.19, 675.27, 675.34, 675.35, 676.19, and 676.16. Sections 674.10, 675.10, 674.34, 674.35, 674.37, 674.52, 674.58, 675.16, 674.8, 674.16, 674.19, 674.31, 674.38, 675.19, 675.27, 675.34, 675.35, 676.19, and 676.16 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. It should be noted, however, that the following provisions apply to the awarding of aid starting with the 1988–89 award year: the provisions governing the application for the allocation and reallocation of funds in §§ .3 and .4; the determination of financial need in accordance with Part F of Title IV of the HEA in § .9; the overaward provisions in § .14, except for the treatment of loans made under the GSL, SLS, and PLUS programs; the coordination with BIA grants in § .15; and the payment of funds under § 674.16. Section 675.23, which allows an institution to use 25 percent of its work-study funds to enter into agreements with for-profit organizations to employ students, was, by statute, effective as of July 1, 1987. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Margaret O. Henry or Richard P. Coppage, Campus and State Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, Room 4018, Washington, DC 20202, telephone number (202) 732–4490.

SUPPLEMENTARY INFORMATION: The Secretary published a notice of proposed rulemaking for the campus-based programs in the **Federal Register** of February 27, 1985, 50 FR 8050–8086. Since the publication of that NPRM, the statute authorizing these programs, the Higher Education Act of 1965 (HEA), has been significantly amended by the Higher Education Amendments of 1986 and the Higher Education Technical Amendments Act of 1987. The regulations have been revised to conform to the new statutory amendments and have also been revised in accordance with public comment. The following discusses the statutory changes. Changes made as a result of public comment on the proposed regulations will be discussed in the appendix to these final regulations.

Conforming Changes to All Three Program Regulations.

The following is a description of the changes made in all the proposed regulations to conform those regulations to new statutory provisions.

Sections 674.3, 675.3, 676.3 Application and §§ 674.4, 675.4, 676.4 Allocation and reallocation.

The method of allocating funds to institutions under each program has been changed under each program statute. Instead of apportioning funds among the States and then allocating funds to institutions from each State's apportionment, funds are allocated directly to institutions under a statutory formula which makes no provision for appeals. Accordingly, § .3 through § .7 of each proposed regulation have been deleted and replaced with new § .3 and § .4 to reflect these statutory changes.

Section .3 of each regulation notifies institutions in general terms about the information that they must provide when they apply for funds. Section .4 of each regulation refers to the statutory section governing the allocation and reallocation of funds for that program instead of repeating the statutory formula. Those sections are section 462 of the HEA for the Perkins Loan program, section 442 of the HEA for the CWS program and section 413D of the HEA for the SEOG program. In addition each § .4 defines terms that are needed by the Secretary to carry out each program's allocation and reallocation and clearly articulates current and long-standing Department policy regarding the duration of the institution's authority to expend program funds.

Sections 462, 442, and 413D of HEA apply to the allocation of funds starting with the 1988–89 award year. Therefore, the Secretary has allocated funds to institutions under these programs for the 1987–88 award year in accordance with the procedures required for those allocations by Pub. L. 99–500, the Continuing Resolution for Fiscal Year 1987.

Sections 674.9, 675.9, 676.9 Student eligibility.

These sections were reorganized to contain only provisions specific to each program. Provisions common to all the Title IV HEA programs are now contained in the Student Assistance General Provisions regulations, 34 CFR Part 668.

Sections 674.10, 675.10, 676.10 Selection of Students for Loans, Selection of Students for CWS Employment, Selection of Students for SEOG Awards.

If an institution's allocation of funds is directly or indirectly based on the financial need demonstrated by students attending the institution as less than full-time students, the institution must award a reasonable proportion of its allocation to those students. This requirement applies to all institutions that permit students to enroll on less than a full-time basis.

Sections 674.11, 675.11, 676.11, 674.12, 675.12, 676.12, and 674.13, 675.13, 676.13 of the proposed regulations. Allowable costs of attendance, Calculation of expected family contributions, Need analysis systems.

Beginning with the 1988–89 award year, a student's financial need, reflecting his or her expected family contribution (EFC) and cost of attendance for each of the campus-based programs, must be calculated in accordance with Part F of Title IV of the HEA. Therefore, the provisions dealing with a student's cost of attendance, the calculation of an expected family contribution, and need analysis systems that were included as §§ 674.11, 675.11, 676.11, 674.12, 675.12, 676.12, and 674.13, 675.13, 676.13 in the proposed regulations, have been deleted. Because Part F of Title IV of the HEA is so

specific, the Secretary has not republished those statutory provisions in these regulations. However, § 674.12 provides the Perkins Loan program maximum loan limits and § 674.13 describes the condition under which an institution must reimburse its Fund.

For the 1987–88 award year, under the Student Financial Assistance Technical Amendments Act of 1982, as amended, institutions must continue to calculate a student's expected family contribution using one of the 32 need analysis systems that the Secretary has approved for that purpose in the notices published in the **Federal Register** of January 30, 1987, 52 FR 3091, and the **Federal Register** of February 26, 1987, 52 FR 5816. Similarly, in accordance with the Student Financial Assistance Technical Amendments of 1982, as amended, the cost of attendance provisions that were in effect for the 1986–87 award year will continue to apply in the 1987–88 award year.

Sections 674.14, 675.14, 676.14 Overaward.

The proposed rule would have permitted the individual to exclude certain portions of Guaranteed Student Loans (GSL) and PLUS loans from the resources that must be considered by the institution. The GSL program statute, as amended, now provides that an applicant for a subsidized GSL qualifies for that loan only if the applicant's cost of attendance exceeds his or her expected family contribution (EFC). However, the amended statute permits an applicant to use a PLUS, SLS, or a loan made under a State-sponsored or private loan program to meet this EFC requirement. The Secretary has therefore revised the proposed rule accordingly: the institution must now consider all GSL loans as resources and may substitute only these enumerated loans for the applicant's EFC. Further, to clarify the resources to be considered, this section has been revised to articulate current policy that all Title IV assistance, including Pell Grants, SEOG and other governmental grants and scholarships, are to be counted as resources.

In addition, §§ 674.14 and 676.14 provide that when an institution makes an overaward for which it is not responsible to repay, it must make a reasonable effort to recover that amount from the recipient. The Secretary regards a reasonable effort to include a written demand for repayment in which the institution notifies the recipient that he or she owes a refund of the overawarded aid and that failure to repay that amount will render the individual ineligible for further Title IV aid by virtue of section 484 of the HEA.

Conforming Changes to the CWS and SEOG Program Regulations

Sections 675.20 and 676.20 Maintenance of effort.

The maintenance of effort requirement contained in section 487 of the HEA governing the CWS and SEOG programs was eliminated when the HEA was amended by the Higher Education Amendments of 1986. Therefore, those provisions have been deleted from the regulations for both programs.

Conforming Changes to the Perkins Loan Program Regulations—Perkins Loans and Direct Loans

Changes made to Title IV–E of the HEA by the Higher Education Amendments of 1986 included changing the name of the program from the National Direct Student Loan Program to the Perkins Loan program. In addition, section 405(b) of the Higher Education Amendments of 1986 made certain provisions in the Perkins Loan program applicable only to loans made on or after July 1, 1987 to "new" borrowers. The Secretary refers to these loans in the regulations as Perkins loans and has defined a "Perkins loan" as follows:

> A loan made under Title IV–E of the HEA to cover the cost of attendance for a period of enrollment beginning on or after July1, 1987, to an individual who on July 1, 1987, had no outstanding balance of principal or interest owing on any loan previously made under Title IV–E of the HEA.

Loans made under the Perkins Loan program to other than new borrowers will continue to be known as Direct loans. The Secretary has defined a "Direct loan" as follows:

> A loan made under Title IV–E of the HEA after June 30, 1972, which does not satisfy the definition of "Perkins loan."

These definitions will be found in 34 CFR Part 668, and are therefore not included in these regulations.

Section 674.2 Definitions.

Section 464 of the HEA has been amended to provide a nine-month initial grace period for Perkins loans, and the regulatory definition of grace period has been revised. An initial grace period is a period which immediately precedes the date of first required repayment on a loan. A post-deferment grace period is a period of six consecutive months which immediately follows the end of certain periods of deferment and precedes the date on which the borrower is required to resume repayment on a loan.

Section 674.9 Student eligibility.

Section 484(b) of the HEA has been amended to require each undergraduate applicant for a loan under the Perkins Loan program to secure at least a preliminary determination of his or her eligibility for a Pell Grant. Section 674.9 has been amended to include this requirement.

Section 674.10 Selection of students for loans.

Section 463 of the HEA has been amended to require that institutions agree to provide loans on a priority basis to students with exceptional needs.

Section 674.12 Loan maximums.

The maximum cumulative amounts a student may borrow have been increased under revisions to section 464(a) of the HEA and these new limits have been included in § 674.12. The maximum amount an eligible student may borrow is increased to $4,500 for a student who has not completed two academic years of study toward a baccalaureate degree, $9,000 for a student who has completed two academic years of study for a baccalaureate degree but has not received the degree, and $18,000 for study toward a professional or graduate degree, including loans borrowed for undergraduate study.

Section 674.16 Making and disbursing loans.

Section 463A of the HEA has been revised to require disclosure, at the time of disbursement, of the total cumulative balance owed by the borrower to that lender, and an estimate of the projected monthly payment for such a cumulative balance. These requirements have been added to § 674.16.

Section 674.17 Federal interest in allocated funds—transfer of Fund.

The Secretary is considering developing the capability of collecting loans directly in the event that an institution closes or no longer wants to participate in the program.

Section 674.19 Fiscal procedures and records.

The Secretary has expanded this section to clarify the manner in which Perkins Loan funds must be deposited. These funds must be invested in insured or collateralized interest-bearing bank accounts or in low-risk income-producing securities such as obligations issued or guaranteed by the United States, and the institution must exercise the level of care in making these

investments required of a fiduciary. Any bank charges incurred from depositing these funds into interest-bearing accounts may be paid from the interest earnings on these funds.

Section 674.31 Promissory note.

Section 464 of the HEA has been revised to provide for a late charge of up to 20 percent of the installment payment for costs incurred during the billing cycle for Title IV–E loans made for periods of enrollment on or after January 1, 1986 and this change has been included in § 674.31.

Section 674.32 Special terms—loans to less than half-time student borrowers.

Section 484(a) revised the limitation that a student must be enrolled on at least a half-time basis to be eligible for Title IV aid, and new § 674.32 incorporates the terms of loans to borrowers who enroll for less than half-time study. The statute has provided a specific grace period before the borrower must begin repayment on Perkins loans so that the borrower may have an opportunity to find or resume employment before bearing the burden of repayment. The Secretary has determined that borrowers who receive loans while enrolled on a less than half-time basis should receive this same benefit, and therefore, the repayment period on a loan to a borrower enrolled on a less than half-time basis begins—

(1) On the date of the next scheduled installment payment on any outstanding loan to the borrower; or

(2) If the borrower has no outstanding loan, at the earlier of—

(a) Nine months from the date the loan was made, or

(b) The end of a nine-month period that includes the date the loan was made and began on the date the borrower ceased enrollment as at least a half-time student at an institution of higher education or comparable institution outside the United States approved for this purpose by the Secretary.

Section 674.34 Deferment of repayment—Perkins loans.

Section 464 has been revised to add new deferments for a Perkins loan borrower:

- For a period of up to 3 years during which time the borrower is a member of the National Oceanic and Atmospheric Administration Corps;
- For a period of up to six months while the borrower is on parental leave; and
- For a period of up to 12 months for a borrower who is a mother with preschool age children and is just entering or reentering the work force and is compensated at a rate that does not exceed $1 in excess of the rate prescribed by section 6 of the Fair Labor Standards Act of 1938.

In addition, deferment previously available to a borrower who is unable to secure employment because the borrower is providing care (such as continuous nursing or other similar services) required by a spouse who is disabled was expanded to include provision of care to a disabled "dependent." The final regulation will use the term "dependent" to reflect this revision.

The Higher Education Technical Amendments of 1987 (Pub. L. 100–50, June 3, 1987) authorized a new internship deferment. Under the new provisions, a borrower may defer payment for up to two years while serving in an internship program that leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training. The current GSL regulations, 34 CFR 682.210(g), published in the **Federal Register** on November 10, 1986, and effective December 24, 1986, provide that a borrower qualifies for an internship deferment only if the internship program requires the borrower to hold at least a bachelor's degree before beginning the program, and is a program that a State licensing agency requires the borrower to complete before it will certify the individual for professional practice or service. 34 CFR 682.210(g)(1)(ii), (iii). Since publication of this regulation, the Department identified certain States that do not require the completion of medical internships as a condition for licensing or certification to practice. Because the regulation limited the internship deferment to borrowers who were serving internships required by State authority, students in these States did not qualify for internship deferments. The Department regards the enactment in June 1987 of this amendatory language in both Perkins and GSLP statutes establishing an additional internship deferment for an individual who is not required to complete an internship program before being eligible to practice as a legislative overruling of this particular limitation in GSLP regulations, and not the other limit in those regulations: Namely, that the program require at least a bachelor's degree as a prerequisite for acceptance into the program. 34 CFR 682.210(g)(1)(ii). Therefore, the Secretary has included the new internship deferment in these regulations, but continues to require that the internship require that the borrower hold at least a bachelor's degree before beginning the internship program.

These additions have been incorporated in § 674.34.

Section 674.37 Deferment procedures.

The deferment procedures proposed in the NPRM have been revised in order to simplify them and make them consistent with current Department policy regarding the effect of a default on a loan. The proposed rule permitted the institution to regard a borrower who did not make scheduled payments and did not apply for a deferment as in default on the loan, and to accelerate that loan. If the loan was accelerated, the institution could not grant a deferment for any repayments due after the date of acceleration. If the defaulted loan had not been accelerated, the institution could grant a deferment if the borrower repaid the entire past-due amount.

On September 22, 1986 the Department revised its rules regarding the effect of a default on the borrower's ability to quality for new Title IV aid. 34 CFR 674.2, 51 FR 33726. Under this revised rule, now in effect, a borrower who has failed to make a required payment is in default for purposes of determining both the default rate of the institution and the borrower's status for new aid, unless the borrower executes a new written repayment agreement for that loan. 34 CFR 674.2. The Department intended that institutions have considerable discretion over the terms of the new agreement. In order to encourage institutions to adopt those terms warranted by a borrower's repayment pattern before default, the Department urged institutions to require the defaulter to repay immediately some or all of the past-due amounts on the loan as a term of, or condition for, such a new agreement. It is important, however, that the borrower understands that once a new repayment agreement is executed, and he or she fails to make required payments when due, the loan will immediately revert to default status.

This cure procedure is available, if the institution chooses, even after a loan has been accelerated. It is consistent with that policy to permit the institution to give a deferment to a borrower after his or her loan is in default if the borrower cures the default by executing a new written repayment agreement and meets any conditions set by the institution for the agreement, such as immediate payment of some or all of those installment payments scheduled to be made before the borrower demonstrated to the institution that a condition existed that might qualify him or her for a deferment.

This revision imposes no additional burden on the borrower or the institution beyond that proposed in the NPRM, and, in fact, grants greater discretion to the institution. The Secretary intends that this final rule apply to all requests for deferment received by institutions after the effective date of this final rule, regardless of the date on which the loan was made. The Department has always regarded the availability of deferments as a matter of right only upon timely request and timely, satisfactory documentation that the borrower qualified for the deferment; neither the proposed rule nor this final rule represents any change in that policy.

The final rule also clarifies that deferments apply only after the borrower is required to begin repayment; the repayment period begins six or nine months after the borrower ceases half-time enrollment. At times a borrower may neglect to notify the institution that he or she has continued studies and remained at least a half-time student at another institution. Regardless of that failure, the borrower was not required to begin repayment until those later studies were completed. The institution holding the loan may reasonably have concluded that the repayment period on that loan had started, and may have demanded payment from the borrower. Under these circumstances, the borrower may mistakenly characterize his or her request for relief on the grounds of student status as a request for deferment, when it is actually no more than a request that the institution recognize the fact that, because the borrower had not ceased half-time enrollment status, the repayment period had not yet started. The borrower may submit proof at any time, even after a loan has been acclerated, that the repayment period on the loan began at a later date than was originally calculated, and the institution must recalculate that date upon receiving such proof from the borrower. The final rule articulates this long-standing Department interpretation that a borrower whose loan is regarded as in default has the right to the correct calculation of the start of the repayment period. However, the rule also articulates the Department's policy that the borrower remains responsible for payments that would have been due in any event, and that the institution is under no obligation to grant a deferment with regard to those past-due payments, and may immediately enforce its demand for those payments.

Section 674.57 Cancellation for volunteer service-Perkins loans.

The 1986 amendments authorize an institution to cancel up to 70 percent of a borrower's Perkins loan plus the interest on the unpaid balance for service as a volunteer under the Peace Corps Act or the Domestic Volunteer Service Act of 1973. Fifteen percent of the total principal amount of the loan plus interest on the unpaid balance may be cancelled for each of the first and second twelve-month periods of service and 20 percent may be cancelled for each of the third and fourth twelve-month periods of service.

Conforming Changes to the CWS Program Regulations

Section 675.21 Intitutional employment.

As a result of an amendment made to the HEA by the Higher Education Amendments of 1986, a proprietary institution may now employ students to work for itself. However, that employment must be "on campus," provide student services, complement and reinforce the educational program or vocational goals of the student to the maximum extent possible, and not involve the solicitation of potential students for enrollment at the proprietary institution.

The Secretary considers that student services may include furnishing academic, library, financial aid, guidance and counseling, health, and social services *directly* to students. Examples of acceptable employment would include employment as an academic tutor or peer counselor.

Section 675.23 Employment provided by a private for-profit organization.

As a result of an amendment made to the HEA by the Higher Education Amendments of 1986, each award year an institution may use up to 25 percent of its allocation to pay the Federal share of the compensation earned by its students who are employed under the CWS program by a private for-profit organization. Section 675.23 contains the conditions under which that employment may be provided.

Section 675.26 CWS Federal share limitations.

Starting with the 1989–90 award year, the Federal share of CWS compensation earned by students working for the institution, for a Federal, State or local public agency, or for a private nonprofit organization under the CWS program will be 75 percent. For award year 1990–91 and subsequent years, the Federal share of that compensation will be 70 percent.

The Secretary will, however, increase the Federal share in each of those years to 100 percent to pay the compensation of students working for other than a private for-profit organization who are enrolled in an institution that applies for that increased share in a timely manner and qualifies as an eligible institution under the Strengthening Institutions program, the Strengthening Historically Black Colleges and Universities program, or the Strengthening Historically Black Graduate Institutions program, each of which is authorized by Title III of the HEA.

The Federal share of compensation for students working for a private for-profit organization is 60 percent for award years 1987–88 and 1988–89, 55 percent for award year 1989–90, and 50 percent for award year 1990–91 and subsequent award years. In addition, the non-Federal share must be provided by the private for-profit organization.

Subpart B—Job Location and Development Programs

A second job location and development program was added to the CWS statute. This program authorizes an institution to use the lesser of 10 percent of its allocation or $20,000 to fund a community service job location and development program. Subpart B has been revised to include the statutory requirements governing this new program.

Conforming Changes to the SEOG Program Regulations

Section 676.10 Selection of students for SEOG awards.

In selecting SEOG recipients for any award year an institution must first award grants to those eligible students, including students attending less than half-time, with the lowest expected family contributions in accordance with Part F Title IV of the HEA who are also recipients of a Pell Grant for that year. The institution may then select SEOG recipients who are not recipients of a Pell Grant for that year in priority order of lowest expected family contributions.

Section 676.20 Minimum and maximum SEOG awards.

The maximum grant has been increased to $4,000 and the minimum grant has been reduced to $100.

Section 676.21 SEOG Federal share limitations.

Starting with the 1989–90 award year, the Federal share of SEOG awards an institution makes will be 95 percent of

the amount of those grants. For award year 1990–91, the Federal share will be 90 percent of the amount of those awards and for the 1991–92 and subsequent years, the Federal share will be 85 percent of the amount of those awards.

The Secretary will, however, increase the Federal share of SEOG awards in each of those years to 100 percent for any institution that applies for that increased share in a timely manner and qualifies as an eligible institution under Strengthening Institutions program or the Strengthening Historically Black Colleges and Universities program, each of which is authorized by Title III of the HEA.

Paperwork Reduction Act of 1980

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Waiver of Notice of Proposed Rulemaking

In addition to the changes made as a result of public comments, the Secretary has made certain changes to conform the regulations to changes made to the Higher Education Act of 1965 by the Higher Education Amendments of 1986, Pub. L. 99–498, and the Higher Education Technical Amendments Act of 1987, Pub. L 100–50. In accordance with section 431(b)(2)(A) of the General Education Provisions Act 20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the latter changes do not implement substantive policy, but merely incorporate statutory changes made to the HEA by the Higher Education Amendments of 1986 and the Higher Education Technical Amendments Act of 1987. Therefore, pursuant to 5 U.S.C. 553(b)(B), the Secretary finds that publication of proposed regulations with regard to these changes is unnecessary and contrary to the public interest.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Assessment of Educational Impact

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

Based on the response to the proposed rules and its own review, as discussed in the appendix, the Department has determined that the regulations in this document may require the transmission of certain information that is also being gathered by other agencies or authorities of the United States. However, the Department either does not have statutory authority to obtain this information from those agencies or authorities, or the information is not currently available in a form usable by the Department.

List of Subjects in 34 CFR Parts 674, 675, and 676

Education loan programs—education, Student aid, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; College Work-Study Program, 84.033; Perkins Loan Program, 84.038)

Dated: November 24, 1987.

William J. Bennett,

Secretary of Education.

Summary of Comments and Responses to the Notice of Proposed Rulemaking—Parts 674, 675 AND 676—General

Section .2—Definitions—"Undergraduate Student/Graduate or Professional Student."

Comment: Many commenters requested clarification regarding the classification of students enrolled in a combined undergraduate and graduate program.

Response: A change has been made. Under the definition of an undergraduate student, a student who is enrolled in a combined undergraduate or graduate program is considered an undergraduate student for the first four years of that program.

Section .14—Overaward.

Comment: Many commenters disagreed with the provision which disallows excess earnings from CWS jobs to substitute for the expected family contribution (EFC). The commenters argued that it is illogical to allow students to substitute for EFC by increasing their debt while not allowing them to earn their EFC by working.

Response: No change has been made. A student's EFC represents an amount which the student's family is reasonably able to contribute toward his or her cost of attendance. A student is eligible for CWS employment only if the student demonstrates financial need (that is, the student's educational costs exceed the student's expected family contribution). CWS earnings may not exceed his or her demonstrated financial need. Since the EFC itself is one of the components used in determining financial need, it is illogical to allow excess earnings to be used to satisfy the EFC. Note that demonstration of financial need is not a requirement for largely unsubsidized loans such as PLUS or SLS (Supplemental Loans for Students).

Section .16—Making and Disbursing Loans: Payments to Students; and Payments of an SEOG.

Comment: Many commenters supported the proposal to delete the requirement that an institution shall get a written acceptance of the financial aid from the student. Three commenters recommended that the institution inform the students of the option to accept or deny all or part of the aid package and provide a time frame for response. Several commenters opposed this deletion stating that without a signed acceptance, students would later dispute the award, especially a loan.

Response: No change has been made. The Secretary emphasizes that before an institution makes a disbursement to a student, the institution is required to provide the student with certain disclosure information. In addition, a borrower must sign the promissory note for each advance under a Direct or Perkins loan, and each CWS payment must be made by check or similar instrument that a student must endorse in order to cash. Therefore, no further record of acceptance is necessary. If the institution is concerned that the student would later dispute that he/she did not receive the award, it is free to require that the student sign a written acceptance for each disbursement.

Comment: Many commenters opposed the proposed time frame of advancing payments of SEOG and Direct/Perkins loans in §.16. The reasons cited were (1) the proposal does not recognize educational expenses which are incurred before the beginning of the period of instruction; (2) the proposal will lead to a large number of overpayments; and (3) should a student withdraw, the grace period would begin and the institution's refund policy would apply any amount toward the student's outstanding principal. Several commenters recommended that each institution be allowed the flexibility of

crediting accounts to accommodate its own billing system.

Response: No change has been made. Under the previous regulation, an institution could disburse an SEOG or Perkins loan only at the beginning of our within a payment period (first day of classes). These regulations give greater flexibility to institutions regarding the disbursement of SEOG and Perkins loans and are consistent with the long-standing Pell Grant program policy of allowing an institution to advance funds directly to a student ten days before the beginning of classes and to credit a student's institutional account three weeks before the first day of classes. They accommodate the need of a student to pay educational expenses incurred before the beginning of a period of instruction.

If the institution chooses to exercise its right to make advance payments, it must accept the responsibility from any resulting overpayment. Therefore, should a student withdraw before the first day of classes, all monies disbursed are considered to be an overpayment and must be restored to the relevant program account.

Comment: Numerous commenters disagreed with the proposal in § 675.16 that the institution shall not obtain a student's power of attorney to authorize any disbursement of funds or crediting of funds to a student's accounts. Most of these commenters cited the large number of students in their overseas international programs and stated that mailing checks instead of crediting the accounts is unduly cumbersome and hazardous and would cause delays to the aid recipients. Some commenters also cited instances in which students are studying in off-campus programs that may be a great distance away. One suggestion that was made to change "shall not obtain" to "shall not hold." Most of the recommendations were to include an "exceptional conditions" clause that would allow institutions to obtain a student's power of attorney for students studying abroad or at a great distance. One commenter noted that "waiver of endorsement" authority is available, and stated that the student should have the choice between the use of that waiver and a power of attorney.

Response: A change has been made. In order to accommodate unusual circumstances, the regulation has been revised to allow the institution to obtain a student's power of attorney for purposes of authorizing disbursements of funds only after obtaining the Secretary's approval.

Section .19—Fiscal Procedures and Records.

Comment: Numerous commenters objected to the proposal in § .19 which requires the institution to maintain the source documents in hard copy or on microfilm. The commenters believe this negates the progress already made in electronic record-keeping. Hard copies of microfilm back-ups are not required in private industry for audit purposes. Other commenters suggested that "source documents" be changed to "promissory notes" and "microfilm" be changed to "microforms" in order to include other methods of storage.

Response: A change has been made. Except as specifically noted in the rule to the contrary (e.g., loan documentation) institutions will not be required to maintain source records in their original form, but may retain this information in either hard copy of microforms.

Public Comments and Departmental Responses Relating to Part 674 (Perkins Loan)

Section 674.8—Program Participation Agreement.

Comment: Many commenters objected to the proposal in § 674.8 requiring the institution to restore to the Fund the outstanding principal balance, accrued interest, and any administrative cost allowance it received if the institution improperly disbursed the loan or failed to exercise due diligence in its collection. The commenters recommended that repayment be required only when a financial loss to the Government occurs and stated that repaying the administrative cost allowance taken on these awards would be administratively burdensome. One of these commenters suggested that a 3% allowable error and omissions rate be allowed. Also, the commenters suggested there is no due process allowed before the institution is required to return the funds.

Response: A change has been made to clarify the intent of the rule. The subject of institutions restoring monies to the Fund has been clarified and moved to § 674.13—Reimbursement to the Fund. The Secretary intends by this rule to require the institution to restore amounts lost to the Fund because of the conduct of the institution or its agents. The relationship of the institution to the Fund has long been characterized by the Department as a trust relationship. This rule applies to that relationship traditional principles governing the responsibility of trustees for losses of trust assets caused by their acts or omissions. As such, the rule codifies existing Department views on the consequences of that responsibility, but does not adopt any new principle or create any new ground of liability.

Under these principles, the institution as trustee is responsible for restoring to the trust those funds used in violation of the directions of the party establishing the trust, the Department. Section 674.13(a)(1) addresses the institution's responsibility with regard to those loans or portions of loans which the borrower was not eligible to receive. These disbursements include overawards caused by a failure to review information available to the institution, such as other aid awarded to the individual in excess of need. *See also* 34 CFR 674.14(c)(2). The institution is likewise responsible, under this principle, for loans to individuals who were not eligible for a loan if the institution should have discovered that fact by a review of information in its own records, such as records regarding academic progress, repayment status on prior loans held by the institution, and immigration status.

The institution as trustee is also responsible for exercising reasonable care in making loans and due diligence in attempting to enforce the loans. Section 674.13(a)(2) addresses the institution's responsibility with regard to loans that it made in the proper amount to eligible borrowers, but on which it failed to exercise due care in collecting. The revised rule recognizes that for these loans, financial loss to the Fund occurs only in the event of default, and requires the institution to restore to the Fund that full unpaid portion of the loan with regard to which the institution failed to exercise reasonable care in disbursing, recording, or attempting to collect. The institution receives no credit for the institutional share of the uncollectable loan under this provision precisely because it had committed that ICC to the Fund for future lending; the loss to the Fund includes the share of the uncollected loan derived from the ICC, and the institution as trustee is required to compensate the Fund for the loss. For example, the institution is responsible, under this principle, for that portion of a loan evidenced by a promissory note that was altered, unsigned, or lost, or which lacked borrower acknowledgment of all advances of loan funds. If the institution uses a note that incorporates the repayment schedule, the institution likewise makes itself responsible for due care in executing and retaining that schedule.

The rule also regards a failure to comply with the regulatory collection

requirements as a cause of the loss to the Fund on an outstanding defaulted loan. Examples of failures to exercise due diligence include any failure to take the following actions in a timely and effective manner: To skip trace promptly, to engage a collection firm, to sue a gainfully employed or otherwise solvent debtor, to report to a credit bureau, or oppose an undue hardship petition in bankruptcy when such opposition is well-grounded and cost-effective.

In some instances, the connection between the institution's conduct and the loss on the loan is fairly clear. For example, the causal connection is reasonably clear where the institution does not sue a gainfully employed debtor whom the institution or its agent had located and whom it could have sued, and the applicable statute of limitations later runs so as to preclude effectively subsequent attempts to collect by lawsuit. Because the failure to sue here is so directly related to the lack of recovery, there is little reason for not holding the institution liable for the loss. On the other hand, a lack of causal connection may be equally clear in other circumstances. For example, if the institution failed to sue a gainfully employed debtor and the statute of limitations ran out on the debt, there is clearly a loss to the Fund. However, if the institution was now able to show that this debtor, at the time suit should have been brought, received a discharge of the loan in a Chapter 13 bankruptcy proceeding which made no provision for any payments on consumer debt, it would thereby demonstrate that the loss to the Fund was clearly caused by the bankruptcy and not its failure to sue. The institution under these circumstances would have no liability to the Fund under § 674.13(b)(1)(ii).

The Secretary recognizes that in many cases, the loss on a defaulted loan can be neither clearly attributed to, nor disassociated from, the failure of the institution to exercise due diligence in collection. For example, if the defaulting borrower moves without providing the institution with his or her forwarding address and the institution does not attempt promptly to trace the borrower, a loss to the Fund has occurred, but there any be several causes for that loss. To resolve questions of causation in these unclear cases, the Secretary considers it fair and practical to use a rebuttable presumption that losses that occur on loans not diligently collected were caused by that failure to attempt collection. The institution, and not the Department, had assumed responsibility for using due diligence in collecting the loan, and was and continues to be in a better position to know or discover the actual cause of its inability to collect the loan. The Secretary therefore considers it reasonable to place on the institution the burden of rebutting the conclusion that the loss would not have occurred if the institution had complied with its collection responsibilities under Federal regulations. § 674.13(b)(1)(ii). For example, an institution might show that its failure to begin skip-tracing while the borrower's trail was fresh was not the cause of the loss by demonstrating, through later investigation, that the borrower after his or her move was not gainfully employed during the period in which the institution might have brought suit to enforce the debt.

The presumption created in § 674.13(b)(1), that the loss to the Fund resulted from the act or omission of the institution, may also be rebutted as provided in this section by demonstrating that the loss was ultimately cured completely, by subsequent recovery from the borrower or consigner, or partially, by securing a judgment for the full amount outstanding on the loan. § 674.13(b)(1)(i)(2). The rule provides that the institution must demonstrate, to the satisfaction of the Secretary, that the loss was not caused by its failure to exercise due diligence. In deciding whether an institution has met that burden of proof in individual cases, the Secretary will take into account the extent to which the institution failed to follow the prescribed due diligence requirements.

If the institution reimburses the Fund under this section, it thereby acquires title to the loan in question in its own name, and not as trustee of the Fund, and may retain for its own account any amount later collected on that loan. The institution must restore to the Fund the outstanding balance of the loan in question, including any portion attributable to the institutional contribution to the Fund.

In response to the comment that this rule denies the institution due process, the Secretary notes that any action taken by the Department to enforce the requirements of § 674.13 wil arise as a result of audits or program reviews of the institution, and as such will be subject to an administrative review and an opportunity for a hearing under the provisions of section 487 of the HEA. In addition, the Secretary believes that adoption of a specific percentage of losses as "allowable" is not a prudent step for several reasons. No legal basis is apparent for such a prospective forgiveness of liability, and it appears that such a tolerance might have the effect of lessening collection efforts.

Comment: Many commenters strongly opposed the mandatory inclusion of the word "Federal" in § 674.19(a) for identifying an account in which Federal funds are deposited. The commenters cite added cost and confusion of check printing and disbursements. Commenters from State institutions stated they could not comply with this proposal because of dealing with State Treasuries. In addition, numerous commenters objected strongly to the proposed regulation requiring an institution to keep its NDSL and Perkins loans fund cash in a separate account. Many of these commenters cited the undue administrative burden and the cost of maintaining the account. Other commenters suggested that the requirement of a separate account should be mandated on an individual basis for those institutions that did not maintain acceptable accounting practices.

Response. A change has been made. The Secretary has deleted the requirement that the institution include the name "Federal" in the name of the account. However, this final rule continues to provide that institutions must either notify the bank in writing of the Federal character of the account, or include that phrase in the name of the account. However, to further clarify the nature of the funds on deposit in Title IV program accounts, the Secretary has added language to this section to establish more clearly that character.

First, the rule now articulates what has always been clear under the statute and Department policy: Title IV funds may be used by the institution only for program purposes. See 20 U.S.C. 1094(a)(1). The sum of the Title IV funds on deposit in the institution's accounts must therefore always at least equal the amount of those funds it has received but not yet spent on program purposes. § 674.19(a)(3)(i). By accepting these funds from the Department, moreover, the institution accepts a fiduciary responsibility for these funds; under traditional common law principles, the institution that depletes these accounts containing Title IV funds is deemed to make any subsequent deposits of institutional funds into these accounts with the intention of restoring to the depleted accounts trust funds previously illegally withdrawn. The Secretary recognizes that such restorative deposits are commonly made by institutions with specific intent that the restored funds become Title IV funds, and that such funds be used for disbursement to students. Indeed, the Department has,

over the years, directed institutions to satisfy liabilities for misspent funds by depositing in these Title IV accounts the amount of institutional funds that would otherwise have been paid over to the Department to satisfy its claim.

The Secretary under this rule places no additional burden on the institution, which was already under a legal obligation to restore improperly withdrawn Title IV funds; rather, the purpose of this rule is to make clear that the Secretary—and the institution—regard these non-Federal funds deposited to depleted Title IV accounts to become part of the Title IV trust funds which the institution holds as fiduciary. These funds therefore become, as part of the trust fund, immune from attachment by third parties to the same extent as the Federal advances they replaced. The Secretary also agrees that only those institutions that do not maintain acceptable accounting practices should be required to maintain funds in a separate Direct/Perkins account. The regulation has been modified accordingly.

Section 674.31—Promissory note.

Comment: Several commenters objected to the provision that the promissory note be limited to either one piece of paper (front and back) or be multiple pages with the borrower's signature on each page. The commenters believed that this is a cumbersome practice that would only increase clerical error and workload. The commenters suggested the use of a multiple page document using the format "page one of five, page two of five, * * *"

Response: A change has been made. The Secretary has added to the final regulations the alternate provision suggested by the commenters allowing a multiple page promissory note, listing the total number of pages in the note as well as the number of each page.

Comment: One commenter encouraged the Department to require co-signers on every Perkins Loan Promissory note as an aid to collection.

Response: No change has been made. Section 464 of the HEA forbids use of an endorser unless the borrower is a minor and the note would not, for that reason, constitute an enforceable obligation under local law. An institution that requires a cosigner, however, must ensure that the obligation of the cosigner or endorser is itself legally enforceable.

Comment: One commenter suggested that a final provision be added to the promissory note section that states that the lending institution should secure the borrower's permission before sending any information about the borrower's account to a credit bureau. The commenter feared that the proposed requirement would violate the general provision in the Family Education Rights and Privacy Act (FERPA).

Response: No change has been made. The Secretary has interpreted 20 U.S.C. 1232g(b)(1)(D), and in particular 34 CFR 99.31(a)(4)(iv), to permit the disclosure of information regarding default on a Perkins (NDSL) loan to credit bureaus. These provisions of FERPA and regulations permit the institution to disclose information contained in the student's educational record without the student's consent if the disclosure is necessary for enforcement of the terms of financial aid which the student has received; reporting the default to a credit bureau is clearly authorized by this authority.

Comment: One commenter suggested changing the language of the sample promissory note that addresses the consequences to the borrower of default and of acceleration of the loan. The commenter suggested that the note should read that the borrower "will lose" deferment or cancellation benefits for service performed after the institution accelerates the loan.

Response: A change has been made. The Secretary has changed the promissory note according to these provisions as adopted in this final rule.

Comment: Three commenters stated that for clarity and simplicity a standard $2 per month penalty charge should be used regardless of the frequency with which the borrower is billed.

Response: A change has been made. Recent statutory changes in the Higher Education Amendments of 1986 have replaced the late charge based on specific dollar charges for each late installment ($1 for the first month, $2 for each month or part of a month thereafter, if repayments are made on a monthly basis, and $3 or $6 for each interval or part thereof for bimonthly or quarterly repayment intervals), with a late charge provision that requires the institution to assess a late payment charge on each late payment, based on the costs of performing activities required in Subpart C of these regulations for the billing cycle (*See:* § 674.44), as long as the total charges do not exceed 20 percent of the amount of the borrower's monthly, bimonthly or quarterly payment. Section 674.31(b)(5) of the final regulations has been amended to read accordingly.

Comment: One commenter suggested the elimination of § 674.31(b)(2) which gives the borrower the option of having graduated installments at his or her request. The commenter suggested that the decision to allow graduated installments should be entirely that of the institution.

Response: No change has been made. The Secretary believes that keeping a borrower in repayment status is a more important objective than requiring equal payments. If a borrower requests a graduated repayment schedule, it is indicative that the borrower intends to repay the loan.

Comment: One commenter stated that the timely filing of cancellation and deferment requests should be clearly stated as a borrower responsibility.

Response: A change has been made. The Secretary agrees with the commenter and the note has been changed accordingly.

Comment: One commenter suggested that Perkins loans be reported to credit bureaus and have their status updated on a monthly basis. Another commenter asked if the IRS tax offset provision should be included in the note.

Response: No change has been made. The Secretary has interpreted FERPA and its implementing regulations, especially 34 CFR 99.31(a)(4)(iv), to permit reporting delinquent or defaulted loans to credit bureaus without the borrower's consent. An institution that wishes to report other loans to credit bureaus may do so only with the consent of the borrower. An institution must report, according to the reporting procedures of the bureau, any changes in account status. The Federal income tax refund offset program is only a pilot program at present, and for that reason it is premature to include notice of this collection tool among routine disclosures.

Comment: One commenter felt that an institution should be allowed to recover all of the costs of collection—either from the NDSL revolving fund or directly from a defaulted borrower. The commenter advocated the deletion of the 25 percent limitation on contingent fee charges by collection firms that may be assessed against the borrower.

Response: A change has been made. In the past, an institution that used a collection firm and intended to pass on to the debtor the cost incurred in paying the collection firm was directed to include in the promissory note a provision specifying that the amount charged the borrower would not exceed 25 percent of the outstanding principal and interest due on the loan. This direction was based on an interpretation by staff of the Federal Trade Commission (FTC) that section 808 of the Fair Debt Collection Practices Act required a specific identification of the type and amount of such charges. The FTC has since revised this position (45

FR 8027, March 7, 1986) and the Department has removed this provision from the model promissory note. Section 484A of the Higher Education Act, added by Pub. L. 99–272, clarifies the consequences of default as subjecting the defaulting borrower to liability for reasonable collection costs, in addition to other charges specified in the law, such as late charges. Final regulations for Subpart C of this part will address this issue of recovery from the debtor of the costs of collection.

Section 674.33—Repayment.

Comment: Several commenters remarked that proposed § 674.32(b) which addressed "minimum repayment rates" was unclear and unnecessarily complex. These commenters felt that institutions should be permitted to use a general pro rata concept when determining how much each account should be repaid. These commenters were also of the opinion that paragraph (b) is inconsistent with the intent of the statute because requiring minimum repayments to be made on one loan while another is deferred deprives the borrower of the benefit of the grace period or deferment prescribed by the statute.

Response: No change has been made. The minimum repayment rates and the deferment provisions are dictated by statute and therefore cannot be changed. See § 674.33(b).

Comment: Three commenters expressed the opinion that notifying the Secretary of all loans that were being extended past the standard ten-year repayment period served no useful purpose. Two commenters suggested that such extensions only be reported on the Fiscal Operations Report and Application to Participate in the campus-based programs (FISAP). One commenter was opposed to granting any extension in the repayment period due to a borrower's low income.

Response: A change has been made. The Secretary agrees with the comment that notifying the Department of all loans that have been extended beyond the ten-year repayment period is an unnecessary institutional burden. The authority to extend the borrower's repayment period remains with the institution.

Section 674.34—Deferment of Repayment—Perkins loans.

Section 674.35—Deferment of Repayment—Direct loans made on or after October 1, 1980.

Comment: There were fifteen comments relative to the internship deferment provision. Two commenters believed the Secretary should not continue to require a bachelor's degree. One commenter stated that the specificity of the proposed provision would be beneficial to the institution in making its decision on a request for deferment. However, all of the other respondents believed that the new requirements were burdensome, time-consuming and of little benefit.

Response: No change has been made. This requirement conforms with all Title IV statutory and program provisions for internships.

Comment: One commenter requested more specificity regarding when a grace period begins and ends. The inquirer felt there was confusion between date-specific or month-specific interpretations.

Response: No change has been made. Section 464 provides that the repayment period begins nine months after the date on which the borrower ceases to be enrolled as at least a half-time student. The grace period is between these two dates. It is determined by specific dates, and cannot be rounded to approximations coinciding with calendar months.

Section 674.37—Deferment Procedures.

Comment: A wide range of comments were received on this section. One respondent was confused by the options available to the institution when a note has not been accelerated. Another commenter questioned if the borrower must pay the amount in default before he or she may be granted a deferment. Another commenter wanted the institution to retain options because it provided leverage needed to collect some loans. Two other commenters believed that this regulation would be unfair to borrowers whose deferments were not processed through no fault of the borrower. They also expressed the concern that the regulation would be a deterrent to accelerating any loans. Four commenters believed that not calculating the interest had little or no significance except to place an additional costly administrative burden on institutions.

Response: A change has been made. Section 674.37 has been re-written to clarify deferment procedures. To qualify for a deferment on a loan, a borrower must submit to the institution to which the loan is owed a written request for a deferment with documentation required by the institution, and must do so by the date that the institution establishes.

After a loan is in default, the institution may, at its discretion, grant a deferment if the borrower signs and complies with a new repayment agreement on the loan. The institution may do so even after it accelerates the defaulted loan. An institution may in these cases insist that the borrower immediately repay some or all of the amounts previously scheduled to be repaid before the date on which the institution made its determination that the borrower had demonstrated that grounds for a deferment existed, plus late charges and collection costs. Institutions are not required to grant deferments on loans in default; however, if they do so, by securing a new agreement, there is no reason to forego the recovery for the Fund of the accrued interest on that loan. If the institution regards the calculation of past-due, accrued interest as unduly burdensome, it may deny deferments on a defaulted loan.

Public Comments and Departmental Responses Relating to Part 675 (CWS)

Section 675.8—Program Participation Agreement.

Comment: A few commenters noted that the requirement in § 675.8(c) that the institution make non-CWS institutional jobs reasonably available to the extent of available funds is more restrictive than the statute. The regulation uses the phrase "* * * non-CWS institutional jobs * * *" but the statute states "* * * equivalent employment offered or arranged * * *." These commenters recommended that the regulation be changed to conform with the statute.

Response: A change has been made. The Secretary agrees with the commenters and § 675.8 has been rewritten to conform with the statute.

Section 675.18—Use of funds.

Comment: Two commenters objected to the proposed requirement in § 675.18 that before an institution may spend its current year CWS allocation, it shall spend any funds carried forward from the previous year. The commenters stated that the requirement would be administratively burdensome because institutions commingle such funds with current year funds and it would be difficult for an institution to demonstrate which funds were used first.

Response: No change has been made. An institution must spend any funds carried forward from the previous year before spending its current year CWS allocation. The Secretary has the authority to reallocate unused current year CWS funds to other institutions. Therefore, to identify accurately the amount of such unused current year funds, it is necessary for institutions to spend first those funds carried forward

from the previous year. Further, the Department of Education may not commingle different CWS annual appropriations in its accounting system, by law; therefore these funds must also be reported separately by the institution.

Section 675.19—Fiscal Procedures and Records.

Comment: Many commenters objected to the proposed rule in § 675.19 which would require the institution to maintain a time record in clock time sequences. Most of these commenters cited increased administrative burden on institutions, prohibitive costs (redesigning time-cards, time sheets, and systems), and the difficulty for State-administered institutions to comply due to standardized forms and procedures for State employees. Many of them stated that this method is more prone to error and will lead students to falsify records. Some commenters recommended that this rule may be necessary only for certain institutions where audits have uncovered flagrant abuse of the present method.

One commenter agreed that the proposal was appropriate, but stated that several months would be required to implement it because of the changes necessary in financial aid offices and payroll systems.

Response: A change has been made. In order to complement existing payroll processes, the Secretary has revised the requirement to provide that the certification must contain, or be supported by, time records in clock-time sequence.

Section 675.21 (§ 675.21 in NPRM)—Institutional employment.

Comment: Two commenters suggested that the areas of contracted services for CWS employment in other than proprietary institutions should be expanded. The commenters stated that the wording "such as food, service, cleaning, maintenance or security" makes it unclear as to whether other areas are allowed.

Response: No change has been made. The regulation lists the most common examples of areas of contracted services to which CWS students may be employed.

Comment: One commenter objected to the wording of § 675.21(d)(2), specifically the statement "The institution may enter into an agreement ONLY with a reliable agency * * *." The commenter suggested the deletion of the word "reliable" because it is judgmental and unnecessary.

Response: A change has been made. The Secretary recognizes the judgmental nature of the word "reliable" and has deleted this word. The reference to the agreement between institutions and organizations has been moved to § 675.20(b) of the final regulations.

Comment: A few commenters supported the rule proposed in § 675.21(d)(4)(ii) that states that the employer may be required to pay such costs as the employer's share of social security or workers' compensation; however, the commenters expressed concern that the regulation does not state *when* an employer must pay such costs.

Response: No change has been made. In an effort to allow institutional flexibility, the Secretary does not regulate when an employer must pay these costs. The decision as to which entity pays these costs will be contained in the agreement between the institution and the employing agency.

Section 675.23 (Previously 675.24)—CWS Federal share limitations.

Comment: Many commenters objected and expressed concern about the proposal to delete the option which allows an institution to refund excess funds to an off-campus employer when the institution receives more money from the employer than is required to pay the non-Federal share of wages and the administrative costs. The commenters argued that this proposal could jeopardize the willingness of some off-campus employers to participate in the CWS program and to deposit sufficient funds to meet institutional payroll requirements. They also stated that the accounting procedures would be difficult, since the excess funds would have to be carried from one fiscal year to the next.

Response: A change has been made. The Secretary agrees with the commenters and the option will remain in the regulations.

The Secretary amends Parts 674, 675, and 676 of Title 34 of the Code of Federal Regulations as follows:

PART 674—PERKINS LOAN PROGRAM

1. The authority citation for Part 674 is revised to read as follows:

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

1a. The Part heading and Note and Subparts A (consisting of §§ 674.1 through 674.20), B (consisting of §§ 674.31 through 674.39), and D (consisting of §§ 674.51 through 674.60) of Part 674 of Title 34 of the Code of Regulations are revised to read as follows, and Appendices A, B, and C are revised, and Appendices D and E are added to read as follows:

Note: An asterisk (*) indicates provisions that are common to Parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Subpart A—General Provisions

Subpart B—Terms of Loans

Subpart D—Loan Cancellation

Subpart A—General Provisions

§ 674.1 Purpose and identification of common provisions.

(a) The Perkins Loan Program provides low-interest loans to financially needy students attending institutions of higher education to help them pay their educational costs.

(b)(1) The Perkins Loan Program authorized by Title IV–E of the Higher Education Act of 1965 and previously named the National Direct Student Loan Program is a continuation of the National Defense Student Loan Program authorized by Title II of the National Defense Education Act of 1958. All rights, privileges, duties, functions, and obligations existing under Title II before the enactment of Title IV–E continue to exist.

(2) The Secretary considers any student loan fund established under Title IV–E to include the assets of an institution's student loan fund established under Title II.

*(c) Provisions in these regulations that are common to all campus-based programs are identified with an asterisk.

(d) Provisions in these regulations that refer to "loans" or "student loans" apply to all loans made under Title IV–E of the HEA or Title II of the National Defense Education Act.

(Authority: 20 U.S.C. 1087aa-1087hh; Pub. L. 92–318, sec. 137(d)(1))

§ 674.2 Definitions.

*(a) Subpart A of the Student Assistance General Provisions regulations, 34 CFR Part 668, sets forth definitions of the following terms used in this part:

Academic year
Award year
College Work-Study (CWS) Program
Defense loan
Direct loan
Enrolled
Guaranteed Student Loan (GSL) Program
HEA
Income Contingent Loan (ICL) Program
National Defense Student Loan Program
National Direct Student Loan (NDSL) Program
Pell Grant Program
Perkins loan
Perkins Loan Program
PLUS Program
Secretary
SLS Program
Supplemental Educational Opportunity Grant (SEOG) Program

(b) The Secretary defines other terms used in this part as follows:

Default: The failure of a borrower to make an installment payment when due or to comply with other terms of the promissory note or written repayment agreement.

Default rate: Represented as a fraction:

$$\frac{\text{Defaulted principal amount outstanding}}{\text{Matured loans}}$$

Defaulted principal amount outstanding: (1) The total loan amount borrowed from an institution's Fund that has reached the repayment stage on those loans that are—

(i) Repayable monthly and in default at least 120 days; or

(ii) Repayable less frequently and in default at least 180 days; minus

(2) That portion of these loans that have been—

(i) Repaid or cancelled;

(ii) Referred to the Secretary;

(iii) Assigned to the Secretary;

(iv) Discharged in bankruptcy; and

(v) Subject to a satisfactory written repayment agreement with which the borrower is currently in compliance.

**Expected family contribution (EFC):* The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

Federal capital contribution (FCC): Federal funds allocated or reallocated to an institution for deposit into the institution's Fund under section 462 of the HEA.

**Financial need:* The difference between a student's cost of attendance and his or her EFC.

**Full-time student:* An enrolled student who is carrying a full-time academic workload (other than by correspondence)—as determined by the institution—under a standard applicable to all students enrolled in a particular program. However, an institution's full-time standard must equal or exceed one of the following minimum requirements:

(1) 12 semester hours or 12 quarter hours per academic term in an institution using a semester, trimester, or quarters system.

(2) 24 semester hours or 38 quarter hours per academic year for an institution using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year.

(3) 24 clock hours per week for an institution using clock hours.

(4) In an institution using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one:

$$\frac{\text{Number of credit hours per term}}{12} + \frac{\text{Number of clock hours per week}}{24}$$

(5) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

Fund (Perkins Loan Fund): A fund established and maintained according to § 674.8.

Graduate or professional student: A student who—

(1) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) Is not receiving Title IV aid as an undergraduate student for the same period of enrollment.

Half-time graduate or professional student: An enrolled graduate or professional student who is carrying a half-time academic workload as determined by the institution according to its own standards and practices.

Half-time undergraduate student: An enrolled undergraduate student who is carrying a half-time academic workload, as determined by the institution, which amounts to at least half the workload of a full-time studnet. However, the institution's half-time standards must equal or exceed the equivalent of one or more of the following minimum requirements:

(1) 6 semester hours or 6 quarter hours per academic term for an institution using a standard semester, trimester, or quarter system.

(2) 12 semester hours or 18 quarter hours per academic year for an institution using credit hours to measure progress, but not using a standard semester, trimester, or quarter system; or the prorated equivalent for a program of less than one year.

(3) 12 clock hours per week for an institution using clock hours.

(4) 12 hours of preparation per week for a student enrolled in a program of study by correspondence. Regardless of the workload, no student enrolled solely

in correspondence study is considered more than half-time.

Initial grace period: That period which immediately follows a period of enrollment and immediately precedes the date of the first required repayment on a loan. This period is generally nine months for Perkins loans, Defense loans, and Direct loans made before October 1, 1980, and six months for other Direct loans.

**Institution of higher education (institution):* A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

Institutional capital contribution (ICC): Institutional funds contributed to establish or maintain a Fund.

Matured loans: The total principal amount of all loans made to students from an institution's Fund minus the principal amount of loans made from the institution's Fund to students who—

(1) Are enrolled as at least half-time students; or

(2) Are still in their first grace period.

**Payment period:* A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year.

Post-deferment grace period: That period of six consecutive months which immediately follows the end of certain periods of deferment and precedes the date on which the borrower is required to resume repayment on a loan.

Student loan: For this part means a Direct Loan, Defense Loan, or a Perkins Loan.

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.

(Authority: 20 U.S.C. 1087aa–1087hh)

***§ 674.3 Application.**

(a) To participate in the Perkins Loan Program, an institution shall file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain the information needed by the Secretary to determine the institution's allocation or reallocation of the Perkins Loan Program funds under section 462 of the HEA.

(Authority: 20 U.S.C. 1087bb)

§ 674.4 Allocation and reallocation.

(a) The Secretary allocates Federal capital contributions to institutions participating in the Perkins Loan program in accordance with section 462 of the HEA.

(b) The Secretary reallocates Federal capital contributions to institutions participating in the Perkins Loan program in a manner that best carries out the purpose of section 462 of the HEA.

(c) As used in section 462 of the HEA, "Eligible institutions offering comparable programs of instruction" means institutions that are being compared with the applicant institution and that fall within one of the following six categories:

(1) Cosmetology.

(2) Business.

(3) Trade/Technical.

(4) Art Schools.

(5) Other Proprietary Institutions.

(6) Non-Proprietary Institutions.

(d) *Payment to institutions.* The Secretary allocates funds for a specific period of time. The Secretary pays an institution its allocation in periodic installments and may make these payments in advance or by way of reimbursement. The Secretary bases the amounts of these installments on periodic fiscal reports.

(Authority: 20 U.S.C. 1087bb)

§§ 674.5—674.7 [Reserved]

§ 674.8 Program participation agreement.

To participate in the Perkins Loan program, an institution shall enter into a participation agreement with the Secretary. The agreement provides that the institution shall use the funds it receives solely for the purposes specified in this part and shall administer the program in accordance with the Act, this part and the Student Assistance General Provisions regulations, 34 CFR Part 668. The agreement further specifically provides, among other things, that—

(a) The institution shall establish and maintain a Fund and shall deposit unto the Fund–

(1) FCC received under this subpart;

(2) ICC equal to at least one-ninth of the FCC described in paragraph (a)(1) of this section;

(3) Payments of principal, interest, late charges and collection costs on loans from the Fund;

(4) Payments to the institution as the result of loan cancellations under section 465(b) of the Act;

(5) Any other earnings on assets of the Fund, including the interest earnings of the funds listed in paragraphs (a)(1) through (4) of this section net of bank charges incurred with regard to Fund assets deposited in interest-bearing accounts; and

(6) Proceeds of short-term no-interest loans made to the Fund in anticipation of collections or receipt of FCC.

(b) The institution shall use the money in the Fund only for—

(1) Making loans to students;

(2) Administrative expenses as provided for in § 674.18(b);

(3) Capital distributions provided for in section 466 of the Act;

(4) Litigation costs (see §674.47);

(5) Other collection costs, agreed to by the Secretary in connection with the collection of principal, interest, and late charges on a loan made from the Fund (see § 674.47); and

(6) Repayment of any short-term, no-interest loans made to the Fund by the institution in anticipation of collections or receipt of FCC.

(c) The institution shall submit an annual report to the Secretary containing information about loans in default—

(1) 120 days or more for loans repayable in monthly installments; or

(2) 180 days or more for loans repayable in less frequent installments.

(d)(1) If an institution determines not to service or collect a loan, the institution may assign its rights to the loan to the United States without recompense at the beginning of a repayment period; or

(2) If a loan is in default despite due diligence on the part of the institution in collecting the loan, the institution may assign its rights to the loan to the United States without recompense.

(e) To assist institutions in collecting outstanding loans, the Secretary provides to an institution the names and addresses of borrowers or other information relevant to collection which is available to the Secretary.

(f) The institution shall provide the loan information required by section 463A of the HEA to a borrower.

(Authority: 20 U.S.C. 1087cc, 1087cc–1, 1094)

§ 674.9 Student eligibility.

A student at an institution of higher education is eligible to receive a loan under the Perkins Loan program for an award year if the student—

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.7;

(b) Is enrolled or accepted for enrollment as an undergraduate, graduate or professional student at the institution;

(c) Has financial need as determined in accordance with Part F of Title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order–

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members;

(d) Has received for that award year, if an undergraduate student—

(1) A SAR as a result of applying for a grant under the Pell Grant Program; or

(2) A preliminary determination of eligibility or ineligibility for a Pell Grant by the institution's financial aid administrator after applying for a SAR with a Pell Grant Processor; and

(e) Is willing to repay the loan. Failure to meet payment obligations on a previous loan, including a loan discharged in bankruptcy, is evidence that the student is unwilling to repay the loan.

(Authority: 20 U.S.C. 1087dd and 1091)

§ 674.10 Selection of students for loans.

(a)(1) An institution shall make loans under this part reasonably available, to the extent of available funds, to all students eligible under § 674.9 but shall give priority to those students with exceptional financial need.

(2) The institution shall define exceptional financial need for the purpose of the priority described in paragraph (a)(1) of this section and shall develop procedures for implementing that priority.

(b) If an institution's allocation of FCC is directly or indirectly based on the financial need demonstrated by students attending the institution as less than full-time students, the institution shall, consistent with the requirements of paragraph (a) of this section, award a reasonable proportion of its allocation to those students.

(c) The institution shall establish selection procedures and these procedures must be—

(1) In writing;

(2) Uniformly applied; and

(3) Maintained in the institution's files.

(Authority: 20 U.S.C. 1087cc and 1087dd)

§ 674.11 [Reserved]

§ 674.12 Loan maximums.

The cumulative maximum amount of Defense Loans, Direct loans and Perkins loans an eligible student may borrow is—

(a) $4,500 for a student who has not completed 2 academic years of study toward a bachelor's degree;

(b) $9,000 for a student who has completed 2 academic years of study toward a bachelor's degree and has achieved third-year status but has *not* received the degree; and

(c) $18,000 for study toward a professional or graduate degree.

(d) The maximum amounts listed in paragraphs (a), (b) and (c) of this section include any amount borrowed previously under Title IV–E of the HEA at any institution, regardless of any amounts that may have been repaid to the Fund at any institution.

(Authority: 20 U.S.C. 1087dd)

§ 674.13 Reimbursement to the Fund.

(a) The Secretary requires an institution to reimburse its Fund in an amount equal to that portion of the outstanding balance of—

(1) A loan disbursed by the institution to a borrower in excess of the amount that the borrower was eligible to receive, as determined on the basis of information the institution had, or should have had, at the time of disbursement; or

(2) Except as provided in paragraph (b) of this section, a defaulted loan with regard to which the institution failed—

(i) To record or retain the loan note in accordance with the requirements of this part;

(ii) To record advances on the loan note in accordance with the requirements of this part; or

(iii) To exercise due diligence in collecting in accordance with the requirements of this part.

(b) The Secretary does not require an institution to reimburse its Fund for the portion of the outstanding balance of a defaulted loan described in paragraph (a)(2) of this section—

(1) That the institution—

(i) Recovers from the borrower or endorser; or

(ii) Demonstrates, to the Secretary's satisfaction, would not have been collected from the borrower or endorser even if the institution complied in a timely manner with the due diligence requirements of Subpart C of this part; or

(2) On which the institution obtains a judgment.

(c) An institution that is required to reimburse its Fund under paragraph (a) of this section shall also reimburse the Fund for the amount of the administrative cost allowance claimed by the institution for that portion of the loans to be reimbursed.

(d) An institution that reimburses its Fund under paragraph (a) of this section thereby acquires for its own account all the right, title and interest of the Fund in the loan for which reimbursement has been made.

(Authority: 20 U.S.C. 1087dd–1087hh)

***§ 674.14 Overaward.**

(a) *Overaward prohibited.* *(1) An institution may only award or disburse a Direct loan or a Perkins loan to a student if that loan, combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding and disbursing a Direct loan or a Perkins loan to a student, the institution shall take into account those resources it—

(i) Can reasonably anticipate at the time it awards loan funds to the student;

(ii) Makes available to its students; or

(iii) Knows about.

(3)(i) If a student receives additional resources before the institution advances the loan, and the total resources including the loan exceed the student's need, and the excess is not from employment, the overaward is the amount that exceeds need.

*(ii) If a student receives additional resources after the institution advances the loan, and the total resources including the loan exceeds the student's need by $200 or more and the excess is not from employment, the overaward is the amount that exceeds $199.

*(4) If a student earns more money from employment than the institution anticipated or could have reasonably anticipated when it awarded or disbursed the loan, the institution shall treat the earnings in accordance with paragraph (d) of this section.

*(b) *Resources.* (1) The Secretary considers that "resources" include but are not limited to any—

(i) Funds the student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Students Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs and ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowship or assistantship;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from employment other than CWS employment for the period of the award except as provided in 34 CFR 675.25; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(2) The Secretary does not consider as a resource any portion of the resources described in paragraph (b)(1) of this section that are included in the student's EFC.

(3) The student may use Supplemental Loans for Students (SLS), State-sponsored or private loans, PLUS loans, or non-need-based ICLs to substitute for his or her expected family contribution. However, if the sum of the loan amounts received exceeds the student's expected contribution, the excess is a resource.

(c) *Liability for and recovery of overpayments.* (1) The student is liable for any overpayment of loan advances made to him or her.

(2) The institution is also liable for an overpayment if the overpayment occurred because it failed to follow the procedures set forth in this part. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its loan Fund even if it cannot collect the overpayment from the student.

(3) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recovery the overpayment by making a reasonable effort to contact the student and recover the overpayment.

The Secretary regards a written demand to the student for repayment of the overawarded funds, with notice that failure to make that repayment will render the student ineligible for further Title IV aid, to constitute such a reasonable effort.

*(d) *Treatment of earnings in excess of need.* An institution shall take the following steps when it learns that a student has earned, or will earn, an amount that when combined with other resources is $200 or more over his or her financial need:

(1) The institution shall decide whether the student has increased financial need unanticipated when it awarded financial aid to the student. If the student does, and the student's earnings plus other resources do not exceed this increased need by $200 or more, no further action is necessary.

(2) If the student's earnings plus other resources still exceed need by $200 or more after the institution subtracts any additional costs, it shall cancel any unpaid loan or grant (other than Pell Grants) to avoid exceeding need by more than $199.

(3) If the student's earnings plus other resources still exceed his or her need by $200 or more after the institution takes the steps required in paragraphs (d) (1) and (2) of this section, and the student is enrolled for the next academic year, the institution shall consider the amount that exceeds $199 as a resource to help pay the student's cost of attendance in the following year.

(4) If the student's earnings plus other resources still exceed his or her need by $200 or more after the institution takes the steps required in paragaphs (d) (1) and (2) of this section, and the student is not enrolled for the next academic year, no further action is necessary.

(Authority: 20 U.S.C. 1087dd, 1087hh)

***§ 674.15 Coordination with BIA grants.**

(a) To determine the amount of a loan for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a BIA/eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 20 U.S.C. 1087dd)

§ 674.16 Making and disbursing loans.

(a)(1) Before an institution makes its first disbursement to a student, the student shall sign the promissory note and the institution shall provide the student with the following information:

(i) The name of the institution and the address to which communications and payments should be sent.

(ii) The principal amount of the loan.

(iii) The stated interest rate on the loan.

(iv) The yearly and cumulative maximum amounts that may be borrowed.

(v) An explanation of when repayment of the loan will begin and when the borrower will be obligated to pay interest that accrues on the loan.

(vi) The minimum and maximum repayment terms which the institution may impose and the minimum monthly repayment required.

(vii) A statement of the total cumulative balance owed by the student to that institution, and an estimate of the monthly payment amount needed to repay that balance.

(viii) Special options the borrowers may have for loan consolidation or other refinancing of the loan.

(ix) The borrower's right to prepay all or part of the loan, at any time, without penalty, and a summary of the circumstances in which repayment of the loan or interest that accrues on the loan may be deferred or canceled including a brief notice of the Department of Defense program for repayment of loans on the basis of specified military service.

(x) A definition of default and the consequences to the borrower including a statement that the default may be reported to a credit bureau or credit reporting agency.

(xi) The effect of accepting the loan on the eligibility of the borrower for other forms of student assistance.

(xii) The amount of any charges collected by the institution at or prior to the disbursement of the loan and any deduction of such charges from the proceeds of the loan or paid separately by the borrower.

(xiii) Any cost that may be assessed on the borrower in the collection of the loan including late charges and collection and litigation costs.

(2) The institution shall provide the information in paragraph (a)(1) of this section to the borrower in writing—

(i) As part of the written application material;

(ii) As part of the promissory note; or

(iii) On a separate written form.

(b)(1) Except as provided in paragraphs (c) and (f) of this section, an

institution shall advance in each payment period a portion of a loan awarded for a full academic year.

(2) The institution shall determine the amount advanced each payment period by the following fraction:

$$\frac{\text{Loan amount}}{N}$$

Where Loan Amount = the total loan awarded for an academic year and N = the number of payment periods that the institution expects the student will attend in that year.

(3) An institution may advance funds, within each payment period, at such time and in such amounts as it determines best meets the student's needs.

(c) If a student incurs uneven costs or resources during an academic year and needs additional funds in a particular payment period, the institution may advance loan funds to the student for those uneven costs.

(d) The institution may advance the loan proceeds to the borrower directly by check or by crediting his or her account with the institution. The institution shall notify the student of the amount he or she can expect to receive, and how and when that amount will be paid. In either case, the borrower must sign for each advance of funds on the promissory note.

(e)(1) An institution may not advance a loan to a student for a payment period until the student is enrolled for that period.

(2) Subject to the requirements of paragraph (f) of this section—

(i) An institution may advance loan proceeds directly to an enrolled student no more than 10 days before the first day of classes of a payment period; and

(ii) An institution may advance loan proceeds by crediting an enrolled student's account no more than 3 weeks before the first day of classes of a payment period.

(f)(1) The institution shall return to the Fund any amount advanced to a student who, before the first day of classes—

(i) Officially or unofficially withdraws; or

(ii) Is expelled.

(2) A student who does not begin class attendance is deemed to have withdrawn.

(g) Only one advance is necessary if the total amount the institution awards a student for an academic year under the Perkins Loan program is less than $501.

(h) An institutional official may not, without prior approval from the Secretary, obtain a student's power of attorney to endorse any check used to disburse loan funds.

(Authority: 20 U.S.C. 1987cc, 1087cc–1, 1087dd, 1091 and 1094)

§ 674.17 Federal interest in allocated funds—transfer of Fund.

(a) Funds received by an institution under the Perkins Loan program, including repayments on loans, are held in trust for the intended student beneficiaries and the Secretary. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(b)(1) If an institution responsible for a Perkins Loan fund closes or no longer wants to participate in the program, the Secretary directs the institution to take one or more of the following steps to protect the outstanding loans and the Federal interest in that Fund:

(i) A capital distribution of the liquid assets of the Fund according to section 466(c) of the Act.

(ii) The transfer of the outstanding loans to another institution.

(iii) The transfer of the outstanding loans to the Department of Education.

(2) An institution that transfers outstanding loans under this paragraph relinquishes its interest in those loans.

(3) If the Secretary directs the transfer of outstanding loans to a second institution, the transferee institution may deposit the collections on those loans in its own Fund. The Secretary considers that portion of the collections on transferred loans corresponding to the transferor institution's ICC to become part of the transferee institution's ICC.

(4) If the Secretary decides to transfer outstanding loans to another institution, and more than one institution offers to collect the outstanding loans, the Secretary directs that the loans be transferred to one or more of the competing institutions on the basis of—

(i) The offering institution's demonstrated loan collection capability; and

(ii) The number of students of the transferor institution expected to enroll in the offering institution.

(5) The Secretary does not take an audit exception against a transferee institution on account of actions or omissions of the transferor institution in the administration of its Fund. The transferee institution shall segregate the transferred Fund account until an audit satisfactory to the Secretary is performed on the operation of the transferor institution's program.

(Authority: 20 U.S.C. 1087cc, 1087ff), and (1087hh)

§ 674.18 Use of funds.

(a) *General.* An institution shall deposit the funds it receives under the Perkins Loan program into its Fund. It may use these funds only for making loans and the other activities specified in § 674.8(b).

(b) *Administrative cost allowance.* (1) An institution participating in the Perkins Loan program for an award year is entitled to an administrative cost allowance if it advances funds to students in that year under the Perkins Loan program.

(2) For any award year, the amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in that award year under the CWS, SEOG and Perkins Loan programs; plus

(ii) Four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures which are in excess of $5,500,000.

(3) However, the institution shall not include, when calculating the allowance in paragraph (b)(2) of this section, the institution's CWS expenditures under the community service learning program (34 CFR 675.28), and the amount of NDSLs and Perkins loans that it assigns to the Secretary under section 463(a)(6) of the HEA.

(4) An institution shall use its administrative cost allowance to offset its cost of administering the CWS, SEOG and Perkins Loan programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistant General Provisions regulations, 34 CFR Part 668.

(5) An institution shall charge any administrative costs against its Fund during the same award year in which the expenditures for these costs were made.

(Authority: 20 U.S.C. 1087cc, 1087dd, and 1096)

§ 674.19 Fiscal procedures and records.

(a) *Fiscal procedures.* (1) In administering its Perkins Loan program, an institution shall establish and maintain an internal control system of checks and balances that ensures that no office can both authorize payments and disburse funds to students.

(2)(i) A separate bank account for Federal funds is not required, except as provided in paragraph (b) of this section.

(ii) An institution shall notify any bank in which it deposits Federal funds

of the accounts into which those funds are deposited by—

(A) Ensuring that the name of the account clearly discloses the fact that Federal funds are deposited in the account; or

(B) Notifying the bank, in writing, of the names of the accounts in which it deposits Federal funds. The institution shall retain a copy of this notice in its files.

(3)(i) The institution shall ensure that the cash balances of the accounts into which it deposits Perkins Loan Fund cash assets do not fall below the amount of Fund cash assets deposited in those accounts but not yet expended on authorized purposes in accordance with applicable Title IV HEA program requirements, as determined from the records of the institution.

(ii) If the cash balances of the accounts at any time fall below the amount described in paragraph (a)(3)(i) of this section, the institution is deemed to make any subsequent deposits into the accounts of funds derived from other sources with the intent to restore to that amount those Fund assets previously withdrawn from those accounts. To the extent that these institutional deposits restore the amount previously withdrawn, they are deemed to be Fund assets.

(b) *Account for Perkins Loan Fund.* (1) An institution must maintain all the cash of its Perkins Loan Fund in a separate bank account that contains no other funds if the Secretary determines that the institution's accounting system and internal controls do not—

(i) Meet the requirements of paragraph (c) or (d) of this section;

(ii) Identify the cash balance of the Perkins Loan Fund as readily as if the Fund were maintained in a separate bank account; or

(iii) Adequately identify the earnings of the Fund.

(2) The Secretary makes that determination on the basis of an audit examination or as a result of a program review.

(3) The separate bank account must be identified as the institution's Federal Fund account and must contain all the cash of the institution's Perkins Loan Fund. That cash includes Federal capital contributions, institutional capital contributions, repayments made by borrowers, loan cancellation payments, and any earnings of the Fund including interest.

(4) An institution shall ensure that all the cash in its Perkins Loan Fund is—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(5) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(c) *Deposit of ICC into Fund.* An institution shall deposit its ICC into its Fund prior to or at the same time it deposits any FCC.

(d) *Records and reporting.* (1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

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

(i) Are reconciled at least monthly;

(ii) Identify each student's account and status;

(iii) Show the eligibility of each student aided under the program; and

(iv) Show how the need was met for each student.

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

(4) The institution shall maintain on file all loan applications for those students it reports on the Fiscal Operations Report and Application to Participate in the Perkins Loan, SEOG, and CWS programs (FISAP).

(5) The institution shall maintain all records supporting its application for funds under this part.

(e) *Retention of records*—(1) *Records.* Each institution shall keep intact and accessible records pertaining to the application for and receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

(2) *Loan records.* (i) An institution shall maintain a repayment history for each borrower. This repayment history must show the date and amount of each repayment over the life of the loan. It must also indicate the amount of each repayment credited to principal, interest, late charges and collection costs.

(ii) This history must also show the date, nature, and result of each contact with the borrower or endorser in the collection of an overdue loan. The institution shall include in the repayment history copies of all correspondence to or from the borrower and endorser, except bills, routine overdue notices, and routine form letters.

* (3) *Period of retention.* (i) Except for loan records and records of expenditures questioned in audits or Departmental program reviews, an institution shall keep records for an award year for five years after it submits its FISAP.

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

(iii) An institution shall keep records on any claim or expenditure questioned by Federal audit or Department program review until resolution of any audit questions raised with regard to that transaction.

(4) *Manner of retention of records.* (i) An institution shall keep the original promissory notes and repayment schedules in a locked, fireproof container until—

(A) The loans are satisfied; or

(B) The original documents are needed in order to enforce the loan obligation.

(ii) The institution shall retain certified true copies of documents released for enforcement of the loan.

(iii) After the loan obligation is satisfied, the institution shall return the original notes marked "paid in full" to the borrower.

(iv) An institution shall maintain separately its records pertaining to cancellations of Defense, Direct, and Perkins Loans.

*(v) An institution may keep the records required in this section on microforms or it may keep its records in computer format. If an institution keeps its records in computer format it shall maintain, in either hard copy or microforms, the source documents supporting the computer input.

(vi) Only authorized personnel may have access to the loan documents.

(Authority: 20 U.S.C. 1087cc, 1087hh, 1094, and 1232f)

§ 674.20 Compliance with equal credit opportunity requirements.

(a) In making a loan, an institution shall comply with the equal credit opportunity requirements of Regulation B (12 CFR Part 202).

(b) The Secretary considers the Perkins Loan program to be a credit assistance program authorized by

Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore, the institution may request a loan applicant to disclose his or her marital status, income from alimony, child support, and spouse's income and signature.

(Authority: 20 U.S.C. 1087aa–1087hh)

Subpart B—Terms of Loans

§ 674.31 Promissory note.

(a) *Promissory note.* (1) An institution may use only a promissory note which the Secretary has approved.

(2) The Secretary has approved the promissory notes set forth in the Appendices to this part. The institution shall not change the substance of the notes set forth in the Appendices without the Secretary's approval.

(3)(i) The institution shall print the note on one page, front and back; or

(ii) The institution may print the note on more than one page if—

(A) The note requires the signature of the borrower and/or any endorser on each page; or

(B) Each page of the note contains both the total number of pages in the complete note as well as the number of each page, e.g., page 1 of 4, page 2 of 4, etc.

(b) *Provisions of the promissory note*—(1) *Interest.* The promissory note must state that—

(i) The rate of interest on the loan is 5 percent per annum on the unpaid balance; and

(ii) No interest shall accrue before the repayment period begins, during certain deferment periods as provided by this subpart, or during the grace period following those deferments.

(2) *Repayment.* (i) Except as otherwise provided in § 674.32, the promissory note must state that the repayment period—

(A) For Direct Loans made on or after October 1, 1980, begins 6 months after the borrower ceases to be at least a half-time regular student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(B) For Perkins Loans and Direct Loans made before October 1, 1980, begins 9 months after the borrower ceases to be at least a half-time student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(C) May begin earlier at the borrower's request; and

(D) May vary because of minimum monthly repayments (see § 674.33(b)), extensions of repayment (see § 674.33(c)), or deferments (see §§ 674.34, 674.35 and 674.36); and

(ii) The promissory note must state that the borrower shall repay the loan—

(A) In equal quarterly, bimonthly, or monthly amounts, as the institution chooses; or

(B) In graduated installments if the borrower requests a graduated repayment schedule, the institution submits the schedule to the Secretary for approval, and the Secretary approves it.

(3) *Cancellation.* The promissory note must state that the unpaid principal, interest, late charges and collection costs on the loan are cancelled upon the death or permanent disability of the borrower.

(4) *Prepayment.* The promissory note must state that—

(i) The borrower may prepay all or part of the loan at any time without penalty;

(ii) The institution shall use amounts repaid during the academic year in which the loan was made to reduce the original loan amount and not consider these amounts to be prepayments;

(iii) If the borrower repays amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be treated as prepayments; and

(iv) If, in an academic year other than that described in paragraph (b)(4)(iii) of this section, a borrower repays more than the amount due for any repayment period, the institution shall use the excess to prepay the principal unless the borrower designates it as an advance payment of the next regular installment.

(5) *Late charge.* (i) An institution shall state in the promissory note that the institution will assess a late charge if the borrower does not—

(A) Repay all or part of a scheduled repayment when due; or

(B) File a timely request for cancellation or deferment with the institution. This request must include sufficient evidence to enable the institution to determine whether the borrower is entitled to a cancellation or deferment.

(ii)(A) The amount of the late charge on a Perkins Loan or a Direct Loan made to cover the cost of attendance for a period of enrollment that began on or after January 1, 1986 must be determined in accordance with § 674.43(b) (2), (3) and (4).

(B) The amount of the late or penalty charge on a Direct loan made for periods of enrollment that began before January 1, 1986 may be—

(*1*) For each overdue payment on a loan payable in monthly installments, a maximum monthly charge of $1 for the first month and $2 for each additional month.

(*2*) For each overdue payment on a loan payable in bimonthly installments, a maximum bimonthly charge of $3.

(*3*) For each overdue payment on a loan payable in quarterly installments, a maximum charge per quarter of $6. (See Appendix E of this part)

(iii) The institution may—

(A) Add the late charge to the principal the day after the scheduled repayment was due; or

(B) Include it with the next scheduled repayment after the borrower receives notice of the late charge.

(6) *Security and endorsement.* The promissory note must state that the loan shall be made without security and endorsement unless—

(i) The borrower is a minor; and

(ii) Under applicable State law, a note signed by a minor would not create a binding obligation.

(7) *Assignment.* The promissory note must state that a note may only be assigned to—

(i) The United States or an institution approved by the Secretary; or

(ii) An institution to which the borrower has transferred if that institution is participating in the Perkins Loan program.

(8) *Acceleration.* The promissory note must state that an institution may demand immediate repayment of the entire loan, including any late charges, collection costs and accrued interest, if the borrower does not—

(i) Make a scheduled repayment on time; or

(ii) File cancellation or deferment form(s) with the institution on time.

(9) *Cost of collection.* The promissory note must state that the borrower shall pay all attorney's fees and other loan collection costs and charges.

(10) *Disclosure of information.* The promissory note must state that if the borrower defaults on the loan and the loan is referred or assigned to the Secretary, the Secretary may disclose to a credit bureau organization—

(i) That the borrower has defaulted on the loan; and

(ii) Any other relevant information.

(Authority: 20 U.S.C. 1087dd)

§ 674.32 Special terms: loans to less than half-time student borrowers.

(a) The promissory note used with regard to loans to borrowers enrolled on a less than half-time basis must state that the repayment period begins—

(1) On the date of the next scheduled installment payment on any outstanding loan to the borrower; or

(2) If the borrower has no outstanding loan, at the earlier of—

(i) Nine months from the date the loan was made, or

(ii) The end of a none-month period that includes the date the loan was made and began on the date the borrower ceased enrollment as at least a regular half-time student at an institution of higher education or comparable institution outside the U.S. approved for this purpose by the Secretary.

(b) The note must otherwise conform to the provisions of § 674.31.

(Authority: U.S.C. 1087dd)

§ 674.33 Repayment

(a) *Repayment Plan.* (1) The institution shall establish a repayment plan before the student ceases to be at least a half-time student.

(2) If the last scheduled payment would be $15 or less the institution may combine it with the next-to-last repayment.

(3) The institution shall apply any payment on a loan in the following order:

(i) Collection costs.

(ii) Late charges.

(iii) Accured interest.

(iv) Principal.

(b) *Minimum repayment rates—(1) Rounding monthly repayment amounts.* If the monthly repayment for all loans made to a borrower by an institution is not a multiple of $5, the institution may round that payment to the next highest dollar amount that is a multiple of $5.

(2) *Minimum monthly repayment of Defense loans from one institution.* An institution may require a borrower of a Defense loan to pay a $15 minimum monthly repayment if—

(i) The monthly repayment of principal and interest for a 10-year repayment period is less than $15 a month; and

(ii) The promissory note includes a $15 minimum monthly repayment provision.

(3) *Minimum monthly repayment of Defense loans from more than one institution.* If a borrower has received Defense loans from more than one institution and—

(i) Only one institution exercises $15 option when the monthly repayment would otherwise be less than $15, that institution receives the difference between $15 and the repayment owed to the other institution; or

(ii) Each institution exercises the $15 minimum option the $15 monthly payment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(4) *Minimum monthly repayment of Direct loans and Perkins loans from one institution.* The institution may require a borrower to pay a $30 monthly repayment on Direct loans or Perkins loans if—

(i) The monthly repayment of principal and interest for a 10-year repayment period is less than $30 a month; and

(ii) The promissory note includes a $30 minimum monthly repayment provision.

(5) *Minimum monthly repayment of Direct loans and Perkins loans from more than one institution.* If a borrower has received Direct loans or Perkins loans from more than one institution and—

(i) Only one institution exercises the $30 option when the monthly repayment would otherwise be less than $30 that institution receives the difference between $30 and the repayment owed to the other institution; or

(ii) Each institution exercise's the $30 minimum option, the $30 monthly payment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(6) *Minimum monthly repayment of both Defense and Direct or Perkins loans from one or more institutions.* If a borrower has received both a Defense loan and a Direct or Perkins loan, the following rules apply:

(i) If the total of the monthly repayments for a Defense, Direct and a Perkins loan is at least $30, no institution may exercise a minimum repayment option, even if the Defense loan repayment is less than $15 or the Direct or Perkins loan repayment is less than $30.

(ii) If the total of the monthly repayments would otherwise be less than $30 for the Defense, Direct, and Perkins loans, an institution may exercise the minimum repayment options applicable to the respective loans. The maximum total monthly repayment, however, may not exceed $30 a month.

(iii) If the total monthly repayment is less than $30 and the monthly repayment on a Defense loan is less than $15 a month, the amount attributed to the Defense loan may not exceed $15 a month. However, $15 may be attributed to the Defense loan only if the institution exercises the minimum option on the Defense loan.

(7) *Minimum monthly repayment of loans from one institution with different interest rates.* (i) If a borrower has received loans with different interest rates from the same institution, and the total monthly repayment is at least $30 for the loans, the institution may not exercise the minimum monthly payment on any loan.

(ii) If the borrower has received loans with different interest rates at the same institution and the total monthly repayment would otherwise be less than $30, the institution may exercise the $30 minimum payment option, providing it is in one of the promissory notes, and the institution divides the repayment between the accounts in proportion to the amount of principal advanced under each loan.

(8) *Differing grace periods and deferments.* If the borrower has received loans with different grace periods and deferments, the institution shall treat each note separately, and the borrower shall pay the applicable minimum monthly payment for a loan that is not in the grace or deferment period.

(9) *Hardship.* The institution may reduce the borrower's scheduled repayments for a period of not more than one year if—

(i) It determines that the borrower is unable to make the scheduled repayments due to hardship (see § 674.33(c)); and

(ii) The borrower's scheduled repayment is the $30 minimum monthly repayment described in paragraph (b) of this section.

(10) The institution shall determine the minimum repayment amount under paragraph (b)(6) of this section for loans with repayment installment intervals greater than one month by multiplying the amounts in paragraph (b)(6) by the number of months in the installment interval.

(c) *Extension of repayment period—*(1) *Hardship.* The institution may extend a borrower's repayment period due to hardship.

(2) *Low-income individual.* (i) For Direct and Perkins loans made on or after October 1, 1980. The institution may extend the borrower's repayment period up to 10 additional years beyond the 10-year maximum repayment period if the institution determines that the borrower will be a low-income individual during the course of the repayment period. The term "low-income individual" means an individual whose family's taxable income for the preceding calendar year did not exceed 150 percent of the poverty level established by the Bureau of the Census for that year. The individual's family includes the borrower and any spouse or legal dependents.

(ii) The institution may adjust the repayment schedule to reflect the income of that individual.

(iii) The institution shall review the borrower's status annually. If the borrower is no longer a low-income individual, the institution shall appropriately adjust the repayment period.

(3) Interest continues to accrue during any extension of a repayment period.

(Authority: 20 U.S.C. 425 and 1087dd, sec. 137(d) of Pub. L. 92-318)

§ 674.34 Deferment of repayment—Perkins loans.

(a) The borrower may defer repayment on a Perkins Loan during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard or an officer in the Commissioned Corps of the U.S. Public Health Service (see § 674.56);

(2) On full-time active duty as a member of the National Oceanic and Atmospheric Administration Corps;

(3) A Peace Corps volunteer,

(4) A volunteer under Title I—Part A of the Domestic Volunteer Act of 1973 (ACTION programs);

(5) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Act of 1973. The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) The borrower serves in an organization which is exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions.

(iii) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes and allowance for subsistence, necessary travel expenses, and stipends.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(6) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure gainful employment because the borrower is providing care, such as continuous nursing or other similar services, required by a dependent who is so disabled. As used in this paragraph—

(i) "Temporarily totally disabled", with regard to the borrower, means the inability by virtue of an injury or illness to attend an eligible institution or to be gainfully employed during a reasonable period of recovery; and

(ii) "Temporarily totally disabled", with regard to a disabled spouse or other dependent of a borrower, means requiring continuous nursing or other services from the borrower for a period of at least three months because of illness or injury.

(d)(1) The borrower need not repay principal, and interest does not accrue, for a period not to exceed two years during which time the borrower is serving an eligible internship.

(2) An eligible internship is one which—

(i) Requires the borrower to hold at least a baccalaureate degree before beginning the internship; and

(ii)(A) A State licensing agency requires an individual to complete as a prerequisite for certification for professional practice or service; or

(B) Is a part of an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training.

(3) To qualify for an internship deferment as provided in paragraph (c)(2)(ii)(A) of this section, the borrower must provide the institution with the following certifications:

(i) A statement from an official of the appropriate State licensing agency that successful completion of the internship program is a prerequisite for its certification of the individual for professional service or practice.

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying—

(A) That a baccalaureate degree must be attained in order to be admitted into the internship program;

(B) That the borrower has been accepted into its internship program; and

(C) The anticipated dates on which the borrower will begin and complete the program.

(4) To qualify for an internship deferment as provided in paragraph (c)(2)(ii)(B) of this section, the borrower must provide the institution with a statement from an authorized official of the internship program certifying that—

(i) A baccalaureate degree must be attained in order to be admitted into the internship program;

(ii) The borrower has been accepted into its internship program; and

(iii) The internship of residency program in which the borrower has been accepted leads to a degree or certificate awarded by an institution of higher education, a hospital or a health care facility that offers postgraduate training.

(e) The borrower need not repay principal, and interest does not accrue, for a period not in excess of six months—

(1) During which the borrower is—

(i) Pregnant, caring for a newborn baby, or caring for a child immediately after placement of the child through adoption; and

(ii) Not attending an eligible institution of higher education or gainfully employed; and

(2) That begins not later than six months after a period in which the borrower was at least a half-time student at an eligible institution.

(f) The borrower need not repay principal, and interest does not accrue, for a period not in excess of one year during which the borrower—

(1) Is a mother of preschool age children;

(2) Has just entered or reentered the work force; and

(3) Is being compensated at a rate which is not more than $1.00 over the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938.

(g) The institution shall not include the deferment periods described in

paragraphs (b), (c), (d), (e), and (f) of this section and the period described in paragraph (h) of this section when determining the 10-year repayment period.

(h) The borrower need not repay principal, and interest does not accrue, until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), (d), (e), and (f) of this section.

(i) An institution may defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see § 674.33(c)).

(Authority: 20 U.S.C. 1087dd)

§ 674.35 Deferment of repayment—Direct loans made on or after October 1, 1980.

(a) The borrower may defer repayment on a Direct Loan made on or after October 1, 1980, during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower need no repay principal, and interest does not accrue, for a period of up to 3 years during which time the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard or an officer in the Commissioned Corps of the U.S. Public Health Service (see § 674.56);

(2) A Peace Corps volunteer;

(3) As volunteer under Title I—Part A of the Domestic Volunteer Act of 1973 (ACTION programs);

(4) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Act of 1973. The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) The borrower serves in an organization which is exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions.

(iii) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes an allowance for subsistence, necessary travel expenses, and stipends.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(5)(i) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure gainful employment because the borrower is providing care, such as continuous nursing or other similar services, required by a spouse who is so disabled.

(ii) "Temporarily totally disabled" with regard to the borrower, means the inability by virtue of an injury or illness to attend an eligible institution or to be gainfully employed during a reasonable period of recovery; and

(iii) "Temporarily totally disabled" with regard to a disabled spouse, means requiring continuous nursing or other services from the borrower for a period of at least three months because of illness or injury.

(d)(1) The borrower need not repay principal, and interest does not accrue, for a period not to exceed two years during which time the borrower is serving an eligible internship.

(2) An eligible internship is an internship—

(i) That requires the borrower to hold at least a bachelor's degree before beginning the internship program; and

(ii) That the State licensing agency requires the borrower to complete before certifying the individual for professional practice or service.

(3) To qualify for an internship deferment, the borrower shall provide to the institution the following certifications:

(i) A statement from an official of the appropriate State licensing agency that the internship program meets the provisions of paragraph (d)(2) of this section; and

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying—

(A) The acceptance of the borrower into its internship program; and

(B) The anticipated dates on which the borrower will begin and complete the program.

(e) An institution may defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see § 674.33)(c)).

(f) The institution shall not include the deferment periods described in paragraphs (b), (c), and (d) of this section and the period described in paragraph (g) of this section when determining the 10-year repayment period.

(g) No repayment of principal or interest begins until six months after completion of any period during which the borrower is in deferment under paragraphs (a), (b), and (c) of this section.

(Authority: 20 U.S.C. 1087dd)

§ 674.36 Deferment of repayment—Direct loans made before October 1, 1980 and Defense loans.

(a) A borrower may defer repayment—

(1) On a Direct loan made before October 1, 1980 during the periods described in paragraphs (b) through (e) of this section; and

(2) On a Defense loan, during the periods described in paragraphs (b) through (f) of this section.

(b)(1) A borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the

borrower's deferment ends on the date the institution ceases to qualify.

(c) A borrower need not repay principal, and interest does not accrue for a period of up to 3 years during which time the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines or Coast Guard (see § 674.56);

(2) A Peace Corps volunteer; or

(3) A volunteer under Title I—Part A of the Domestic Volunteer Act of 1973 (ACTION programs).

(d) The institution shall exclude the deferment periods described in paragraphs (b) (1) and (2) of this section when determining the 10-year repayment period.

(e) An institution may permit the borrower to defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see § 674.33(c)).

(f) The institution may permit the borrower to defer payment of principal and interest, but interest shall continue to accrue, on a Defense loan for a total of 3 years after the commencement or resumption of the repayment period on a loan, during which he or she is attending an institution of higher education as a less-than-half-time regular student.

(Authority: 20 U.S.C. 425, 1087dd)

§ 674.37 Deferment procedures.

(a)(1) To qualify for a deferment on a loan, a borrower shall submit to the institution to which the loan is owed a written request for a deferment with documentation required by the institution, by the date that the institution establishes.

(2) If the borrower fails to meet the requirements of paragraph (a) (1) of this section, the institution may declare the loan to be in default, and may accelerate the loan.

(b)(1) The institution may grant a deferment to a borrower after it has declared a loan to be a default.

(2) As a condition for a deferment under this paragraph, the institution—

(i) Shall require the borrower to execute a written repayment agreement on the loan; and

(ii) May require the borrower to pay immediately some or all of the amounts previously scheduled to be repaid before the date on which the institution determined that the borrower had demonstrated that grounds for a deferment existed, plus late charges and collection costs.

(c) If the information supplied by the borrower demonstrates that for some or all of the period for which a deferment is requested, the borrower had retained in-school status or was within the initial grace period on the loan, the institution shall—

(1) Redetermine the date on which the borrower was required to commence repayment on the loan;

(2) Deduct from the loan balance any interest accrued and late charges added before the date on which the repayment period commenced, as determined in paragraph (c)(1) of this section; and

(3) Treat in accordance with paragraph (b) of this section, the request for deferment for any remaining portion of the period for which deferment was requested.

(Authority: 20 U.S.C. 425, 1087dd)

§ 674.38 Postponement of loan repayments in anticipation of cancellation.

(a) An institution shall postpone loan repayments for a 12-month period if the borrower—

(1) Notifies the institution in writing that he or she is teaching or engaged in other services that qualify for loan cancellation under § 674.55, 674.56 or 674.57.

(2) Submits a statement signed by a responsible official in the military, agency, or school employing the borrower, specifying that the borrower is so employed. The statement must describe the borrower's job, list the period of employment, and state whether the job is full- or part-time.

(b) If a borrower has received Defense, Direct, and Perkins loans and is eligible for cancellation benefits on only one, the institution may postpone only repayments on the loan for which cancellation is available.

(Authority: 20 U.S.C. 425 and 1087dd, 1087ee)

§ 674.39 Treatment of loan repayments where cancellation, loan repayments, and minimum monthly repayments apply.

(a) An institution may not exercise the minimum monthly repayment provisions on a note when the borrower has received a partial cancellation for the period covered by a postponement.

(b) If a borrower has received Defense, Direct, and Perkins loans and only one can be cancelled, the amount due on the uncancelled loan is the amount established in § 674.31(b) (2), loan repayment terms; § 674.33(b), minimum repayment rates; or § 674.33(c), extension of repayment period.

(Authority: 20 U.S.C. 425 and 1087dd, 1087ee)

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Subpart D—Loan Cancellation

§ 674.51 Special definitions.

The following definitions apply to this Subpart:

(a) *Academic year or its equivalent for elementary and secondary schools and special education:* (1) One complete school year, or two half years from different school years, excluding summer sessions, that are complete and consecutive and generally fall within a 12-month period.

(2) If such a school has a year-round program of instruction, the Secretary considers a minimum of nine consecutive months to be the equivalent of an academic year.

(b) *Academic year or its equivalent for institutions of higher education:* A period of time in which a full-time student is expected to complete—

(1) The equivalent of 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(2) At least 900 clock hours of training for each program at an institution using clock hours.

(c) *Chapter I children:* Children of ages 5 through 17 who are counted under section 111(c) of the Elementary and Secondary Education Act of 1965, as amended.

(d) *Elementary school:* A school that provides elementary education, including education below grade 1, as determined by—

(1) State law; or

(2) The Secretary, if the school is not in a State.

(e) *Handicapped children:* Children of ages 3 through 21 inclusive who require special education and related services because they are—

(1) Mentally retarded;

(2) Hard of hearing;

(3) Deaf;

(4) Speech and language impaired;

(5) Visually handicapped;

(6) Seriously emotionally disturbed;

(7) Orthopedically impaired;

(8) Specific learning disabled; or

(9) Otherwise health impaired.

(f) *Local educational agency:* (1) A public board of education or other public authority legally constituted within a State to administer, direct, or perform a service function for public elementary or secondary schools in a city, county, township, school district, other political subdivision of a State; or such combination of school districts of counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(2) Any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(g) *Secondary school:* (1) A school that provides secondary education, as determined by—

(i) State law; or

(ii) The Secretary, if the school is not in a State.

(2) However, State laws notwithstanding, secondary education does not include any education beyond grade 12.

(h) *State education agency:* (1) The State board of education; or

(2) An agency or official designated by the Governor or by State law as being primarily responsible for the State supervision of public elementary and secondary schools.

(i) *Teacher:* (1) A teacher is a person who provides—

(i) Direct classroom teaching;

(ii) Classroom-type teaching in a non-classroom setting; or

(iii) Educational services to students directly related to classroom teaching such as school librarians or school guidance counselors.

(2) A supervisor, administrator, researcher, or curriculum specialist is not a teacher unless he or she primarily provides direct and personal educational services to students.

(3) An individual who provides one of the following services does not qualify as a teacher unless that individual is licensed, certified, or registered by the appropriate State education agency for that area in which he or she is providing related special educational services, and the services provided by the individual are part of the educational curriculum for handicapped children:

(i) Speech pathology and audiology.

(ii) Psychological and counseling services.

(iii) Physical or occupational therapy.

(iv) Recreational therapy.

Authority: 20 U.S.C. 425, 1087ee, 1141, and 1401(1).

§ 674.52 Cancellation procedures.

(a) *Application for cancellation.* To qualify for cancellation of a loan, a borrower shall submit to the institution to which the loan is owed, by the date that the institution establishes, both a written request for cancellation and any documentation required by the institution to demonstrate that the borrower meets the conditions for the cancellation requested.

(b)(1) An institution may refuse a request for cancellation based on a claim of simultaneously teaching in two or more schools or institutions if it cannot determine easily from the documentation supplied by the borrower that the teaching is full-time. However, it shall grant the cancellation if one school official certifies that a teacher worked full-time for a full academic year.

(2) If the borrower is unable due to illness or pregnancy to complete the academic year, the borrower still qualifies for the cancellation if—

(i) The borrower completes the first half of the academic year, and has begun teaching the second half; and

(ii) The borrower's employer considers the borrower to have fulfilled his or her contract for the academic year for purposes of salary increment, tenure, and retirement.

(c)(1) Except with regard to cancellation on account of the death or disability of the borrower, a borrower whose defaulted loan has not been accelerated may qualify for a cancellation based on teaching, volunteer, or military service by complying with the requirements of paragraph (a) of this section.

(2) A borrower whose defaulted loan has been accelerated—

(i) May qualify for a loan cancellation for services performed before the date of acceleration; and

(ii) Cannot qualify for a cancellation for services performed on or after the date of acceleration.

(3) An institution shall grant a request for cancellation on account of the death or disability of the borrower without regard to the repayment status of the loan.

(d) The Secretary considers a borrower's loan deferment under §§ 674.34, 674.35 and 674.36 to run concurrently with any period for which a cancellation for military or VISTA service is granted.

Authority: 20 U.S.C. 425, 1087ee.

§ 674.53 Teacher cancellation—Direct and Perkins loans.

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) An institution shall cancel up to 100 percent of the outstanding loan balance on a Direct or Perkins loan for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds, in that year, under Chapter 1 of the Education Consolidation and Improvement Act of 1981; and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of Chapter 1 children.

(2) However, the Secretary does not select more than 50 percent of the schools in a State receiving Chapter 1 assistance.

(3)(i) The Secretary selects schools under paragraph (a)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency shall base its ranking of the schools on objective standards and methods. These standards must take into account the numbers and percentages of Chapter 1 children attending those schools.

(iii) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (a) of this section.

(4) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(b) *Cancellation for full-time teaching of the handicapped.* (1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Direct or Perkins loan, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(2) A borrower qualifies for cancellation under this paragraph only if a majority of the students whom the borrower teaches are handicapped children.

(c) *Cancellation rates.* (1) To qualify for cancellation under paragraph (a) or (b) (low-income or handicapped) of this section, a borrower shall teach full time for a complete academic year, or its equivalent.

(2) Cancellation rates are—

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time teaching;

(ii) 20 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time teaching; and

(iii) 30 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time teaching.

(d) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(e) *Teaching children and adults.* A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

Authority: 20 U.S.C. 1067ee.

§ 674.54 Teacher cancellation—Defense loans.

(a) *Cancellation for full-time teaching.* (1) An institution shall cancel up to 50 percent of the outstanding balance on a borrower's Defense loan for full-time teaching in—

(i) A public or other nonprofit elementary or secondary school;

(ii) An institution of higher education; or

(iii) An overseas Department of Defense elementary or secondary school.

(2) The cancellation rate is 10 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete year, or its equivalent, of teaching.

(b) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) The institution shall cancel up to 100 percent of the outstanding balance on a borrower's Defense loan for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds in that year under Chapter 1 of the Education Consolidation and Improvement Act of 1981, as amended; and

(ii) Has been selected by the Secretary based on a determination that a high concentration of students enrolled at the school are from low-income families.

(2)(i) The Secretary does not select more than 25 percent of the eligible schools in a State for any year unless at least 50 percent of the enrollment of each school selected is made up of Chapter 1 children.

(ii) In making this calculation, the Secretary uses a low-income factor of $3,000.

(3)(i) The Secretary selects schools under paragraph (b)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency shall base its ranking of the schools on objective standards and methods. These standards must take into account the numbers and percentages of Chapter 1 children attending those schools.

(4) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(5) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (b) of this section.

(6) The cancellation rate is 15 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching.

(7) Cancellation for full-time teaching under paragraph (b) of this section is available only for teaching beginning with academic year 1966–67.

(c) *Cancellation for full-time teaching of the handicapped.* (1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Defense loan, plus interest, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(2) The cancellation rate is 15 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching.

(3) A borrower qualifies for cancellation under this paragraph only if a majority of the students whom the borrower teaches are handicapped children.

(4) Cancellation for full-time teaching under paragraph (c) of this section is available only for teaching beginning with the academic year 1967–68.

(d) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(e) *Teaching children and adults.* A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

Authority: 20 U.S.C. 425(b)(3).

§ 674.55 Cancellation for service in a Head Start program.

(a) An institution shall cancel up to 100 percent of a borrower's Direct or Perkins loan, plus the interest on the unpaid balance, for service as a full-time staff member in a "Head Start" program if—

(1) The program operates for a complete academic year, or its equivalent; and

(2) The borrower's salary does not exceed the salary of a comparable employee working in the local educational agency of the area served by the local Head Start program.

(b) The cancellation rate is 15 percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching service.

(c)(1) "Head Start" is a preschool program carried out under the Head Start Act (Subchapter B, Chapter 8 of Title VI of Pub. L. 97–35, the Budget Reconciliation Act of 1981, as amended; formerly authorized under section 222(a)(1) of the Economic Opportunity Act of 1964). (42 U.S.C. 2809 (a) (1))

(2) "Full-time staff member" is a person regularly employed in a full-time professional capacity to carry out the educational part of a Head Start program.

Authority: 20 U.S.C. 425.

§ 674.56 Cancellation for military service.

(a) *Cancellation on a Defense loan.* (1) An institution shall cancel up to 50 percent of a Defense loan made after April 13, 1970, for the borrower's full-time active service starting after June 30, 1970, in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard.

(2) The cancellation rate is 12½ percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for the first complete year of qualifying service, and for each consecutive year of qualifying service.

(3) Service for less than a complete year, including any fraction of a year beyond a complete year of service, does not qualify for military cancellation.

(b) *Cancellation of a Direct or Perkins loan.* (1) An institution shall cancel up to 50 percent of a Direct or Perkins loan for service as a member of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) The cancellation rate is 12½ percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete year of qualifying service.

(3) Service for less than a complete year, including any fraction of a year beyond a complete year of service, does not qualify for military cancellation.

Authority: 20 U.S.C. 425(b)(3) and 1087ee.

§ 674.57 Cancellation for volunteer service—Perkins loans.

(a) An institution shall cancel up to 70 percent of the outstanding balance on a Perkins loan for service as a volunteer under—

(1) The Peace Corps Act; or

(2) The Domestic Volunteer Service Act of 1973.

(b) Cancellation rates are—

(1) Fifteen percent of the original principal loan amount plus the interest

on the unpaid balance accruing during the year of qualifying service, for each of the first and second twelve-month periods of service;

(2) Twenty percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth twelve-month periods of service.

Authority: 20 U.S.C. 1087ee.

§ 674.58 Cancellation for death or disability.

(a) *Death.* An institution shall cancel the unpaid balance of a borrower's Defense, Direct, or Perkins loan, including interest, if the borrower dies. The lending institution shall cancel the loan on the basis of a death certificate or other evidence of death that is conclusive under State law.

(b) *Permanent and total disability.* (1) An institution shall cancel the unpaid balance of a Defense, Direct, or Perkins loan, including interest, if the borrower becomes permanently and totally disabled after receiving the loan. The lending institution shall decide whether to cancel the loan based on medical evidence, certified by a physician, which the borrower or his or her representative supplies.

(2) Permanent and total disability is the inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

(c) *No Federal reimbursement.* No Federal reimbursement is made to an institution for cancellation of loans due to death or disability.

(d) *Retroactive.* Cancellation for death or disability applies retroactively to all Defense, Direct or Perkins loans.

(Authority: 20 U.S.C. 425 and 1087dd and sec. 130(g)(2) of the Education Amendments of 1976, Pub. L. 94-482)

§ 674.59 No cancellation for prior service—no repayment refunded.

(a) No portion of a loan may be cancelled for teaching, Head Start, volunteer or military service if the borrower's service is performed—

(1) During the same period that he or she received the loan; or

(2) Before the date the loan was disbursed to the borrower.

(b) The institution shall not refund a repayment made during a period for which the borrower qualified for a cancellation unless the borrower made the payment due to an institutional error

(Authority: 20 U.S.C. 425 and 1067ee)

§ 674.60 Reimbursement to institutions for loan cancellation.

(a) *Reimbursement for Defense loan cancellation.* (1) The Secretary pays an institution each award year its share of the principal and interest cancelled under §§ 674.54 and 674.56(a).

(2) The institution's share of cancelled principal and interest is computed by the following ratio:

$$\frac{I}{I+F}$$

Where I is the institution's capital contribution to the Fund, and F is the Federal capital contribution to the Fund.

(b) *Reimbursement for Direct and Perkins loan cancellation.* The Secretary pays an institution each award year the principal and interest cancelled from its student loan fund under §§ 674.53, 674.55, 674.56(b) and 674.57. The institution shall deposit this amount in its Fund.

(Authority: 20 U.S.C. 428 and 1087ee)

Appendix A—Promissory Note—Perkins Loan

Perkins Loan Program: PERKINS LOAN

[Any bracketed clause or paragraph may be included at option of institution.]

I, ——— promise to pay to ——— (hereinafter called the Institution) located at ——— the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable collection costs and charges necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures For Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XI, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning 9 months after the date I cease to be at least a half-time student at an institution of higher education, or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending 10 years later, unless that period is shortened under paragraph III(5), or extended under paragraphs III(4), III(7) (extensions), or VI(1) (deferments).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Institution. I understand that if my installment payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Perkins Loans including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

[(5)(B) If I have received Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all may outstanding Perkins Loans including those received from other institutions. The amount of the $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Perkins Loans.

[(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion,

circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made will be used to reduce the amount of the loan and will not be considered a prepayment unless that year is also the year in which I am required to begin repayment on this loan.

(3) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Article VI, VII, VIII, IX, X, or XI of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is transferred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer or military service described in Articles VII, VIII and IX, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary;

(B) For a period of three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or the National Oceanic and Atmospheric Administration Corps, or as an officer on full-time active duty in the Commissioned Corps of the United States Public Health Service;

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my dependent who is so disabled;

(C) For a period not in excess of two (2) years—

(i) After I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service, or

(ii) Serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital or a health care facility that offers postgraduate training;

(D) For a period not in excess of one (1) year during which, if I am a mother of preschool age children, I have entered or reentered the work force, and am being paid at a rate which does not exceed $1.00 above the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938;

(E) For a period not in excess of six (6) months—

(i) That follows by six months or less a period during which I was enrolled as at least a half-time student at an eligible institution; and

(ii) During which I am pregnant, caring for my newborn baby, or caring for a child immediately after he or she was placed with me through adoption and I am neither attending an eligible institution of higher education nor gainfully employed; and

(F) During a six (6) month period immediately following the expiration of any deferment provided in paragraphs VI(1)(A) through VI(1)(E).

(2) The Institution may, upon my written request, defer my scheduled repayments if it determines that the deferment is necessary to avoid a financial hardship for me. Interest, however, will continue to accrue.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter 1 of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be cancelled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second complete academic years of the teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be cancelled at the rate to 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon cancelled if I serve as a member of the Armed Forces of the

United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the U.S.C.

(2) This loan will be cancelled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Volunteer Service Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 70 percent of the amount of this loan plus the interest thereon cancelled if I perform service—

(A) As a volunteer under the Peace Corps Act; or

(B) As a volunteer under the Domestic Volunter Service Act of 1973.

(2) This loan will be cancelled at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second twelve-month periods of volunteer service completed;

(B) 20 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the third and fourth twelve-month periods of volunteer service completed.

XI. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be cancelled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XII. Change in Name, Address, Telephone Number and Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XIII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, and XI of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIV. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

Schedule of Perkins Loans at Other Institutions

	Amount	Date	Institution
1.....			
2.....			
3.....			
4.....			

XVI. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	signature of borrower
1.....			
2.....			
3.....			
4.....			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE INSTITUTION MUST SUPPLY A COPY OF THIS NOTE TO YOU AND ANY COSIGNER.

[This note is signed as a sealed instrument.]

Signature ——— [(seal)].

Date ——— 19—.

Permanent Address (Street or Box Number, City, State, and Zip Code).

Social Security Number (borrower must provide).———

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of cosigner ——— [(seal)].

Date ——— 19—.

Permanent Address (Street or Box Number, City, State, Zip Code).

(Authority: 20 U.S.C. 1087dd)

Appendix B—Promissory Note—Direct Loan

Perkins Loan Program: Direct Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, ——— promise to pay to ——— (hereinafter called the Institution) located at ——— the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable collection costs and charges necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures for Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through X, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning 6 months after the date I cease to be at least a half-time student at an institution of higher education, or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending 10 years later, unless that period is shortened under paragraph III(5), or extended under paragraph III(4), III(7) (extensions), or VI(1) (deferments).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Institution. I understand that if my installment payment for all the loans made to

me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Direct, Defense and Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).]

[(5)(B) If I have received Direct, Defense and Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Direct, Defense and Perkins Loans including those received from other institutions. The amount of this $30 monthly payment that will be applied to this loan will be difference between $30 and the total of the amounts owed at a monthly rate on my other Direct, Defense and Perkins Loans.]

[(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made will be used to reduce the amount of the loan and will not be considered a prepayment, unless that year is also the year in which I am required to begin repayment on this loan.

(3) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs, if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, and X of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is transferred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer, or military service described in Articles VII, VIII and IX, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For a period of three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service.

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my spouse who is so disabled;

(C) For a period not in excess of two (2) years after I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service; and

(D) During a six (6) month period following the expiration of my deferment in paragraph VI(1)(A) through VI(1)(C).

(2) In addition, the Institution may permit me to defer making scheduled installment payments if it determines that the deferment is necessary to avoid a financial hardship for me. I will be required to repay interest that accrues during this period of deferment.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XI. Change in Name, Address, Telephone Number and Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, and X of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIII. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XIV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans, National Direct Student Loans, and National Defense Student Loan I have obtained at other institutions. (If no prior loans have been received, state "None.")

SCHEDULE OF PERKINS LOANS, NATIONAL DIRECT STUDENT LOANS, AND NATIONAL STUDENT LOANS AT OTHER INSTITUTIONS.

	Amount	Date	Institution
1.....			
2.....			
3.....			
4.....			

XV. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the date indicated:

	Amount	Date	Signature of borrower
1.....			
2.....			
3.....			
4.....			

NOTICE TO BORROWERS: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE INSTITUTION MUST SUPPLY A COPY OF THIS NOTE TO YOU AND ANY COSIGNER.

[This note is signed as a sealed instrument.]

Signature _____ [(seal)]

Date _____ 19—

Permanent Address (Street or Box Number, City, State, and Zip Code) _____

Social Security Number (borrower must provide) _____

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of Cosigner _____ [(seal)]

Date _____ 19—

Permanent Address (Street or Box Number, City, State, and Zip Code) _____

Authority: 20 U.S.C. 1087dd.

Appendix C—Promissory Note—Perkins Loan—Less Than Half-Time Student Borrower

Perkins Loan Program: Perkins Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, _____ promise to pay to _____ (hereinafter called the Institution) located at _____ the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable collection costs and charges necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures For Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XI, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1)(A) I promise to repay the principal and the interest which accrues on it to the Lending Institution over a period beginning—

(i) On the date of the next scheduled installment payment on any other outstanding Perkins loan I have received; or

(ii) If I have no other outstanding Perkins loans, either nine months from the date this loan is made, or, if the loan was made less than nine months after I ceased at least half-time enrollment status, at the end of that nine-month period.

(B) I understand that this repayment period shall end 10 years later, unless it is extended under paragraph III(4), III(7), or VI(1), or shortened under paragraph III(5).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment

period in equal monthly, bimonthly or quarterly installments as determined by the Institution. I understand that if my monthly payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Lending Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Perkins Loans including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Perkins Loans including those received from other institutions. The amount of this $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles IV, VII, VIII, IX, X, or XI of this agreeemnt.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is transferred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant informaion, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer or military service described in Articles VII, VIII and IX, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accure, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary;

(B) For a period of three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or the National Oceanic and Atmospheric Administration Corps, or as an officer on full-time active duty in the Commissioned Corps of the United States Public Health Service;

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my dependent who is so disabled;

(C) For a period not in excess of two (2) years—

(i) After I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service, or

(ii) Serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital or a health care facility that offers postgraduate training;

(D) For a period not in excess of one (1) year during which, if I am a mother or preschool age children, I have entered or reentered the work force, and am being paid at a rate which does not exceed $1.00 above the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938;

(E) For a period not in excess of six months—

(i) That follows by six months or less of a period during which I was enrolled as at least a half-time student at an eligible institution; and

(ii) During which I am pregnant, caring for my newborn baby, or caring for a child immediately after he or she was placed with me through adoption and I am neither attending an eligible institution of higher education nor gainfully employed; and

(F) During a six (6) month period immediately following the expiration of any deferment provided in paragraphs VI(1)(A) through VI(1)(E).

(2) The Institution may, upon my written request, defer my scheduled repayments if it determines that the deferment is necessary to avoid a financial hardship for me. Interest, however, will continue to accrue.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be cancelled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Lending Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be cancelled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or the equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Lending Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon cancelled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be cancelled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Volunteer Service Cancellation

(1) I understand that upon making a properly documented request to the Lending Institution, I am entitled to have up to 70 percent of the amount of this loan plus the interest thereon cancelled if I perform service—

(A) As a volunteer under the Peace Corps Act; or

(B) As a volunteer under the Domestic Volunteer Service Act of 1973.

(2) This loan will be cancelled at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second twelve-month periods of volunteer service completed;

(B) 20 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the third and fourth twelve-month periods of volunteer service completed.

XI. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be cancelled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XII. Change in Name, Address, Telephone Number and Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XIII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, and XI of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIV. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

SCHEDULE OF PERKINS LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1			
2			
3			
4			

XVI. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of borrower
1			
2			
3			
4			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE INSTITUTION MUST SUPPLY A COPY OF THIS NOTE TO YOU AND ANY COSIGNER.

[This notice is signed as a sealed instrument.]

Signature ———— [(seal)].

Date ———— 19——.

Permanent Address (Street or Box Number, City, State, and Zip Code)

———————————————

Social Security Number (borrower must provide) ————.————

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of cosigner ———— [(seal)].

Date ———— 19——.

Permanent Address (Street or Box Number, City, State, Zip Code)

———————————————

(Authority: 20 U.S.C. 1087dd)

Appendix D—Promissory Note—Direct Loan—Less Than Half-Time Student Borrower

Perkins Loan Program: Direct Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, ———— promise to pay to ———— (hereinafter called the Institution) located at ———— the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable collection costs and charges necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and

Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures for Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to provide that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through X, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1)(A) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning—

(i) On the date of the next scheduled installment payment on any other outstanding loan made under the Perkins Loan Program I have received; or,

(ii) If I have no other outstanding loans made under the Perkins Loan Program, either nine months from the date this loan is made, or, if the loan was made less than nine months after I ceased at least half-time enrollment status, at the end of that nine-month period.

(B) I understand that this repayment period shall end 10 years later, unless it is extended under paragraphs III(4), III(7), or VI(1), or shortened under paragraph III(5).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Institution. I understand that if my monthly payment for all the loans made to me by the Institaution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Direct, Defense and Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this laon at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Direct, Defense and Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Direct, Defense and Perkins Loans including those received from other institutions. The amount of this $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owned at a monthly rate on my other Direct, Defense and Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayment or extend the repayments period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment, prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charge and collection costs, if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles, VI, VII, VIII, IX, and X of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant inforrmation, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is transferred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer, or military service described in Articles VII, VIII and IX, performed after the date of Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For a period of three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service.

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my spouse who is so disabled;

(C) For a period not in excess of two (2) years after I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service; and

(D) During a six (6) month period following the expiration of my deferment in paragraph VI(1)(A) through VI(1)(C).

(2) In addition, the Institution may permit me to defer making scheduled installment payments if it determines that the deferment is necessary to avoid a financial hardship for me. I will be required to repay interest that accrues during this period of deferment.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and

which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have special learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be cancelled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understanding that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be cancelled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon cancelled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be cancelled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance for each complete year of such service.

X. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be cancelled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XI Change in Name, Address, Telephone Number and Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, and X of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIII. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XIV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans, National Direct Student Loans, and National Defense Student Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

SCHEDULE OF PERKINS LOANS, NATIONAL DIRECT STUDENT LOANS, AND NATIONAL DEFENSE STUDENT LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1			
2			
3			
4			

XV. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of borrower
1			
2			
3			
4			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE INSTITUTION MUST SUPPLY A COPY OF THIS NOTE TO YOU AND ANY COSIGNER.

[This note is signed as a sealed instrument.]

Signature————————[(seal)].

Date————19——.

Permanent Address (Street or Box Number, City, State, and Zip Code)

Social Security Number (borrower must provide)————————.

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of Cosigner————————[(seal)].

Date————19——.

Permanent Address (Street or Box Number, City, State, Zip Code)

(Authority: 20 U.S.C. 1087dd)

Appendix E—Examples for Computing Maximum Penalty Charges (6 Months Unpaid Overdue Payments) on Direct Loans Made for Periods of Enrollment Before January 1, 1986

Monthly repayment schedule	Installment due dates—Missed payments						Separate monthly maximum penalty charges
	Jan. 2	Feb. 2	Mar. 2	Apr. 2	May 2	June 2	
1st Past due installment	$1						$1
2nd Past due installment		$1+$2					3
3rd Past due installment			$3+$2				5
4th Past due installment				$5+$2			7
5th Past due installment					$7+$2		9
6th Past due installment						$9+$2	11
Cumulative maximum subtotals.	1	4	9	16	25	36	

Bimonthly repayment schedule	Installment due dates—Missed payments			Separate bimonthly maximum penalty charges
	Jan. 2	Mar. 2	May 2	
1st Past due installment	$3			$3
2nd Past due installment		$3+$3		6
3rd Past due installment			$6+$3	9
Cumulative maximum subtotals	3	9	18	

Quarterly repayment schedule	Installment due dates—Missed payments		Separate quarterly maximum penalty charges
	Jan. 2	Apr. 2	
1st Past due installment	$6		$6
2nd Past due installment		$6+$6	12
Cumulative maximum subtotals	6	18	

Note.—In the above table of examples, the Cumulative Maximum Subtotal line contains the maximum penalty charges that can be assessed on an NDSL borrower for any given installment that was missed on its due date. For example, if three borrowers, all on different repayment schedules, owed and missed their first installment payment on January 2 and all three made their next payment on April 10, the maximum penalty charges that could be assessed each individual borrower would be as follows: $16 to the monthly repayment schedule borrower; $9 to the bimonthly repayment schedule borrower; and $18 to the quarterly repayment schedule borrower.

2. Part 675 of Title 34 of the Code of Federal Regulations is revised to read as follows:

PART 675—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAMS

Note: An asterisk (*) indicates provisions that are common to Parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Subpart A—College Work-Study Program

Sec.

Subpart B—Job Location and Development Programs

Authority: 42 U.S.C. 2571–2756z, unless otherwise noted.

Subpart A—College Work-Study Program

§ 675.1 Purpose and identification of common provisions.

(a) The College Work-Study (CWS) Program provides part-time employment to students attending institutions of higher education who need the earnings to help meet their costs of postsecondary education.

*(b) Provisions in these regulations that are common to all campus-based programs are identified with an asterisk.

(Authority: 42 U.S.C. 2751–2756b)

§ 675.2 Definitions.

*(a) Subpart A of the Student Assistance General Provisions regulations, 34 CFR Part 668, sets forth definitions of the following terms used in this part:

Academic year
Award year
Clock hour
Enrolled
Guaranteed Student Loan (GSL) Program
HEA
Income Contingent Loan Program
Pell Grant Program
Perkins Loan Program
PLUS Program
Secretary
SLS Program
Supplemental Educational Opportunity Grant (SEOG) Program

(b) The Secretary defines other terms used in this part as follows:

*_Expected family contribution_ (EFC): The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

*_Financial need:_ The difference between a student's cost of attendance and his or her EFC.

Full-time student: An enrolled student who is carrying a full-time academic work load (other than by correspondence)—as determined by the institution—under a standard applicable to all students enrolled in a particular program. However, an institution's full-time standard must equal or exceed one of the following minimum requirements:

(1) 12 semester hours or 12 quarter hours per academic term in an institution using a semester, trimester, or quarters system.

(2) 24 semester hours or 36 quarter hours per academic year for an institution using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year.

(3) 24 clock hours per week for an institution using clock hours.

(4) In an institution using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one:

$$\frac{\text{Number of credit hours per term}}{12} + \frac{\text{Number of clock hours per week}}{24}$$

*Financial

(5) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic work-load of a full-time student.

Graduate or professional student: A student who—

(1) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) Is not receiving Title IV aid as an undergraduate student for the same period of enrollment.

**Institution of higher education (institution).* A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

Nonprofit organization: An organization owned and operated by one or more nonprofit corporations or associations where no part of the organization's net earnings benefits, or may lawfully benefit, any private shareholder or entity. An organization may show that it is nonprofit by meeting the provisions of § 75.51 of the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.51.

(Authority: 20 U.S.C. 1141(c))

**Payment period:* A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year. A payment period is not the payroll period discussed in § 675.16.

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.

(Authority: 20 U.S.C. 1087aa–1087ii)

§ 675.3 Application.

(a) To participate in the CWS program, an institution shall file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain the information needed by the Secretary to determine the institution's allocation or reallocation of the CWS program funds under section 442 of the HEA.

(Authority: 42 U.S.C. 2752)

§ 675.4 Allocation and reallocation.

(a) The Secretary allocates and reallocates funds to institutions participating in the College Work-Study program in accordance with section 442 of the HEA.

(b) As used in section 442 of the HEA, "Eligible institutions offering comparable programs of instruction" means institutions that are being compared with the applicant institution and that fall within one of the following six categories:

(1) Cosmetology.
(2) Business.
(3) Trade/Technical.
(4) Art Schools.
(5) Other Proprietary Institutions.
(6) Non-Proprietary Institutions.

(c) *Payment to institutions.* The Secretary allocates funds for a specific period of time. The Secretary pays an institution its allocation in periodic installments and may make these payments in advance or by way of reimbursement. The Secretary bases the amounts of these installments on periodic fiscal reports.

(d) *Authority to expend funds.* Except as specifically provided in § 675.18 (c) and (d), an institution shall not use funds allocated or reallocated for an award year—

(1) To meet CWS wage obligations incurred with regard to an award of CWS employment made in any other award year; or

(2) To satisfy any other obligation incurred after the end of the designated award year.

(Authority: 42 U.S.C. 2752)

§§ 675.5–675.7 [Reserved]

§ 675.8 Program participation agreement.

To participate in the CWS program, an institution of higher education shall enter into a participation agreement with the Secretary. The agreement provides that, among other things, the institution shall—

(a) Use the funds it receives solely for the purposes specified in this part;

(b) Administer the CWS program in accordance with the HEA, the provisions of this part, and the Student Assistance General Provisions regulations, 34 CFR Part 668;

(c) Make employment under the CWS program reasonably available, to the extent of available funds, to all eligible students;

(d) Make equivalent employment offered or arranged by the institution reasonably available, to the extent of available funds, to all students in the institution who want to work; and

(e) Award CWS employment, to the maximum extent practicable, that will complement and reinforce each

recipient's educational program or career goals.

(Authority: 20 U.S.C. 1094, 42 U.S.C. 2753)

§ 675.9 Student eligibility.

A student at an institution of higher education is eligible to receive part-time employment under the CWS program for an award year if the student—

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.7;

(b) Is enrolled or accepted for enrollment as an undergraduate, graduate or professional student at the institution; and

(c) Has financial need as determined in accordance with Part F of Title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members.

(Authority: 20 U.S.C. 1091; 42 U.S.C. 2752–2753)

§ 675.10 Selection of students for CWS employment.

(a) An institution shall make employment under CWS reasonably available, to the extent of available funds, to all eligible students.

(b) An institution shall establish selection procedures and those procedures must be—

(1) Uniformly applied;

(2) In writing; and

(3) Maintained in the institution's files.

(c) If an institution's allocation of CWS funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less than full-time students, the institution shall award a reasonable proportion of its allocation of CWS funds to those students.

(Authority: 20 U.S.C. 1091, 42 U.S.C. 2752–2753)

§§ 675.11—675.13 [Reserved]

***§ 675.14 Overaward.**

(a) *Overaward prohibited.* *(1) An institution may award CWS employment to a student if the award, combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding CWS employment to a student, the institution shall take into account those resources it—

(i) Can reasonably anticipate at the time it awards CWS funds to the student;

(ii) Makes available to its students; or

(iii) Knows about.

(3)(i) If a student receives additional resources before the institution employs the student under the CSW program, and the total resources including the prospective CWS wages exceed the student's need, the overaward is the amount that exceeds need.

*(ii) If a student receives additional resources after the institution disburses the student's CWS wages and the total resources including the CWS wages exceed the student's need by $200 or more and the excess is not from employment, the overaward is the amount that exceeds $199.

*(4) If a student earns more money from employment than the institution anticipated or could have reasonably anticipated when it awarded the CWS employment, the institution shall treat the earnings in accordance with paragraph (c) of this section.

*(b) *Resources.* (1) The Secretary considers that "resources" include but are not limited to any—

(i) Funds the student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Student Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs an ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowship or assistantship;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from employment other than CWS employment for the period of the award except as provided in 34 CFR 675.25; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(2) The Secretary does not consider as a resource any portion of the resources described in paragraph (b)(1) of this section that are included in the student's EFC.

(2) The student may use Supplemental Loans for Students (SLS), State-sponsored or private loans, PLUS loans, or non-need-based ICLs to substitute for his or her expected family contribution. However, if the sum of loan amounts received exceeds the student's expected family contribution, the excess is a resource.

*(c) *Treatment of earnings in excess of need.* An institution shall take the following steps when it learns that a student has earned, or will earn, an amount that when combined with other resouces is $200 or more over his or her financial need:

(1) The institution shall decide whether the student has increased financial need unanticipated when it awarded financial aid to the student. If the student does, and the student's earnings plus other resources do not exceed this increased need by $200 or more, no further action is necessary.

(2) If the student's earnings plus other resources still exceed need by $200 or more after the institution subtracts any additional costs, it shall cancel any unpaid loan or grant (other than Pell Grants) to avoid exceeding need by more than $199.

(3) If the student's earnings plus other resources still exceed his or her need by $200 or more after the institution takes the steps required in paragraphs (c) (1) and (2) of this section, and the student is enrolled for the next academic year, the institution shall consider the amount that exceeds $199 as a resource to help pay the student's cost of attendance in the following year.

(4) If the student's earnings plus other resources still exceed his or her need by $200 or more after the institution takes the steps required in paragraphs (c) (1) and (2) of this section, and the student is not enrolled for the next academic year, no further action is necessary.

(d) An institution may continue to employ a student employed in a CWS job, during a payment period, at the time income derived from any employment (CWS or non-CWS employment) is in excess of the student's financial need for that payment period. However, as provided in § 675.26(a)(3), if that excess income equals $200 or more, continued employment under CWS may not be subsidized with CWS funds.

(Authority: 42 U.S.C. 2753(b)(3))

***§ 675.15 Coordination with BIA grants.**

(a) To determine the amount of CWS compensation for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total or the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: Loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a BIA-eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 42 U.S.C. 2753)

§ 675.16 Payments to students.

(a)(1)(i) An institution shall pay a student at least once a month. The Federal share of each payment must be paid to the student by check or similar instrument that the student can cash on his or her own endorsement.

(ii) The institution may not directly transfer the Federal share of any payment to the student's account at the institution or elsewhere.

(2) Regardless of who employs the student, the institution is responsible for ensuring that the student is paid for work performed.

(3) A student's CWS wages are earned when the student performs the work.

(4) An institution may pay a student after the student's last day of attendance for CWS wages earned while he or she was in attendance at the institution.

(b)(1) If an institution pays a student its share or his or her CWS wages by check, it shall pay the student at the same time it pays the Federal share.

(2) If an institution pays a student its CWS share for an award period in the form of tuition, fees, services, or equipment, it shall pay that share before the student's final payroll period.

(3) If an institution pays its CWS share in the form or prepaid tuition, fees, services, or equipment for a forthcoming academic period, it shall give the student a statement before the close of his or her final payroll period listing the amount of tuition, fees, services, or equipment earned.

(c) A correspondence student shall submit his or her first completed lesson before receiving a payment.

(d) The institution may not obtain a student's power of attorney to authorize any disbursement of funds without prior approval from the Secretary.

(Authority: 20 U.S.C. 1091, 42 U.S.C. 2753)

***§ 675.17 Federal interest in allocated funds.**

Except for funds received for the administrative cost allowance (see § 675.18(b)) and for certain activities under the Job Location and Development Programs, funds received by an institution under the CWS program are held in trust for the intended student beneficiaries and the Secretary. Funds may not be used or hypothecated (i.e. serve as collateral) for any other purpose.

(Authority: 42 U.S.C. 2751–56)

§ 675.18 Use of funds.

(a) *General.* An institution may use its CWS allocation only for—

(1) Paying the Federal share of CWS wages;

(2) Carrying out the administrative activities described in paragraph (b)(4) of this section;

(3) Meeting the cost of a Job Location and Development program under Subpart B; and

(4) Transferring a portion of its CWS allocation to its SEOG allocation as described in paragraph (f) of this section.

(b) *Administrative cost allowance.* (1) An institution participating in the CWS program is entitled to an administrative cost allowance if it provides CWS employment to its students in that award year.

(2) For any award year the amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in that award year under the CWS, SEOG, and Perkins Loan programs; plus

(ii) Four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures which are in excess of $5,500,000.

(3) However, the institution shall not include, when calculating the allowance in paragraph (b)(1) of this section, the institution's CWS expenditures under the community service learning program (§ 675.25), and the amount of loans made under the Perkins Loan program it assigns to the Secretary under section 463(a)(6) of the HEA.

(4) An institution shall use its administrative cost allowance to offset its costs of administering the Pell Grant, CWS, SEOG, and Perkins Loan programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistance General Provisions regulations, 34 CFR Part 668.

(5)(i) In addition to the amount calculated in paragraph (b)(1) of this section, an institution's administrative cost allowance includes ten (10) percent of its expenditures under the community service learning program set forth in § 675.25.

(ii) This portion of its administrative cost allowance must be taken from the institution's CWS allocation.

(iii) The institution may use this portion of its administrative cost allowance to offset the costs of administering the Pell Grant, CWS, SEOG, and Perkins Loan programs and to pay the administrative costs of conducting its community service learning program. These latter costs may include the costs of—

(A) Developing mechanisms to assure the academic quality of a student's experience;

(B) Assuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives; and

(C) Collaborating with public and private nonprofit agencies in the planning and administering of these programs.

(c) *Carry forward funds.* (1) An institution may carry forward and expend in the next award year up to 10 percent of the sum of its initial and supplemental CWS allocations for the current award year.

(2) Before an institution may spend its current year CWS allocation, it shall spend any funds carried forward from the previous year.

(d) *Carry back funds.* An institution may carry back and expend in the previous award year up to 10 percent of the sum of its initial and supplemental CWS allocations for the current award year. The institution's official allocation letter represents the Secretary's approval to carry back funds.

(e) The institution may use the funds carried forward or carried back under paragraphs (c) and (d) of this section, respectively, for activities described in paragraph (a) of this section.

(f) *Transfer funds to SEOG.* (1) An institution may transfer up to 10 percent of the sum of its initial and supplemental

CWS allocations for an award year to its SEOG program.

(2) An institution shall use transferred funds according to the requirements of the program to which they are transferred.

(3) An institution shall report any transferred funds on the Fiscal Operations Report required under § 675.19(b).

(4) An institution shall transfer back to the SEOG program any funds unexpended at the end of the award year that it transferred to the CWS program from the SEOG program.

(Authority: 20 U.S.C. 1095, 1096; 42 U.S.C. 2753, 2756, 2756b)

§ 675.19 Fiscal procedures and records.

(a) *Fiscal procedures.* (1) In administering its CWS program, an institution shall establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2) If an institution uses a fiscal agent, that agent may perform only ministerial acts.

(3)(i) Except as provided in paragraph (a)(3)(ii) of this section, a separate bank account for CWS funds is not required. However, an institution shall notify any bank in which it deposits Federal funds of the account in which those funds are deposited by—

(A) Including in the name of the account the fact that Federal funds are deposited; or

(B) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution shall retain a copy of this notice in its files.

(ii) If the Secretary determines that adequate accounting records are not maintained, the institution shall keep CWS funds in a separate bank account.

(b) *Records and reporting.* (1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

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

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

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

(iii) Include a noncash contribution record to document any payment of the institution's share of the student's earnings in the form of services and equipment (see § 675.25(a));

(iv) Are reconciled at least monthly;

(v) Identify each student's account and status;

(vi) Show the eligibility of each student aided under the program; and

(vii) Show how the need was met for each student.

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

(4) The institution must maintain on file all CWS employment applications for those students it reports on the Fiscal Operations Report and Application to Participate in the Perkins Loan, SEOG, and CWS Programs (FISAP).

(5) The institution shall maintain all records supporting its application for funds under this part.

(c) *Retention of records.*—(1) *Records.* Each institution shall keep intact and accessible records of the application, the receipt, and the expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

*(2) *Period of retention.* Except for audit questions, an institution shall keep records for an award year for five years after it submits its FISAP for that year.

*(3)(i) An institution may keep the records required in this section on microforms or it may keep its records in computer format.

(ii) If the institution keeps its records in computer format it shall maintain, in either hard copy or microforms, the source documents supporting the computer input.

*(4) *Audit questions.* An institution shall keep records on any claim or expenditure questioned by Federal audit or program review until any audit questions are resolved.

(Authority: 42 U.S.C. 2753 and 20 U.S.C. 1094 and 1232f)

§ 675.20 Eligible employers and general conditions and limitation on employment.

(a) *Eligible CWS employers.* A student may be employed under the CWS program by—

(1) The institution in which the student is enrolled;

(2) A Federal, State, or local public agency;

(3) A private nonprofit organization; or

(4) A private for-profit organization.

(b) *Agreement between institution and organization.*

(1) If an institution wishes to have its students employed under this part by a Federal, State or local agency, or a private nonprofit or for-profit organization, it shall enter into a written agreement with that agency or organization. The agreement must set forth the CWS work conditions (see Appendix B for a sample agreement). The agreement must indicate whether the institution or the agency or organization shall pay the students employed, except that the agreement between an institution and a for-profit organization must require the employer to pay the non-Federal share of the student earnings.

(2) The institution may enter into an agreement with an agency or organization that has professional direction and staff.

(3) The institution is responsible for ensuring that—

(i) Payment for work performed under each agreement is properly documented; and

(ii) Each student's work is properly supervised.

(4) The agreement between the institution and the employing agency or nonprofit organization may require the employer to pay—

(i) The non-Federal share of the student earnings; and

(ii) Required employer costs such as the employer's share of social security or workers' compensation.

(c) *CWS general employment conditions and limitation.* (1) Regardless of the student's employer, the student's work must be governed by employment conditions, including pay, that are appropriate and reasonable in terms of—

(i) Type of work;

(ii) Geographical region;

(iii) Employee proficiency; and

(iv) Any applicable Federal, State, or local law.

(2) CWS employment may not—

(i) Impair existing service contracts;

(ii) Displace employees;

(iii) Fill jobs that are vacant because the employer's regular employees are on strike;

(iv) Involve the construction, operation, or maintenance of any part of a facility used or to be used for religious worship or sectarian instruction; or

(v) Include employment for the U.S. Department of Education.

(Authority: 42 U.S.C. 2753)

§ 675.21 Institutional employment.

(a) An institution, other than a proprietary institution, may employ a student to work for the institution itself, including those operations, such as food service, cleaning, maintenance, or security, for which the institution contracts, if the contract specifies—

(1) The number of students to be employed; and

(2) That the institution selects the students to be employed and determines each student's pay rate.

(b) A proprietary institution may employ a student only in jobs that—

(1) Are on campus;

(2) Furnish student services;

(3) To the maximum extent possible, complement and reinforce the educational program or vocational goals of the student; and

(4) Do not involve the solicitation of potential students to enroll at the proprietary institution.

(Authority: 42 U.S.C. 2753)

§ 675.22 Employment provided by a Federal, State, or local agency, or a private nonprofit organization.

(a) If a student is employed by a Federal, State, or local public agency, or a private nonprofit organization, the work that the student performs must be in the public interest.

(b) *CWS employment in the public interest.* The Secretary considers work in the public interest to be work performed for the national or community welfare rather than work performed to benefit a particular interest or group. Work is not in the public interest if—

(1) It primarily benefits the members of a limited membership organization such as a credit union, a fraternal or religious order, or a cooperative;

(2) It is for an elected official who is not responsible for the regular administration of Federal, State, or local government;

(3) It is work as a political aide for any elected official;

(4) A student's political support or party affiliation is taken into account in hiring him or her;

(5) It involves any partisan or nonpartisan political activity or is associated with a faction in an election for public or party office; or

(6) It involves dlobbying on the Federal, State, or local level.

(Authority: 42 U.S.C. 2753)

§ 675.23 Employment provided by a private for-profit organization.

(a) An institution may use up to 25 percent of its CWS allocation and reallocation for an award year to pay the compensation of CWS students employed by a private for-profit organization.

(b) If a student is employed by a private, for-profit organization—

(1) The work that the student performs must be academically relevant to the student's educational program; and

(2) The private for-profit organization—

(i) Must provide the non-Federal share of the student's compensation; and

(ii) May not use any CWS funds to pay an employee who would otherwise by employed by that organization.

(Authority: 42 U.S.C. 2753)

§ 675.24 Establishment of wage rate under CWS.

(a) *Wage rates.* (1) Except as provided in paragraph (a)(3) of this section, an institution shall compute CWS compensation on an hourly wage basis for actual time on the job. An institution may not pay a student a salary, commission, or fee.

(2) An institution may not count fringe benefits as part of the wage rate.

(3) An institution may pay a graduate student it employs a salary or an hourly wage, in accordance with its usual practices.

(b) *Minimum wage rate.* The minimum wage rate for a student employee under the CWS program is the minimum wage rate required under section 6(a) of the Fair Labor Standards Act of 1938.

(Authority: 42 U.S.C. 2753)

§ 675.25 Earnings applied to cost of attendance.

(a)(1) The institution shall determine the amount of earnings from a CWS job to be applied to a student's cost of attendance (attributed earnings) by subtracting taxes and job related costs from the student's gross earnings.

(2) Job related costs are costs the student incurs because of his or her job. Examples are uniforms and transportation to and from work. Room and board during a vacation period may also be considered a job related cost if they would not otherwise be incurred except for the CWS employment.

(b) If a student is employed under CWS during a vacation or other period when he or she is not attending classes, the institution shall apply the attributed earnings (earnings minus taxes and job related costs) to the cost of attendance for the next period of enrollment.

(Authority: 42 U.S.C. 2753)

§ 675.26 CWS Federal share limitations.

(a)(1) Unless the Secretary approves a higher share under paragraph (d) of this section, the Federal share of CWS compensation paid to a student employed other than by a for-profit organization may not exceed—

(i) 80 percent for award years 1987–88 and 1988–89, 75 percent for award years 1989–90, and 70 percent for award year 1990–91 and subsequent award years; or

(ii) 90 percent under a community service learning program described in § 675.28 if the amount paid to students under the community service learning program does not exceed 10 percent of the institution's CWS allocation or reallocation for an award year.

(2) The Federal share of the compensation paid to a student employed by a for-profit organization may not exceed 60 percent for award years 1987–88 and 1988–89, 55 percent for award year 1980–90, and 50 percent for award year 1990–91 and subsequent award years.

(3) An institution may not use CWS funds to pay a student after he or she has, in addition to other resources, earned $200 or more over his or her financial need.

(b) The institution may not include the following when determining the Federal share:

(1) Fringe benefits such as paid sick days, paid vacations, or paid holidays.

(2) The employer's share of social security, workers' compensation, retirement, or any other welfare or insurance program that the employer must pay on account of the student employee.

(c) If an institution receives more money under an employment agreement from an off-campus employer than required employer costs, its not-Federal share, and any share of administrative costs that the employer agreed to pay, the excess funds must be—

(1) Used to reduce the Federal share on a dollar-for-dollar basis;

(2) Held in trust for off-campus student employment next year; or

(3) Refunded to the off-campus employer.

(d) For each award year, the Secretary authorizes a Federal share of 100 percent of the compensation earned by a student under this part if—

(1) The work performed by the student is for the institution itself, for a Federal, State or local public agency, or for a private nonprofit organizations; and

(2) The institution at which the student is enrolled—

(i) Is designated as an eligible institution under the Strengthening Institutions program (34 CFR 607), the

Strengthening Historically Black Colleges and Universities program (34 CFR Part 608), or the Strengthening Historically Black Graduate Institutions program (34 CFR Part 609); and

(ii) Requests that increased Federal share as part of its regular CWS funding application for that year.

(Authority: 20 U.S.C. 1069a, 42 U.S.C. 2753)

§ 675.27 Nature and source of institutional share.

(a)(1) An institution may use any resource available to it, except funds allocated under the CWS program, to pay the institutional share of CWS compensation to its students. The institutional share may be paid in the form of services and equipment, e.g., tuition, room, board, and books.

(2) The institution shall document all amounts claimed as non-cash contributions.

(3) Non-cash compensation may not include forgiveness of a charge assessed solely because of a student's employment under the CWS program.

(b) An institution may not solicit or accept fees, commission, contributions, or gifts as a condition for CWS employment, nor permit any organization with which it has an employment agreement to do so.

(Authority: 42 U.S.C. 2753)

§ 675.28 Community service learning program.

(a) From its allocation under the CWS program, an institution may employ its students in a community service learning program designed to develop, improve or expand services for low-income individuals and families, or to solve particular programs related to the needs of low-income individuals.

(b) A community service learning program is a program of student work that—

(1) Provides tangible community services for or on behalf of low-income individuals; and

(2) Provides students with work-learning opportunities related to their educational or vocational programs or goals.

(c) As used in this section—

(1) A low-income individual is an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the proverty level detemined by using criteria of poverty established by the Bureau of the Census; and

(2) Community services—

(i) Are direct services, planning or applied research activities, designed to—

(A) Improve the quality of life for community residents, particularly low-income individuals; or

(B) Solve particular problems relating to the needs of low-income individuals; and

(ii) May include activities related to such fields as health care, education, welfare, social services, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development and community improvement.

(Authority: 42 U.S.C. 2756a)

Subpart B—Job Location and Development Programs

§ 675.31 Purpose.

(a) The purpose of the regular job location and development program is to expand off-campus job opportunities for students enrolled in eligible institutions of higher education who want jobs, regardless of their financial need.

(b) The purpose of the community services job location and development program is to locate and develop community services jobs for students qualifying as eligible students under § 675.9.

(Authority: 42 U.S.C. 2756)

§ 675.32 Program description.

(a) *Regular job location and development program.* An institution may expend up to the lesser of $30,000 or 10 percent of its CWS allocation and reallocation for an award year to establish or expand a program under which the institution, separately or in combination with other eligible institutions, locates and develops jobs for currently enrolled students.

(b) *Community services job location and development program.* (1) An institution may expend up to the lesser of $20,000 or 10 percent of its CWS allocation and reallocation for an award year to establish or expand a program under which the institution, separately or in combination with other eligible institutions and through consultation with local nonprofit, governmental, educational, and community-based organizations, locates and develops community services jobs for students qualifying as eligible students under § 675.9.

(2) As used in this subpart, the term "community services" means services that—

(i) Are identified by the institution through formal or informal consultation with local nonprofit, governmental and community-based organizations; and

(ii) Are designed to—

(A) Improve the quality of life for community residents, particularly low-income individuals; or

(B) Solve particular problems related to the needs of the community residents including, but not limited to, such fields as health care, child care, literacy training, education (including tutorial services), housing and neighborhood improvement, rural development, and community improvement.

(Authority: 42 U.S.C. 2756)

§ 675.33 Allowable costs.

(a)(1) *Allowable and unallowable costs.* Except as provided in paragraph (a)(2) of this section, costs reasonably related to carrying out the programs described in § 675.32 are allowable.

(2) Costs related to the purchase, construction, or alteration of physical facilities or indirect administrative costs are not allowable.

(b) *Federal share of allowable costs.* An institution may use CWS funds, as provided in § 675.32, to pay up to 80 percent of allowable costs.

(c) *Institutional share of allowable costs.* An institution's share of allowable costs may be in cash or in the form of services. The institution shall keep records documenting the amount and source of its share.

(Authority: 42 U.S.C. 2756)

§ 675.34 Multi-Institutional job location and development programs, or arrangements with nonprofit organizations.

(a) An institution participating in the CWS program may enter into a written agreement to establish and operate job location programs for its students with—

(1) Other participating institutions; or

(2) A nonprofit organization. The nonprofit organization must have professional direction and staff.

(b) The agreement described in paragraph (a) of this section must—

(1) Designate the administrator of the program; and

(2) Specify the terms, conditions, and performance standards of the program.

(c) Each institution shall retain responsibility for the proper disbursement of the Federal funds it contributes under an agreement with other eligible institutions or with a nonprofit organization.

(Authority: 42 U.S.C. 2756)

§ 675.35 Agreement.

(a) A CWS participating institution, to establish or expand these programs, shall enter into an agreement with the Secretary.

(b) The agreement must provide—

(1) That the institution will administer the programs accordance with the HEA and the provisions of this part;

(2) That the institution will submit to the Secretary an annual report on the use of the funds and an evaluation of the effectiveness of the programs in benefiting the institution's students; and

(3) Satisfactory assurances that—

(i) The institution will not use program funds to locate and develop jobs at the institution under the regular job location and development program described in § 675.32(a);

(ii) The institution will use program funds to locate and develop jobs for students during and between periods of attendance at the institution, not upon graduation;

(iii) The program will not displace employees or impair existing service contracts;

(iv) Program funds can realistically be expected to generate total student wages exceeding the total amount of the Federal funds spent under this subpart; and

(v) If the institution uses Federal funds to contract with another organization, suitable performance standards will be part of that contract.

(Authority: 42 U.S.C. 2756)

§ 675.36 Procedures and records.

Procedures and records concerning the administration of a JLD project established and operated under this subpart are governed by applicable provisions of § 675.19.

(Authority: 42 U.S.C. 2756a)

§ 675.37 Termination and suspension.

(a) If the Secretary terminates or suspends an institution's eligibility to participate in the CWS program, the action also applies to the institution's job location and development programs.

(b) The Secretary pays an institution's financial obligations incurred and allowable before the termination but not incurred—

(1) During a suspension; or

(2) In anticipation of a suspension.

(c) However, the institution must cancel as many outstanding obligations as possible.

(Authority: 42 U.S.C. 2756a)

Appendix A—[Reserved]

Appendix B—Model Off-Campus Agreement

(The paragraphs below are suggested as models for the development of a written agreement between an institution of higher education and a Federal, State, or local public agency or private nonprofit organization which employs students participating in the College Work-Study program. Institutions and agencies or organizations may devise additional or substitute paragraphs which are not inconsistent with the statute or regulations.)

This agreement is entered into between ————————, hereinafter known as the "Institution," and ————————, hereinafter known as the "Organization," a (Federal, State, or local public agency), (private nonprofit organization), (strike one), for the purpose of providing work to students eligible for the College Work-Study program (CWS).

Schedules to be attached to this agreement from time to time must be signed by an authorized official of the institution and the organization and must set forth—

(1) brief descriptions of the work to be performed by students under this agreement;

(2) the total number of students to be employed;

(3) the hourly rates of pay, and

(4) the average number of hours per week each student will be used.

These schedules will also state the total length of time the project is expected to run, the total percent, if any, of student compensation that the organization will pay to the institution, and the total percent, if any, of the cost of employers' payroll contribution to be borne by the organization. The institution will inform the organization of the maximum number of hours per week a student may work.

Students will be made available to the organization by the institution to perform specific work assignments. Students may be removed from work on a particular assignment or from the organization by the institution, either on its own initiative or at the request of the organization. The organization agrees that no student will be denied work or subjected to different treatment under this agreement on the grounds of race, color, national origin, or sex. It further agrees that it will comply with the provisions of the Civil Rights Act of 1964 (Pub. L. 88–352; 78 Stat. 252) and Title IX of the Education Amendments of 1972 (Pub. L. 92–318) and the Regulations of the Department of Education which implement those Acts.

(Where appropriate any of the following three paragraphs or other provisions may be included.)

(1) Transportation for students to and from their work assignments will be provided by the organization at its own expense and in a manner acceptable to the institution.

(2) Transportation for students to and from their work assignments will be provided by the institution at its own expense.

(3) Transportation for students to and from their work assignments will not be provided by either the institution or the organization.

(Whether the institution or the organization will be considered the employer of the students covered under the agreement depends upon the specific arrangement as to the type of supervision exercised by the organization. It is advisable to include some provision to indicate the intent of the parties as to who is considered the employer. As appropriate, one of the following two paragraphs may be included.) [1]

(1) The institution is considered the employer for purposes of this agreement. It has the ultimate right to control and direct the services of the students for the organization. It also has the responsibility to determine whether the students meet the eligibility requirements for employment under the College Work-Study program, to assign students to work for the organization, and to determine that the students do perform their work in fact. The organization's right is limited to direction of the details and means by which the result is to be accomplished.

(2) The organization is considered the employer for purposes of this agreement. It has the right to control and direct the services of the students, not only as to the result to be accomplished, but also as to the means by which the result is to be accomplished. The insitution is limited to determining whether the students meet the eligibility requirements for employment under the College Work-Study program, to assigning students to work for the organization, and to determining that the students do perform their work in fact.

(Wording of the following nature may be included, as appropriate, to locate responsibility for payroll disbursements and payment of employers' payroll contributions.)

Compensation of students for work performed on a project under this agreement will be disbursed—and all payments due as an employer's contribution under State or local workers' compensation laws, under Federal or State social security laws, or under other applicable laws, will be made—by the (organization) (institution) (strike one).

(Where appropriate any of the following paragraphs may be included.)

(1) At times agreed upon in writing, the organization will pay to the institution an amount calculated to cover the organization's share of the compensation of students employed under this agreement.

(2) In addition to the payment specified in paragraph (1) above, at times agreed upon in writing, the organization will pay, by way of reimbursement to the institution, or in advance, an amount equal to any and all payments required to be made by the institution under State or local workers' compensation laws, or under Federal or State social security laws, or under any other applicable laws, on account of students participating in projects under this agreement.

(3) At times agreed upon in writing, the institution will pay to the organization an

[1] It should be noted that although the following paragraphs attempt to fix the identity of the employer, they will not necessarily be determinative if the actual facts indicate otherwise. Additional wording which specifies the employer's responsibility in case of injury on the job may also be advisable, since Federal funds are not available to pay for hospital expenses or claims in case of injury on the job. In this connection it may be of interest that one or more insurance firms in at least one State have in the past been willing to write a workers' compensation insurance policy which covers a student's injury on the job regardless of whether it is the institution or the organization which is ultimately determined to have been the student's employer when he or she was injured.

amount calculated to cover the Federal share of the compensation of students employed under this agreement and paid by the organization. Under this arrangement the organization will funish to the institution for each payroll period the following records for review and retention:

(a) Time reports indicating the total hours worked each week in clock time sequence and containing the supervisor's certification as to the accuracy of the hours reported;

(b) A payroll form identifying the period of work, the name of each student, each student's hourly wage rate, the number of hours each student worked, each student's gross pay, all deductions and net earnings, and the total Federal share applicable to each payroll; [2] and

(c) Documentary evidence that students received payment for their work, such as photographic copies of cancelled checks.

3. Part 676 of Title 34 of the Code of Federal Regulations is revised to read as follows:

PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Note: An asterisk (*) indicates provisions that are common to Parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Sec.

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

§ 676.1 Purpose and identification of common provisions.

(a) The Supplemental Educational Opportunity Grant (SEOG) Program awards grants to financially needy students attending institutions of higher education to help them pay their educational costs.

*(b) Provisions in these regulations that are common to all campus-based programs are identified with an asterisk.

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

§ 676.2 Definitions.

*(a) Subpart A of the Student Assistance General Provisions regulations, 34 CFR Part 668, sets forth definitions of the following terms used in this part:

Academic year
Award year
Clock hour
College Work-Study (CWS) Program
Enrolled
Guaranteed Student Loan (GSL) Program
HEA
Income Contingent Loan Program
Pell Grant Program
Perkins Loan Program
PLUS Program
Secretary
SLS Program

(b) The Secretary defines other terms used in this part as follows:

**Expected family contribution (EFC):* The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

**Financial need:* The difference between a student's cost of attendance and his or her EFC.

**Full-time student:* An enrolled student who is carrying a full-time academic work load (other than by correspondence)—as determined by the institution—under a standard applicable to all students enrolled in a particular program. However, an institution's full-time standard must equal or exceed one of the following minimum requirements;

(1) 12 semester hours or 12 quarter hours per academic term in an institution using a semester, trimester, or quarterly system.

(2) 24 semester hours or 36 quarter hours per academic year for an institution using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year.

(3) 24 clock hours per week for an institution using clock hours.

(4) In an institution using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one.

$$\frac{\text{Number of credit hours per term}}{12} + \frac{\text{Number of clock hours per week}}{24}$$

(5) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic work-load of a full-time student.

**Institution of higher education (institution):* A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

**Payment period:* A semester, trimester, or quarter. For an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of an academic year.

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.

(Authority: 20 U.S.C. 1087aa–1087ii)

*§ 676.3 Application.

(a) To participate in the SEOG program, an institution shall file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain the information needed by the Secretary to determine the institution's allocation of reallocation of the SEOG program funds under section 413D of the HEA.

(Authority: 20 U.S.C. 1070b–3)

§ 676.4 Allocation and reallocation.

(a) The Secretary allocates and reallocates funds to institutions participating in the Supplemental Educational Opportunity Grant program in accordance with section 413D of the HEA.

(b) As used in section 413D of the HEA, "Eligible institutions offering comparable programs of instruction" means institutions that are being compared with the applicant institution and that fall within one of the following six categories:

(1) Cosmetology.
(2) Business.
(3) Trade/Technical.
(4) Art Schools.
(5) Other Proprietary Institutions.
(6) Non-Proprietary Institutions.

[2] These forms, when accepted, must be countersigned by the institution as to hours worked as well as to the accuracy of the total Federal share which is to be reimbursed to the organization or agency.

(c) *Payment to institutions.* The Secretary allocates funds for a specific period of time. The Secretary pays an institution its allocation in periodic installments and may make these payments in advance or by way of reimbursement. The Secretary bases the amounts of these installments on periodic fiscal reports.

(d) *Authority to expend funds.* An institution shall not use funds allocated or reallocated for an award year—

(1) To make SEOG disbursements to students in any subsequent award year; or

(2) To satisfy any other obligation incurred after the end of the designated award year.

(Authority: 20 U.S.C. 1070b–3)

§§ 676.5—676.7 [Reserved]

§ 676.8 Program participation agreement.

To participate in the SEOG program, an institution shall enter into a participation agreement with the Secretary. The participation agreement provides, among other things, that the institution shall—

(a) Use the funds it receives solely for the purposes specified in this part; and

(b) Administer the SEOG program in accordance with the HEA, the provisions of this part, and the Student Assistance General Provisions regulations, 34 CFR Part 668.

(Authority: 20 U.S.C. 1070b *et seq.*, and 1094)

§ 676.9 Student eligibility.

A student at an institution of higher education is eligible to receive an SEOG for an award year if the student—

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.7;

(b) Is enrolled or accepted for enrollment as an undergraduate student at the institution; and

(c) Has financial need as determined in accordance with Part F of Title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members.

(Authority: 20 U.S.C. 1070b–1, 1070b–2 and 1091)

§ 676.10 Selection of students for SEOG awards.

(a)(1) In selecting among eligible students for SEOG awards in each award year, an institution shall select those students with the lowest expected family contributions who will also receive Pell Grants in that year.

(2) If the institution has SEOG funds remaining after giving SEOG awards to all the Pell Grant recipients at the institution, the institution shall award the remaining SEOG funds to those eligible students with the lowest expected family contributions who will not receive Pell Grants.

(b) If an institution's allocation of SEOG funds is directly or indirectly based on the financial need demonstrated by students attending the institution as less than full-time students, the institution shall, consistent with the requirements of paragrah (a) of this section, award a reasonable proportion of its allocation to those students.

(Authority: 20 U.S.C. 1070b–2)

§ 676.11–676.13 [Reserved]

***§ 676.14 Overaward.**

(a) *Overaward prohibited.* *(1) An institution may award or disburse an SEOG to a student if the SEOG, combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding and disbursing an SEOG to a student, the institution shall take into account those resources it—

(i) Can reasonably anticipate at the time it awards SEOG funds to the student;

(ii) Makes available to its students; or

(iii) Knows about.

(3)(i) If a student receives additional resources before the institution disburses the SEOG, and the total resources including the SEOG exceed the student's need, and the excess is not from employment, the overaward is the amount that exceeds need.

*(ii) If a student receives additional resources after the institution disburses the SEOG, and the total resources including the SEOG exceed the student's need by $200 or more, and the excess is not from employment, the overaward is the amount that exceeds $199.

*(4) If a student earns more from employment than the institution anticipated or could have reasonably anticipated when it awarded or disbursed the SEOG, the institution shall treat the earnings in accordance with paragraph (d) of this section.

*(b) *Resources.* (1) The Secretary considers that "resources" include but are not limited to any—

(i) Funds the student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Student Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs and ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowship or assistantship;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from employment other than CWS employment for the period of the award except as provided in 34 CFR 675.25; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(2) The Secretary does not consider as a resource any portion of the resources described in paragraph (b)(1) of this section that are included in the student's EFC.

(3) The student may use Supplemental Loans for Students (SLS), State-sponsored or private loans, PLUS loans, or non-need-based ICLs to substitute for his or her expected family contribution. However, if the sum of loan amounts received exceeds the student's expected family contribution, the excess is a resource.

(c) *Liability for and recovery of overpayments.* (1) The student is liable for any SEOG overpayment made to him or her.

(2) The institution is also liable for an overpayment if the overpayment occurred because it failed to follow the procedures set forth in this Part. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its SEOG account even if it cannot collect the overpayment from the student.

(3) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recover the overpayment by making a reasonable effort to contact the student and recover the overpayment.

The Secretary regards a written demand to the student for repayment of the overawarded funds, with notice that failure to make that repayment will render student ineligible for further Title IV aid, to constitute such a reasonable effort.

*(d) *Treatment of earnings in excess of need.* An institution shall take the following steps when it learns that a student has earned, or will earn, an

amount that when combined with other resources is $200 or more over his or her financial need:

(1) The institution shall decide whether the student has increased financial need unanticipated when it awarded financial aid to the student. If the student does, and the student's earnings plus other resources do not exceed this increased need by $200 or more, no further action is necessary.

(2) If the student's earnings plus other resources still exceed need by $200 or more after the institution subtracts any additional costs, it shall cancel any unpaid loan or grant (other than Pell Grants) to avoid exceeding need by more than $199.

(3) If the student's earnings plus other resources still exceed his or her need by $200 or more after the institution takes the steps required in the two preceding subparagraphs, and the student is enrolled for the next academic year, the institution shall consider the amount that exceeds $199 as a resource to help pay the student's cost of attendance in the following year.

(4) If the student's earnings plus other resources still exceed his or her need by $200 or more after the institution takes steps required in subparagraphs (1) and (2) of this paragraph, and the student is not enrolled for the next academic year, no further action is necessary.

(Authority: 20 U.S.C. 107b–1)

***§ 676.15 Coordination with BIA grants.**

(a) To determine the amount of an SEOG for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with package prepared for students in similar circumstances who are not eligible for BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted from the other assistance, not the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a BIA-eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 20 U.S.C. 1070b–1).

§ 676.16 Payment of an SEOG.

(a)(1) Except as provided in paragraphs (b) and (e) of this section, an institution shall pay in each payment period a portion of an SEOG awarded for a full academic year.

(2) The institution shall determine the amount paid each payment period by the following fraction:

$$\frac{\text{SEOG}}{\text{N}}$$

Where:

SEOG = the total SEOG awarded for an academic year and N = the number of payment periods that the institution expects the student will attend in that year.

(3) An institution may pay the student, within each payment period, at such times and in such amounts as it determines best meets the student's needs.

(b) If a student incurs uneven cost or resources during an academic year and needs additional funds in a particular payment period, the institution may pay SEOG funds to the student for those uneven costs.

(c) The institution may pay the student directly by check or by crediting his or her account with the institution. The institution shall notify the student of the amount he or she can expect to receive, and how and when that amount will be paid.

(d)(1) An institution may not pay an SEOG to student for a payment period until the student registers for that period.

(2) The earliest an institution may directly pay a registered student is 10 days before the first day of classes of a payment period.

(3) The earliest an institution may pay a registered student by crediting the student's account is three weeks before the first day of classes of a payment period.

(e)(1) The institution shall return to the SEOG account any funds paid to a student who, before the first day of classes—

(i) Officially or unofficially withdraws; or

(ii) Is expelled.

(2) A student who does not begin class attendance is deemed to have withdrawn.

(f) Only one payment is necessary if the total amount the institution awards a student for an academic year under the SEOG and NDSL program is less than $501.

(g) A correspondence student shall submit his or her first completed lesson before receiving an SEOG payment.

(Authority: 20 U.S.C. 1070b. 1091)

***§ 676.17 Federal interest in allocated funds.**

Except for funds received for the administrative cost allowance (see § 676.18(b)), funds received by an institution under the SEOG program are held in trust for the intended student beneficiaries and the Secretary. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(Authority: 20 U.S.C. 1070b–1070b–3)

§ 676.18 Use of funds.

(a) *General.* An institution may use its SEOG allocation and reallocation only for—

(1) Making grants to eligible students;

(2) Carrying out the administrative activities described in paragraph (b)(4) of this section; and

(3) Transferring a portion of its SEOG allocation to its CWS allocation as described in paragraph (c) of this section.

(b) *Administrative cost allowance.* (1) An institution participating in the SEOG program is entitled to an administrative cost allowance for an award year if it awards grants to students in that year.

(2) For any award year, the amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in that award year under the CWS, SEOG, and Perkins Loan programs; plus

(ii) four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures which are in excess of $5,500,000.

(3) However, the institution may not include, in calculating this allowance in paragraph (b)(1) of this section, the institution's CWS expenditures under the community service learning program (34 CFR 675.25) and the amount of loans made under the Perkins Loan Program that it assigns to the Secretary under section 463(a)(6) of the HEA.

(4) An institution shall use its administrative cost allowance to offset its costs of administering the Pell Grant,

CWS, SEOG, and Perkins Loan programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistance General Provisions regulations, 34 CFR 668.

(c) *Transfer of funds to CWS.* (1) An institution may transfer up to 10 percent of the sum of its SEOG allocation for an award year to its CWS program.

(2) An institution shall use transferred funds according to the requirements of the program to which they were transferred.

(3) An institution shall report any transferred funds on the Fiscal Operations Report required under § 676.19.

(4) An institution shall transfer back to the CWS program any funds unexpended at the end of the award year that it transferred to the SEOG program from the CWS program.

(Authority: 20 U.S.C. 1070b *et seq.*, 1095 and 1096)

§ 676.19 Fiscal procedures and records.

(a) *Fiscal Procedures.* (1) In administering its SEOG program, an institution shall establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2)(i) Except as provided in paragraph (a)(2)(ii) of this section, a separate bank account for SEOG funds is not required. However, an institution shall notify any bank in which it deposits Federal funds of the accounts in which those funds are deposited by—

(A) Including in the name of the account the fact that Federal funds are desposited; or

(B) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution shall retain a copy of this notice in its files.

(ii) If the Secretary determines that adequate accounting records are not maintained, the institution shall keep SEOG funds in a separate bank account.

(b) *Record and reporting.* (1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

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

(i) Are reconciled at least monthly;

(ii) Identify each student's account and status;

(iii) Show the eligibility of each student aided under the program; and

(iv) Show how the need was met for each student.

(3) The institution shall maintain on file all SEOG applications for those students it reports on the Fiscal Operations Report and Application to Participate in the Perkins Loan, SEOG, and CWS Programs (FISAP).

(4) The institution shall maintain all records supporting its application for funds under this part.

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

(c) *Retention of records.*—(1) *Records.* Each institution shall keep intact and accessible records of the application, the receipt, and the expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

* (2) *Period of retention.* Except for audit questions, an institution shall keep records for an award year for five years after it submits its FISAP for that year.

* (3)(i) An institution may keep the records required in this section on microforms or it may keep its records in computer format.

(ii) If the institution keeps its records in computer format it shall maintain, in either hard copy or microforms, the source documents supporting the computer input.

(4) *Audit questions.* An institution shall keep records on any claim or expenditure questioned by Federal audit or program review until any audit questions are resolved.

(Authority: 20 U.S.C. 1070b, 1094, and 1232f)

§ 676.20 Minimum and maximum SEOG awards.

(a) An institution may award an SEOG for an academic year in an amount it determines a student needs to

continue his or her studies. However, an SEOG may not be awarded for a full academic year that is—

(1) Less than $100; or

(2) More than $4,000.

(b) For a student enrolled for less than a full academic year, the minimum allowable SEOG may be proportionately reduced.

(Authority: 20 U.S.C. 1070, 1070b–1)

§ 676.21 SEOG Federal share limitations.

(a) Except as provided in paragraph (b) of this section—

(1) For award years 1987–88 and 1988–89, the Federal share of SEOGs awarded to students by an institution equals 100 percent of the amount of the SEOG awards made by that institution;

(2) For award year 1989–90, the Federal share of SEOG awards made by an institution may not exceed 95 percent of the amount of those awards;

(3) For award year 1990–91, the Federal share of SEOG awards made by an institution may not exceed 90 percent of the amount of those awards; and

(4) For award year 1991–1992 and subsequent award years, the Federal share of SEOG awards made by an institution may not exceed 85 percent of the amount of those awards.

(b) Beginning with the 1989–90 award year, the Secretary authorizes, for each award year, a Federal share of 100 percent of the SEOGs awarded to students by an institution that—

(1) Is designated as an eligible institution under the Strengthening Institutions program (34 CFR Part 607) or the Strengthening Historically Black Colleges and Universities program (34 CFR Part 608); and

(2) Requests that increased Federal share as part of its regular SEOG funding application for that year.

(c) The non-Federal share of SEOG awards must be made from the institution's own resources, which include for this purpose—

(1) Institutional grants and scholarships;

(2) Tuition or fee waivers;

(3) State scholarships; and

(4) Foundation or other charitable organization funds.

(Authority: 20 U.S.C. 1070b–2 and 1069a)

[FR Doc. 27422 Filed 11–30–87; 8:45 am]

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federal register

Tuesday
December 1, 1987

Part IV

Department of Education

Office of Special Education and Rehabilitative Services

Postsecondary Education Program for Handicapped Persons; Final Annual Funding Priority; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Postsecondary Education Program for Handicapped Persons

AGENCY: Department of Education.

ACTION: Notice of final annual funding priority.

SUMMARY: The Secretary announces an annual funding priority for the Postsecondary Education Program for Handicapped Persons-Demonstration Projects component. This priority will support projects that provide development or refinement of employment-related skills to youths with mild and moderate handicaps in community colleges, vocational-technical institutions, and other postsecondary educational settings.

EFFECTIVE DATE: This final annual funding priority takes effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of this annual funding priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Rosenstein, Postsecondary Education Program for Handicapped Persons, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3096—M/S 2313), Washington, DC 20202. Telephone: (202) 732–1176.

SUPPLEMENTARY INFORMATION: The Postsecondary Education Program for Handicapped Persons is authorized by section 625 of Part C of the Education of the Handicapped Act (20 U.S.C. 1424a) to develop, operate, and disseminate specially designed or adapted model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities. Consideration is given, under a separate competition, to four regional centers serving individuals who are deaf. This notice concerns support for model projects for individuals with handicapping conditions other than deafness, for the purpose of developing and adapting educational programs that meet the special needs of these individuals. These projects are to coordinate, facilitate, and encourage education of persons with handicaps with their nonhandicapped peers. Under this program, The Secretary makes awards to State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies.

Summary of Comment and Response

A notice of proposed annual funding priority was published in the **Federal Register** on September 9, 1987 (52 FR 34104). The public was given thirty days in which to comment. One comment was received from a professional organization in response to the notice of proposed annual funding priority. The comment and the Department's response are summarized below:

Comment: The comment expresses concern that the priority may be too limiting in that it focuses solely "on short-term educational interventions".

Response: No change has been made. Longer-term educational interventions have been targeted in past years under this program, and models have been generated for two- and four-year programs. The focus suggested under the current priority encourages the field to propose specially-modified interventions that may better fit the needs of the targeted population.

Priority

In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary will give an absolute preference to applications submitted under this priority for model projects of supportive services to individuals with mild or moderate handicapping conditions other than deafness that (1) focus on specially adapted or designed educational programs that coordinate, facilitate, and encourage education of handicapped individuals with their nonhandicapped peers, and (2) are targeted to vocational outcomes for youth who have recently completed or left secondary educational programs. Applicants must develop strategies for locating and serving young adults with handicaps who are in need of continued educational services to secure and maintain competitive employment. Applicants must establish or make use of existing formal cooperative relationships between secondary schools and potential employers, and must assure that these young adults will have individualized educational plans that detail the goals and objectives for obtaining the skills requisite for employment. Job placements and follow-along activities are expected as basic components of proposed activities. This priority is focused on short-term educational interventions necessary to assist youth to secure competitive employment. In addition to entry-level employment, interventions may include training in aspects of adjustment to the community as well as to the workplace. Applications for multi-year awards will have graduates entering the work force; these applications may reflect follow-up and follow-along data from worker-graduates in their evaluation plans.

Program Authority: 20 U.S. 1424a.

Dated: November 16, 1987.

(Catalog of Federal Domestic Assistance No. 84.078: Postsecondary Educational Programs for Handicapped Persons)

William J. Bennett,

Secretary of Education.

[FR Doc. 87–27500 Filed 11–30–87; 8:45 am]

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federal register

Tuesday
December 1, 1987

Part V

Environmental Protection Agency

**40 CFR Parts 144, 264, 265, 270, and 271
Hazardous Waste; Codification Rule for 1984 RCRA Amendments; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 144, 264, 265, 270, and 271

[SWH; FRL 3211-6]

Hazardous Waste; Codification Rule for the 1984 RCRA Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule..

SUMMARY: This rule is a companion to EPA's final rule of July 15, 1985, which codified requirements specified by the Hazardous and Solid Waste Amendments of 1984 (HSWA) that took effect immediately or shortly after enactment (see 50 FR 28702). The July 15 final rule amended EPA's hazardous waste regulations to incorporate the statutory language of HSWA into EPA's existing regulatory framework. This rule codifies further changes to the existing regulations which implement the HSWA provisions relating to corrective action and permitting for RCRA facilities. Today's rule also includes provisions to implement the statutory requirements pertaining to corrective action for releases beyond the facility boundary, and to corrective action for hazardous waste injection wells.

DATES: The following regulatory amendments to Title 40 of the Code of Federal Regulations become effective December 31, 1987—§§ 144.1(h), 144.31(g), 265.1(c)(2), 270.1(c) introductory text, (5) and (6), 270.4(a), 270.10(k), 270.14 (c) introductory text and (d), 270.41(a)(3), 270.60(b)(3) and the addition to Table 1 in 271.1(j).

The following regulatory amendments become effective immediately December 1, 1987—§§ 264.100(e) introductory text, (1) and (2), and 264.101(c).

ADDRESS: The docket for this rulemaking is available for public inspection in the sub-basement, U.S. EPA, 401 M Street SW., Washington, DC 20460 from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. The docket number is F–87–CODF–FFFFF.

FOR FURTHER INFORMATION CONTACT: Sharon Frey, Closure/Financial Responsibility Section (WH–563), Office of Solid Waste, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; (202) 475–6725.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

These regulations are issued under authority of sections 2002, 3004, 3005, 3006, and 3015 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912, 6924, 6925, 6926, and 6935.

II. Background

The preamble to the final codification rule promulgated on July 15, 1985 (50 FR 28702) provides substantial detail on the background and purpose of today's rule, which incorporates into the existing Subtitle C regulations an additional set of requirements from the 1984 Hazardous and Solid Waste Amendments (HSWA). The preamble to the July 15, 1985 final rule should be read first to understand the context of this rule. Briefly, the July 15 rule codified, with very few changes, the statutory language of many of the new provisions of the HSWA to the existing Subtitle C regulations, with a preamble that provided EPA's legal interpretations of that language. Today's rule, by contrast, codifies changes to the Subtitle C regulations that are more than mere transpositions of those statutory provisions which took effect immediately or shortly after enactment. This rule and accompanying preamble deal with issues relating to corrective action and permit information requirements that are generally logical outgrowths of the 1984 amendments rather than requirements imposed directly by the statute.

The proposal for today's rule was published for comment on March 28, 1986 (51 FR 10706). In addition to corrective action and permit requirements, the proposed rule also contained provisions addressing land disposal restrictions and minimum technology requirements under section 3004 of RCRA. Those latter provisions will be addressed in a separate final rule.

III. Section-by-Section Analysis

The following sections of this preamble include discussions of the major issues and explanations of EPA's rationale for promulgating the final rules.

A. Corrective Action Requirements

1. Permit Application Requirements

In the March 28, 1986 proposed rule, EPA proposed to amend § 270.14 by adding a new provision (paragraph d) requiring the provision of additional information in Part B applications pertaining to solid waste management units (SWMUs) at facilities seeking a RCRA permit. The proposed provision, as part of the codification of corrective action requirements under section 3004(u) of RCRA, would require owners and operators of facilities seeking permits to provide descriptive information on the SWMUs themselves and all available information pertaining to any release from the units. The proposal also gives EPA or an authorized state the authority to require the permit applicant to conduct sampling and analysis at the SWMUs to determine if more detailed analysis is necessary.

The Agency received many comments on the proposed requirement. Several commenters objected to the provision, arguing that it sets no real limitations on the amount of information which may be demanded by the permitted authority. In particular, these commenters contended that the proposed rule may compel permit applicants to conduct extensive sampling and analysis simply to determine whether a release has occurred.

The Agency, while sensitive to these concerns, is today promulgating the requirement as proposed. The Agency does not intend this rule to require extensive sampling and monitoring at every solid waste management unit at a RCRA facility seeking a permit. However, EPA believes that sampling and analytical data are often necessary as part of its preliminary assessment of releases from SWMUs (the RCRA Facility Assessment or RFA) before a permit is issued, and that it should have a mechanism to require the owner/operator to provide those data. As described in the proposed rule, EPA will conduct an RFA [1] on each facility during

[1] The RFA was previously known as the Preliminary Assessment/Site Investigation (PA/SI), but has been changed to distinguish it from the analogous CERCLA process. Similiarly, the RFI (RCRA Facility Investigation) is analogous to a RI (Remedial Investigation under CERCLA. These

Continued

the permitting process to determine whether a release from a SWMU has or is likely to have occurred, as well as to determine what subsequent investigations may be necessary to identify and characterize the release further. When EPA conducts an RFA, it will rely first on existing information about the facility and a site visit to make this determination. Sampling is generally required only in situations where there is insufficient evidence on which to make an initial release determination. This requirement is not anticipated to place an unreasonable new resource burden on owners/operators. The actual extent of sampling will vary, however, depending on the amount and quality of existing information available.

The Agency also received a number of comments concerning certain descriptive information on SWMUs that the proposal required. One commenter objected that the proposed rule did not require a structural description of the solid waste management unit, arguing that this information is needed to determine the potential for releases of hazardous waste from the unit. Another suggested that EPA should require a hydrological study for solid waste management units as part of the permit application. A third commenter was concerned that the provision required information that may not be available for certain types of solid waste management units such as long-inoperative wood pallet or scrap metal storage areas.

As noted in the preamble to the proposed rule, the new requirements in § 270.14(d) are intended to assist the Agency in determining the existence or likelihood that there is or has been a release at a facility. Complete information on solid waste management units will enhance the Agency's ability to make these determinations; however, the Agency recognizes that for many solid waste management units, detailed information on waste characteristics and design of the units may not be available. Accordingly, the final rule states that while general information on solid waste management units (e.g., location, unit type, dimensions) is required for each unit, specification of all wastes that have been managed at the unit and information pertaining to releases from such units is required only to the extent that this information is available (with the exception of any additional data that may be required under § 270.14(d)(3)).

The Agency is generally retaining its proposed approach for the reasons stated above. EPA agrees, however, that structural descriptions of solid waste management units should be required to assist the Agency in determining the potential or likelihood that a release has occurred. The Agency recognizes that some SWMUs do not have defined engineered structures; in such cases this requirement would be satisfied by a general description. The final rule includes this requirement.

Another commenter expressed the concern that a conclusion from an RFA that no further investigation is necessary could be construed to shield owner/operators from any future responsibilities for responding to releases and implementing corrective action as necessary. The commenter further suggested that EPA should routinely require ground-water monitoring at certain types of solid waste management units, such as land treatment or disposal units, unless the facility could make a specific showing that no release has occurred or is likely to occur in the future.

The legislative history of section 3004(u) demonstrates that Congress intended to extend the requirements of section 3004(u) to releases that occur after permit issuance (see S. Rep. 98–284, 98th Cong. 1st Sess. 32 (1983)). Although the emphasis of the corrective action program is on addressing releases that are identified at the time of permit issuance, the Agency recognizes the need to detect and correct future releases from SWMU's. EPA has authority under section 3004(u) to require ground-water monitoring to detect future releases. However, the Agency currently believes it is not necessary to require routine ground-water monitoring at all SWMU's located on Subtitle C facilities. EPA is considering the need to monitor solid waste management facilities more broadly in the context of its review of the Subtitle D program for the regulation of solid waste. In the interim, the Agency intends to exercise its monitoring authority under section 3004(u) on a case-by-case basis, writing permit conditions to require monitoring (or modeling) for any media where it finds that a SWMU is likely to release hazardous constituents that pose a threat to human health and the environment. The Agency may consider factors such as the volume and concentration of the constituents, site characteristics, unit design or other factors in making this determination.

In cases where releases from a SWMU are not identified at the time of permit issuance, the owner/operator has a continuing responsibility to report and address such releases (ref. § 270.30(1)). In addition, permits for land disposal facilities will be reviewed five years after issuance, to determine whether modifications to the permit, including any new or additional corrective action requirements should be added to the permit. At the time of permit reissuance, the Agency has the opportunity to reevaluate the potential for releases at the facility, and to address them in the context of the reissued permit.

Finally, the Agency received two comments requesting clarification of specific language in this provision. One commenter noted that paragraph (d)(3) should specify that sampling and analysis information be "supplied" to the permitting agency. Another commenter requested that the phrase "hazardous waste or constituents" in paragraph (d)(2) be clarified to read "hazardous waste or hazardous constituents." The final rule adopts these clarifications.

One commenter expressed the opinion that the permit application information requirements of § 270.14(d) should not apply to units in which certain wastes identified under RCRA section 3001(b)(3)(A)(i), including fossil fuel combustion wastes, are managed. The commenter argued that such wastes are exempt from coverage under § 3004(u), and therefore should not be required to comply with information requirements promulgated pursuant to section 3004(u). To support his contention, the commenter pointed out that section 3001(b)(3)(A) provides that these specified wastes shall be "subject only to regulation under other applicable provisions of Federal or state law in lieu of Subtitle C of RCRA until at least six months after the date of the submission of the applicable study required to be conducted under subsection * * * (n) * * * of section 8002" of RCRA. The commenter thus argued that since section 3004(u) is located in Subtitle C of RCRA, its requirements do not apply to fuel combustion wastes.

This comment raises a significant issue of statutory interpretation that applies not only to wastes from fossil fuel combustion, but also to three other categories of wastes excluded under section 3001. Section 3001(b)(3), the provision quoted above, also addresses wastes from the extraction, beneficiation and processing of ores and minerals ("mining wastes"), and cement kiln dust wastes. This provision is commonly called the "Bevill amendment." In addition, section 3001(b)(2) subjects drilling fluids,

procedures are described more fully in EPA's National Corrective Action Strategy, announced in the Federal Register of October 23, 1986 (51 FR 205).

produced waters, and other wastes associated with the production of crude oil or natural gas or geothermal energy ("oil and gas wastes") to a similar limitation.

EPA does not agree that these exclusions extend to corrective action for releases from solid waste management units under section 3004(u). EPA believes that Congress enacted these provisions in 1980 to prohibit EPA from regulating these wastes as "hazardous" while it studied the impacts of such regulation. When Congress enacted these exemptions in 1980, Subtitle C provided only for the regulation of hazardous waste. Hence, the reference to "this subtitle" indicated only an intent to exclude these special wastes from EPA's hazardous waste regulations.

Section 3004(u), however, does not fit in the 1980 statutory scheme. Although it is located in Subtitle C, it provides for clean-up of releases of "hazardous constituents" (not just hazardous wastes) from both hazardous waste and solid waste management units. Indeed, section 3004(u) is the only provision in Subtitle C that reaches beyond the universe of hazardous waste. Thus, the question of statutory interpretation for the Agency is whether the exemption, which extends to regulation "under Subtitle C", should be read as covering the authorities granted to EPA to correct releases of hazardous constituents at solid waste management units.

EPA does not believe that Congress intended the exemptions in section 3001, which were clearly aimed at hazardous waste, to extend to corrective action for solid wastes under section 3004(u). Certainly nothing in the plain language of the legislative history of section 3004(u) suggests that Congress intended to create any exemptions for any category of solid waste. Furthermore, the commenter conceded that fossil fuel combustion wastes are "solid wastes" subject to corrective action regulation under Subtitle D and emergency clean-up orders under Section 7003. (See the brief of petitioner Edison Electric Institute in *United Technologies Corporation* v. *EPA*, D.C. Cir. No. 85-1654 consolidated cases.) It is more logical and consistent with Congressional goals to conclude that these solid wastes are similarly subject to clean-up requirements under section 3004(u).

An exemption from corrective action under section 3004(u) is also not necessary to achieve the goals of the original exemption in section 3001. The sponsors of the 1980 amendments were chiefly concerned with the lack of specific data showing that these solid wastes endangered human health and the environment, and the potential for disruptive economic impacts if these wastes were subject to regulation as hazardous wastes under Subtitle C. *See, e.g.*, 126 Cong. Rec. H1101-1102 (daily ed. Feb. 19, 1980) (remarks of Representative Bevill); 125 Cong. Rec. S6821 (daily ed. June 4, 1979) (remarks of Senator Huddleston). Section 3004(u), however, will not require any corrective action unless EPA obtains data showing that specific solid waste management units are releasing hazardous constituents in the manner that threatens human health and the environment. Furthermore, a decision to require clean-up under section 3004(u) will not require compliance with the full range of Subtitle C regulations. For example, the double liner retrofitting requirements in section 3005(j) would not apply to a solid waste management unit containing a Bevill waste or an oil and gas waste. Corrective action will not have the same economic impact as full Subtitle C regulation. As indicated, Congress provided for corrective action for solid wastes under Subtitle D and/or section 7003; coverage under section 3004(u) simply provides a linkage between corrective action and the hazardous waste permitting process.

In summary, EPA has concluded that "Bevill wastes" and oil and gas wastes are subject to the corrective action requirements of section 3004(u) when they are found in solid waste management units at facilities that need permits to manage hazardous wastes.

2. Corrective Action Beyond the Facility Boundary

In the March 28, 1986 proposed rule, the Agency proposed to codify section 3004(v) of HSWA by adding §§ 264.100(e) and 264.101(c) to the current regulations. This proposal required owners/operators of hazardous waste treatment, storage, and disposal facilities to institute corrective action beyond the facility boundary where necessary to protect human health and the environment, unless the owner/operator is denied access to adjacent lands despite the owner/operator's best efforts. This requirement also applies to permit-by-rule facilities required to compy with § 264.101.

In the preamble to the proposed rule, the Agency solicited comment on how "best efforts" should be defined, and what kind of documentation should be required. Several commenters questioned the need for rigid or defined rules as to what constitutes "best efforts," arguing that the circumstances surrounding individual sites vary extensively, and therefore can not be adequately addressed in a generic rulemaking. Other commenters suggested that a certified letter sent by the owner or operator requesting access to conduct corrective action should suffice to demonstrate best efforts to obtain permission from the adjacent landowner. EPA agrees with those commenters who argued the need for a flexible, case-by-case approach. In determining what constitutes "best efforts," the Agency will consider a number of factors, including the necessity of the off-site investigation, the extent and significance of the release, the contacts made between property owners, and the reasonableness of the efforts. In any case, the Agency believes that efforts to seek permission should, at a minimum, be demonstrated through a certified letter (or equivalent demonstration) from the owner/operator.

In the proposed rule, the Agency also requested comments on what kinds of corrective measures should be required on-site if permission to extend corrective action measures beyond the facility boundary is denied. Specifically, the Agency asked for comments on whether hydraulic gradient modifications or purchase of water rights should be required in these cases.

Several commenters cautioned that these alternatives may not be physically possible, legal, or effective in many cases. For example, gradient modifications may dewater neighbors' wells and streams, and water rights are not transferable in some states. In light of these considerations, the Agency agrees with those commenters who suggested that while these options may be appropriate at a particular site, they should not be an automatic requirement. Therefore, the agency will examine the feasibility and appropriateness of on-site measures on a case-by-case basis, considering site-specific hydrogeologic conditions and other relevant factors, in situations where off-site access is denied. Today's final rule has added to §§ 264.100(e)(2) and 264.101(c) to clarify that owner/operators are not relieved of responsibilities to perform on-site corrective actions if off-site access is denied.

EPA disagrees with those commenters who argued that if permission from the adjacent landowner is denied—despite the owner/operator's best efforts—the owner/operator should be relieved of all responsibility to clean up a release that has migrated beyond the facility boundary. The Agency believes that even if permission is denied, owners/operators may still not be relieved of their responsibility to undertake

corrective measures to address releases that have migrated beyond the facility boundary. In such cases, owner/operators may be required, on a case-by-case basis, to implement certain corrective measures on-site to clean up releases beyond the facility boundary if such measures are necessary to protect human health and the environment, and if they are possible, legal, and effective.

The proposed rule also clarified that assurances of financial responsibility must be provided for corrective action beyond the facility boundary. This requirement has been promulgated as proposed. One commenter objected to this provision, arguing that there is no specific requirement under section 3004(v) of HSWA that owner/operators must provide such assurances. EPA disagrees with this commenter's interpretation of sections 3004(u) and 3004(v) of HSWA. The Agency believes that Congress intended the financial assurance requirements of sections 3004(a)(6) and 3004(u) to apply to all corrective actions that are necessary to address releases from solid waste management units at a facility, regardless of whether those releases have migrated beyond the facility boundary and thus require off-site actions. Rules proposed on October 24, 1986 (51 FR 37854) address in detail requirements for financial assurance for corrective action.

3. Corrective Action for Injection Wells

The March 28, 1986 rule proposed amendments to three sections of existing regulations for underground injection wells which inject hazardous waste: 40 CFR 144.1(h), 144.31(g), and 144.56. These proposed amendments were intended to define the requirements for such wells as related to the corrective action provisions of RCRA section 3004(u). Today's final rule makes final two of the three proposed amendments: §§ 144.1(h) and 144.31(g). The following discussion provides a general outline of the Agency's overall approach to permitting of hazardous waste injection wells as related to corrective action requirements under RCRA and the Safe Drinking Water Act (SDWA). It also explains today's new regulatory amendment (§ 270.60(b)(3)(ii)), and how and why this final rulemaking differs from the proposal.

i. *SDWA and RCRA Permitting Scheme.* A hazardous waste injection well must have authorization to operate under both SDWA and RCRA. Authorization is obtained under SDWA through an Underground Injection Control (UIC) permit or an authorization by rule (see 40 CFR 144.21). RCRA authorization is obtained through interim status (40 CFR Part 265 Subpart R) or a permit-by-rule (40 CFR 270.60(b)). RCRA interim status facilities are considered to have a pending permit application, and must submit required information when it is called in by the regulatory authority. Neither RCRA nor SDWA authorization alone is sufficient to inject hazardous waste.

RCRA permits-by-rule issued after November 8, 1984 must address the corrective action requirements of RCRA section 3004(u), as codified in § 264.101 (see § 270.60(b)(3)). (The term "corrective action", in this context, is not the same as the term corrective action as used in the UIC program under 40 CFR 144.55 for plugging man-made conduits). Sections 264.101 and 270.60(b) require that a RCRA permit-by-rule issued after November 8, 1984, address corrective action for releases of hazardous waste or constituents from any solid waste management unit (SWMU) at the facility. Therefore, a RCRA permit-by-rule issued after this date must address any necessary corrective action not only for the well, but for all SWMUs at the facility.

The timing of implementation of section 3004(u) corrective action requirements at facilities with injection wells will vary, depending on the nature of the facility and its permitting status. The major categories of facilities, and the corresponding timing of implementation of section 3004(u) requirements, are discussed briefly below.

First, many injection wells with RCRA interim status are located at interim status facilities which have another unit or units that are subject to RCRA permitting (e.g., hazardous waste storage tanks). For these facilities, as for all facilities which inject hazardous waste, EPA intends to review potential releases from the injection well as part of the UIC permitting process (under SDWA authorities, and, if necessary, RCRA section 3008(h)). However, implementation of substantive requirements of section 3004(u) for the well and all SWMUs at the facility will be addressed through the first RCRA permit issued to the other hazardous waste unit(s) at the facility. Once the RCRA permit for the other unit(s) has been issued, the injection well would automatically obtain its permit-by-rule by fulfilling the corrective action requirements of § 270.60(b), provided that the other requirements of § 270.60(b) have been met.

Second, some hazardous waste injection wells are located at facilities with no other units subject to RCRA permitting. In this case, EPA will implement corrective action requirements of section 3004(u) as they apply to SWMUs on the surface concurrently with the UIC permit process. These requirements will be imposed in a RCRA "rider permit" to the UIC permit which would be issued according to RCRA permitting procedures in conjunction with issuance of the UIC permit. When the UIC and the RCRA "rider" permit have been issued, the well will have a RCRA permit-by-rule.

Third, some hazardous waste injection wells were issued UIC permits before November 8, 1984, and, therefore, are operating under a RCRA permit-by-rule rather than interim status. At the time the UIC permit is reissued, the facility must address the corrective action requirements for all SMWUs in order to renew the RCRA permit-by-rule. This will require a RCRA "rider" permit addressing section 3004(u) corrective action for all SWMUs for the wells to continue to handle hazardous waste.

Similarly, new injection wells or other wells which have never qualified for interim status and do not have a permit, will require a UIC permit and a RCRA "rider" permit addressing section 3004(u) corrective action for all SWMUs before the wells can handle hazardous waste.

ii. *Section 144.1(h).* Under previous requirements, issuance of a UIC permit essentially constituted issuance of a RCRA permit-by-rule, and, thus, provided the well's RCRA authorization. The final rule of July 15, 1985 (50 FR 28702) at § 270.60(b), however, now provides that the permit-by-rule requires 1) a UIC permit *and* 2) compliance with § 270.60(b) requirements (including corrective action). Thus, obtaining a UIC permit in and of itself is not sufficient to move a well from interim status to having a permit-by-rule. Therefore, § 144.1(h) of this final rule provides that hazardous waste injection wells now operating under RCRA interim status may retain RCRA interim status after issuance of a UIC permit. Until a RCRA permit, or a RCRA "rider" to a UIC permit, which addresses section 3004(u) corrective action is issued, the well must comply with applicable interim status requirements imposed by § 265.430, and Parts 144, 146, and 147 (and any requirement imposed in the UIC permit).

In addition to finalizing § 144.1(h), today's rule deletes § 265.1(c)(2) from existing regulations as a necessary conforming change. Section 265.1(c)(2) had provided that interim status requirements do not apply to a UIC well once its UIC permit has been issued.

This requirement is no longer appropriate since a facility must now do more than obtain a UIC permit to obtain a RCRA permit-by-rule.

Several comments were received on the § 144.1(h) regulatory amendment as proposed. One commenter expressed concern that a facility may be able to receive a UIC permit and maintain interim status in perpetuity, *i.e.*, without any specified date for conducting corrective action. EPA disagrees with this comment. In the case of injection wells without surface units subject to RCRA permitting, EPA will require a RCRA permit-by-rule to address corrective action for surface SWMUs at the same time as the UIC permit is issued. This will consolidate any necessary corrective action and avoid duplicative permit proceedings. For wells with surface units operating under interim status, corrective action for all SWMUs will be addressed when the surface unit(s) is permitted. The permitting of these units is subject to the statutory deadlines of HSWA, and therefore cannot be delayed significantly.

Furthermore, EPA believes that requiring injection wells in interim status to address corrective action for surface units at the time the UIC permit is issued would be counterproductive. One of the Agency's fundamental objectives in implementing the RCRA corrective action program is to assign highest priority to those facilities having the most serious environmental problems. If the Agency did not provide for the continuation of interim status after issuance of the UIC permit, it would be required either to (a) delay issuance of the UIC permit until RCRA corrective action for surface units could be addressed, or (b) process the corrective action portion of the RCRA permit before other facilities which may have more serious environmental problems. The Agency does not believe that either situation would effectively serve overall protection of human health and the environment. In any case, however, if EPA identifies the need for corrective action at injection wells with interim status, it will address any problems through RCRA section 3008(h) or other enforcement authorities.

iii. *Section 144.31(g).* Today's rule finalizes § 144.31(g), which requires submission of available information regarding operating history and condition of the injection well, as well as any available information on known releases from the well or injection zone as part of the UIC permit process. The submission of this information will be used to evaluate the need for further investigations or corrective action for such releases. Site investigations will be required only to the extent necessary to follow up Agency concerns which arise during an evaluation of available information on the well.

One commenter expressed concern that, as proposed, § 144.31(g)(2) could require submission of unnecessary information simply because it was "available," and suggested that "relevant" be added to qualify the statement. Another was concerned that site investigations would be required (under § 144.31(g)(3)) without evidence to support a concern about a release from a unit. Because evaluating historic releases can be difficult and the information that may be useful will follow no set pattern, EPA believes it is reasonable, and not an undue burden, for the applicant to submit whatever is available concerning corrective action. Obviously EPA only seeks information which relates to the problem, but the Agency believes that all pre-existing information should be analyzed by the regulating agency, rather than just the applicant. The intent of the amendment is to provide the Agency with the necessary information from owners/operators to support determinations as to whether more extensive investigations should be conducted to verify and fully characterize releases, and to compel corrective actions as necessary. Section 144.31(g)(2) has, therefore, been finalized unchanged from the proposal. New site investigations under § 144.31(g)(3), however, would only be required where necessary to determine whether a release has occurred. EPA believes the standard in the proposed rule is appropriate and incorporates this standard in the final rule.

iv. *Section 270.60(b)(3)(ii).* Today's rule amends the permit-by-rule regulations of § 270.60 to require UIC facility owner/operators to submit certain information related to corrective action with their UIC applications. As discussed above, in a few cases, an injection well which requires a RCRA permit-by-rule may be the only unit at the facility which requires a RCRA permit. In such cases, information on SWMUs at the facility would not be obtained through a RCRA permit application process for a surface facility. The permit-by-rule must, therefore, be the vehicle for implementing corrective action at such facilities. Since information on SWMUs at the facility is necessary to develop any required corrective action conditions in a permit, EPA is persuaded that submission of this information (specified in today's rule at § 270.14(d)) should be a requirement for obtaining a permit-by-rule for hazardous waste injection wells. Submission of this information is a step which must occur prior to the issuance of the permit-by-rule. Only after corrective action schedules are written in a RCRA rider to the permit would the well have a permit-by-rule. The preamble to the March, 1986 proposal indicated that EPA was considering amending the permit-by-rule regulations (§ 270.60) to include such a requirement. Today's rule finalizes this requirement.

v. *Section 144.56 (Deleted).* Proposed § 144.56 has been deleted from this final rule. This section would have established, within the UIC regulations, corrective action requirements to implement section 3004(u) for the injection well through UIC permits. This proposed provision would have had the effect of implementing corrective action under RCRA section 3004(u) for the injection well under one permit, and for the surface units at the facility under a different permit at a different time. Upon further consideration, EPA has decided against adopting this approach. This decision is in keeping with the language of section 3004(u) which calls for corrective action to be addressed for the entire facility at the time the RCRA permit is issued. Section 3004(u) is a permit-related authority; EPA has concerns about the availability of this authority outside the context of a RCRA facility permit. Enforcement authorities under section 3008(h) and other authorities will be used as necessary to address corrective action at interim status facilities with injection wells prior to issuance of a RCRA permit.

vi. *Comments on Applicability of Section 3004(u) to Hazardous Waste Injection Wells.* Several commenters on the proposed rule suggested that section 3004(u) authority should not apply at all to facilities subject to permit-by-rule requirements. The Agency reaffirms its position, stated in the final codification rule issued on July 15, 1985 (50 FR 28712), that it sees no legal basis for departing from a literal reading of the statute, which appears to encompass *any* section 3005(c) permit within its mandate. Permits issued under section 3005(c) include those for any facility conducting or planning to conduct treatment, storage, or disposal of hazardous wastes. None of these comments argue that Class I wells are outside the bounds of the activities described; they argue that, because the units are seeking permits under the UIC program in 40 CFR Part 144, they are not seeking a permit under section 3005(c) of RCRA. Hazardous waste injection wells

seeking UIC permits are simultaneously seeking RCRA permits.

RCRA, as well as EPA regulations (40 CFR 270.1(c) (2) and (3)), contain exemptions to the section 3005(c) permitting requirements for specific types of facilities treating, storing, or disposing of hazardous waste. For example, section 3005(f) of RCRA specifically exempts facilities with coal mining wastes and reclamation permits from coverage by regulations promulgated under Subtitle C. Such a specific exclusion indicates that Congress consider which, if any, holders of other permits should be exempt from permitting under section 3005(c). Injection wells, however, are not specifically exempted by Congress, and, in fact, are specifically included as requiring a RCRA permit under 40 CFR 270.1(c)(1). The permit-by-rule was established to acknowledge that the standards already established under the Safe Drinking Water Act would constitute acceptable standards for RCRA section 3005(c).

One commenter suggested that EPA's proposed regulation regarding standards for managing recycled used oil (50 FR 49212, November 29, 1985) is inconsistent with the Agency position that corrective action applies to facilities subject to a RCRA permit-by-rule. However, the situation of recycled oil facilities differs significantly from that of UIC wells operating under a permit-by-rule. Section 3004(u) clearly states that corrective action must be addressed in permits issued under section 3005, which includes permits-by-rule for injection wells. The preamble to the proposed recycled used oil rule indicated that standards promulgated under section 3004(u) would not apply to certain recycled oil facilities. This is because recycled oil facilities are subject to permitting requirements under section 3014(d), rather than under section 3005(c). Therefore, the corrective action requirements of section 3004(u) do not apply. Further, the recycled oil proposal should not be considered a statement of final Agency policy; in a **Federal Register** notice at 51 FR 41903 (November 19, 1986), the Agency indicated that the used oil facility standards require further study before being finalized. The limited situation described in that proposal is not analogous to a facility with Class I underground injection wells which inject hazardous waste.

vii. *Comments on Migration Within Injection Zone.* Two commenters expressed concern that corrective action requirements for releases which migrate beyond the facility boundary, proposed in § 144.56(c), should not apply to wastes in the injection zone (a geological formation which may extend underground beyond the property boundary established on the surface). EPA has already stated in the preamble to the final codification rule issued on July 15, 1985 (see 50 FR 28712) that emplacement of liquids into an injection zone through a well does not constitute a *release* from a solid waste management unit, but rather is migration within a unit. Since RCRA corrective action requirements only apply to *releases* of hazardous waste or hazardous constituents from solid waste management units, the requirements do not apply to the wastes within an injection zone as described in the comments.

B. Permits

1. Permit Modifications

Section 270.41(a)(3) allows permits to be modified because of amended standards or regulations only if the permittee requests such modification. In the March 28, 1986 proposed rule, the Agency proposed to expand this provision in light of the recent statutory amendments to section 3005(c) of RCRA. This amendment allows EPA to initiate modifications to a permit without first receiving a request from the permittee, in cases where statutory changes or new or amended regulatory standards affect the basis of the permit.

Several commenters objected to the proposed rule on the grounds that it was unnecessary or would place permitted facilities in jeopardy of permit changes and would interfere with long-term planning. Some commenters suggested that EPA not initiate permit modifications except according to the schedule for the five-year or ten-year permit renewal. The Agency considered these comments but is promulgating this section as proposed. In order to minimize threats to human health and the environment, the Agency considers it important—and consistent with Congressional intent—to have the regulatory authority to modify RCRA permits when statutory changes or new regulations affect the standards on which the permits were based. Moreover, EPA does not believe that this requirement will unduly restrict planning efforts at RCRA facilities. Permit holders will be protected through standard rulemaking procedures against arbitrary or unnecessary changes, as well as by procedural protections built into the permit modification process. EPA does not intend to use this authority for minor procedural changes in regulatory requirements; rather, it is intended for significant amendments which may provide a substantial increase in protection of human health or the environment at a particular site.

The Agency also disagrees with those commenters who suggested that, to avoid potential abuse, EPA should codify specific conditions and criteria for reopening permits under this provision. The Agency believes that it would be unnecessarily time- and resource-consuming to issue specific guidance, criteria, or rules for its use. EPA will use this authority where it is necessary to protect human health and the environment, and does not believe that it should be limited to statutory provisions intended to have immediate effect, as one commenter suggested.

In a related activity, EPA has recently completed regulatory negotiations on RCRA permit modification with representatives of industry, States, and public interest groups, and will be issuing a proposed rule based on the results of these negotiations. While EPA's proposal on permit modifications may substantially alter modification procedures, it will retain the principle that EPA or an authorized State may initiate modification procedures in cases where permit conditions are inconsistent with new statutory or regulatory requirements.

2. Permit as a Shield

The March 28, 1986 proposed rule sought to amend the "permit as a shield" provision (§ 270.4(a)) to clarify that permittees must comply with new requirements that are imposed by statute and with the land disposal regulations promulgated in 40 CFR Part 268.

Several comments on this proposed amendment addressed the question of how new requirements would actually be imposed on the permittee; that is, whether or not permits would have to be modified, and whether or not authorized States would have to have adopted these requirements, for the requirements to be enforceable. EPA emphasizes that these requirements are self-implementing and they are effective—and enforceable—at RCRA facilities regardless of whether or not the facility's permit has specific conditions that require compliance, or, for changes imposed by HSWA, an authorized State has formally incorporated these requirements into its regulations (RCRA section 3006(g)). In fact, it is the responsibility of the owner/operator to comply with these requirements, even where there are contrary permit conditions (e.g., after certain specified dates, a land disposal facility is not

allowed to accept and dispose of a restricted waste, unless it has met the required treatment standard, regardless of the conditions stated in the facility's permit).

Because the statutory and regulatory requirements described in § 270.4(a) are effective regardless of permit conditions, EPA is not required to reopen existing permits to incorporate them and generally will not do so. However, permits issued after the effective date of a regulatory or statutory change would generally cite these requirements, so that their applicability would be clear both to the permittee and the public.

3. Permit Conditions as Necessary to Protect Human Health and the Environment

The March 28, 1986 proposed rule sought to amend the existing general permit application requirements under § 270.10 by adding a new paragraph (k) establishing the Administrator's authority to require information from permit applicants concerning permit conditions necessary to protect human health and the environment. The Agency previously codified the HSWA provision which allowed EPA to establish permit conditions necessary to protect human health and the environment in § 270.32(b) (section 3005(c)).

A number of commenters argued that EPA's "omnibus" authority under section 3005(c) should be limited to special or unique circumstances different from those addressed in the regulations (such as the permitting of hazardous waste disposal/storage in underground mines), or to additional permit conditions which are "absolutely necessary" and intended to be incorporated in all similar facility permits. The Agency does not agree with these interpretations. The language of section 3005(c) as amended by HSWA gives the Agency broad authority to impose permit conditions necessary to protect human health and the environment, and does not contain the limitations suggested by the commenters. As noted in the preamble to the July 15, 1985 final rule, the Agency believes the Congressional intent underlying this provision includes authorization to impose permit conditions beyond those mandated by the regulations. Thus, in specific circumstances where regulatory requirements may be inadequate, the Agency believes that the use of 3005(c) authority is not limited either to unique cases or to "absolutely necessary" conditions affecting all similar facilities.

EPA agrees with those commenters who stated that the authority to require submittal of information to support permit conditions that are imposed under the authority of § 270.32(b) should be used sparingly, and not for random and unjustified "fishing expeditions," or for conditions unrelated to hazardous waste activities. The Agency intends to use this requirement only where necessary to protect human health and the environment, and only to address specific environmental circumstances that are not adequately covered in existing regulations. Therefore, § 270.10(k) is finalized as proposed.

4. Post-closure Permits

i. Applicability and Effective Date

Section 3005(i) of RCRA requires that all landfills, surface impoundments, waste piles and land treatment units which received hazardous wastes after July 26, 1982, comply with the same groundwater monitoring, unsaturated zone monitoring, and corrective action requirements that apply to new units. To implement this requirement, EPA proposed an amendment to § 270.1(c) that would require post-closure permits for all land disposal units receiving hazardous wastes after that date. This proposed amendment was intended to establish consistency between the Part 264 groundwater protection requirements and the requirement to obtain post-closure permits. Previously, post-closure permits were required for land disposal units which closed after January 26, 1983, while new section 3005(i) imposed Part 264 Subpart F requirements on any land disposal unit which received wastes after July 26, 1982.

The Agency received numerous comments on this proposal. Several commenters supported the proposal, whereas others questioned EPA's basic authority to required post-closure permits for RCRA facilities in general, and specifically for surface impoundments which closed by removal under interim status. The commenters cited the language of § 270.1(c), which requires post-closure permits for units which are subject to post-closure care requirements of § 264.117. The commenters argued that impoundments which closed under interim status would not be required to receive post-closure permits, since they are not subject to § 264.117. EPD does not agree with the commenters who argue that EPA does not have authority to require RCRA permits for facilities during a "post-closure" period. See 47 FR 32291, 32292, 32336 (July 26, 1982). Furthermore, EPA has always intended that land disposal units that received waste after the effective date of Part 264 regulations must obtain permits and meet Part 264 requirements, even if they close under interim status (see 47 FR 32336 (July 26, 1982)). In additional, new section 3005(i) makes compliance with certain Part 264 rules a statutory requirement. Section 3005(i) subjects interim status regulated units to those ground-water monitoring, unsaturated zone monitoring and corrective action requirements which are applicable to new permitted units. Therefore, since a permitted unit would be required to meet permit conditions providing for post-closure care if closure by removal failed to meet the standard of § 264.228, interim status units must be treated in the same manner. EPA thus rejects the commenters' contention that post-closure permits cannot be required for units which closed under interim status. In today's final rule, the proposal to amend § 270.1(c) by eliminating the reference to § 264.117 has been adopted. This clarifies that units which close by removal under interim status rules are subject to post-closure requirements.

Several commenters argued that requiring post-closure permits for land disposal units that received wastes after July 26, 1982 increases the permit burden on the Agency and industry unnecessarily. Alternatives to the proposed post-closure permit requirement were suggested, including (1) amending Part 264 Subpart F so that it would apply only when a release is indicated by Part 265 monitoring, and (2) relying solely on the interim status closure and post-closure requirements of Part 265 to provide the requisite groundwater protection measures. Section 3005(i) prohibits both alternatives, since it requires units to meet the Part 264 standards. Furthermore, the Agency is persuaded that the groundwater protection standards of Part 264 provide a more environmentally protective mechanism for addressing goundwater protection at closed facilities than would be obtained through interim status closure and post-closure requirements.

Several commenters argued that the proposed rule would create a "loophole" in the applicability of post-closure permits. The proposal, in tying applicability of post-closure permits to the receipt of waste after July 26, 1982, would not have required post-closure permits for units which stopped receiving wastes prior to that date, but which did not complete closure until after January 26, 1983. Thus, some units which previously were subject to the post-closure permits requirement (i.e., that closed after 1/26/83), would be released from such requirements under the proposal. EPA agrees that such a loophole is not desirable. Therefore,

today's final rule differs from the proposed revision to § 270.1(c) by requiring post-closure permits for any landfill, surface impoundment, waste pile, or land treatment unit which received waste after July 26, 1982, *or* which closed after January 26, 1983. The term "closure" in this context has been clarified to mean certification of closure according to § 265.115. An exception to this post-closure permit requirement would be in the case of units which close by removal or decontamination according to the requirements of Part 264 (i.e., §§ 264.228, 264.258, 264.280(e): See following discussion).

ii. *Closure by Removal.* The preamble to the proposed rule also discussed how the proposal will affect regulated units which close by removal according to Part 265. The preamble acknowledged that permitted surface impoundments, waste piles, and land-treatment units need not conduct post-closure care under a post-closure permit if they satisfy the requirements for closure by removal or decontamination in §§ 264.228 (for surface impoundments), 264.258 (for waste piles), or 264.280(e) (for land treatment units). However, the interim status units that closed by removal under Part 265 standards as written prior to the recent promulgation of conforming changes to the Part 265 closure standards, may not meet Part 264 standards for closure by removal. Such units would retain post-closure responsibilities, including the requirement to obtain post-closure permits. The recent conforming changes rule made the interim status standards for closure by removal for surface impoundments equivalent to the permitting standards for surface impoundment closures. See 52 FR 8704 (March 19, 1987).

The preamble to the March 28, 1986 proposal requested comment on whether all facilities that closed by removal under Part 265 be considered subject to post-closure permitting requirements, or whether EPA should allow facilities to demonstrate that they complied with Part 264 closure standards, and thus do not require post-closure permits. A number of commenters supported the idea of a equivalency demonstration which would serve to establish whether a closed unit met the Part 264 standards, and which would be implemented through a process which EPA would define. One commenter suggested that EPA or the state should base the determination of equivalency on a review of the closure plan and its implementation. Another commenter supported the idea of using the post-closure permit application process to gather necessary information on which to base a determination of equivalency. Several commenters opposed an alternative to the post-closure permitting process for making such determinations, since they believed it would involve less public participation, lacked a corrective action "trigger," and would not assure that Part 264 standards were met.

After considering these comments, EPA has decided to use the Part B permit application process as the primary mechanism for collecting the information to allow a determination to be made as to whether a regulated unit which closed by removal or decontamination did so in compliance with the corresponding requirements of Part 264. The Part B application process is a well-established system for reviewing the types of groundwater, soil and other sampling and analytical data that will typically be required in determining the "equivalency" of interim status closure. However, the Agency has decided that an owner-operator should be allowed to demonstrate that a unit has been closed in accordance with the Part 264 closure by removal or decontamination standards, without having to submit a full Part B application for a post-closure permit. Therefore, the Agency is establishing a mechanism in today's rulemaking to allow such "equivalency demonstrations" to be made outside the Part B permit process.

As provided by § 270.1(c)(5)(ii) (promulgated today) an owner/operator may request the Regional Administrator to determine whether a post-cloture permit is required for a surface impoundment, waste pile or land treatment unit that closed according to Part 265 closure standards. These requests may be submitted at any time at the discretion of the owner/operator, including when EPA calls in the Part B post-closure permit application. If the owner or operator has not previously submitted a Part B permit application, he must provide sufficient information, including data on contaminant levels in soil and ground water, to demonstrate that the applicable Part 264 standards for closure by removal or decontamination have been met.

The Agency will review the information to determine whether the "equivalency" of the closure has been successfully demonstrated. If EPA determines that the interm status closure has met the appropriate Part 264 closure standard, a full Part B permit application will not be required to be submitted, nor will a post-closure permit be issued. The Agency will give public notice of such determinations and provide the opportunity for public comment using a procedure that parallels the closure plan approval procedures outlined in § 265.112(d)(4). If EPA determines that the closure does not meet the Part 264 standards, the owner/operator will be required to submit a Part B permit application containing all the applicable information in accordance with Part 270, and EPA will issue a post-closure permit. EPA anticipates that the number of "non-equivalent" interim status closures will decrease as the new conforming changes rule takes effect. This determination process will apply primarily to closures completed under the previous interim status rules.

It should be understood that the process of demonstrating equivalency of closure will not affect the due date of a Part B application once it has been requested. If a petition is submitted after a Part B has been requested, it may be difficult for the Agency, given the time required to review the data and process the petition, to make a determination well in advance of the Part B due date. This could create difficulties, especially when a petition is rejected, allowing little time for the owner/operator to prepare a Part B by the specified due date. The Agency therefore urges owners/operators who intend to submit equivalency demonstrations to do so before the facility's Part B is requested.

One commenter on the proposed rule raised concerns regarding facilities which are able to successfully demonstrate "equivalency" for a closed unit, and which thereby may not be required to obtain a post-closure permit for the facility. Specifically, the commenter noted that the absence of a permitting requirement would relieve the owner/operator of the responsibility for complying with section 3004(u) corrective requirements. The commenter further argued that, although such facilities will be subject to section 3008(h) interim status corrective action order authority, this enforcement authority is an "inadequate substitute" for section 3004(u) is obtaining corrective action.

EPA does not agree that the section 3008(h) authority is inadequate as a means of addressing necessary corrective action at facilities with units that have successfully demonstrated equivalent closure by removal. Section 3008(h) is substantially identical to section 3004(u) in terms of the type and scope of cleanup actions which can be required of facility owner/operators. Although procedurally the two authorities differ, and the enforcement authority is discretionary in the sense

that it is not automatically triggered upon issuance of a permit, it is the Agency's view that section 3008(h) can and will be used effectively to address necessary corrective action requirements at facilities which will not require post-closure permits due to "equivalent" closure.

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to HSWA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in a State where the State was authorized to issue permits. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements are applied by EPA in authorized States in the interim.

Today's rule is promulgated pursuant to RCRA sections 3004(u), 3004(v) and 3005(i). These provisions were added by HSWA. Therefore, the Agency is adding the requirement to Table 1 in § 271.1(j) which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble.

B. Effect on State Authorizations

As noted above, EPA will implement today's rule in authorized States until they modify their programs to adopt these rules and the modification is approved by EPA. Because the rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire January 1, 1993 (see § 271.24(c)).

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes, and must subsequently submit the modifications to EPA for approval. The deadline for State program modifications for this rule is July 1, 1989 (or July 1, 1990 if a state statutory change is needed). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations beings promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit their official applications for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. The process and schedule for final State authorization applications is described in 40 CFR 271.3.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. However, none of the standards promulgated today are considered to be less stringent than or to reduce the scope of the existing Federal requirements.

V. Effective Dates

EPA believes it has a sound basis for suspending the statutory six-month effective date (RCRA section 3010(b)) for certain provisions promulgated today. HSWA amended section 3010(b) to provide that EPA may shorten or provide for an immediate effective date where (1) the regulated community does not need six months to come into compliance, (2) the regulation responds to an emergency situation, or (3) there is other good cause. Sections 144.1(h) and 265.1(c)(2) (which is deleted by this rule) are not new requirements but merely clarify that a UIC well may obtain a UIC permit under Part 144 but still maintain RCRA interim status. The sections outlining information necessary for corrective action permit decisions (§ 144.31(g), 270.14 (c) and (d), and 270.60(b)(3)(ii)) are necessary to process what is already a statutory requirement. In most cases the authority to request the information already exists. For other provisions of today's rulemaking relating to corrective action and permitting requirements, EPA believes that the regulated community does not need six months to come into compliance with these regulations. Therefore, §§ 265.1(c)(2), 270.1(c), 270.4(a) 270.10(k), 270.14 (c) and (d), 270.41(a)(3), 270.60(b)(3)(ii) and 271.1(j) will become effective in thirty days, as required by the Administrative Procedures Act, 5 U.S.C. 553(d).

In addition regulations pertaining to corrective action beyond the facility boundary (§§ 264.100(e) and 264.101(c)), implementing section 3004(v) of RCRA, will become effective on the date of promulgation. Section 3004(v) requires the Agency to amend its regulatory standards to address corrective actions beyond the facility boundary and states that these amendments "shall take effect immediately upon promulgation, notwithstanding section 3010(b) * * *."

VI. Regulatory Analyses

A. Regulatory Impact Analysis

Executive Order No. 12291 requires each Federal agency to determine if a regulation is a "major" rule as defined by the order and "to the extent permitted by law," to prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule.

This rule establishes several information requirements, and merely codifies corrective action requirements for releases migrating beyond the property boundary. It does not however, establish the specific levels that facilities must meet in taking corrective actions. The Agency intends to specify these levels in a proposed rule being developed under section 3004(u) of RCRA, along with a complete assessment of the costs, impacts and benefits.

The regulatory impact analysis for today's rule, therefore, only addressed the costs associated with new information requirements. These information requirements alone do not impose costs that would make it a major rulemaking as defined by Executive Order No. 12291. This regulation is thus not considered to be a major rule.

A complete assessment of the impacts of the section 3004 (u) and (v) corrective action requirements which EPA anticipates to be major, will be addressed in the RIA that is now being prepared as part of the section 3004(u) regulations. The RIA will accompany the section 3004(u) rule when it is proposed.

This final rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, at the time an agency publishes any proposed or final rule in the **Federal Register**, it must prepare a Regulatory Flexibility Analysis which describes the impact of the rule on small businesses and organizations, unless the Agency's Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Agency has examined the final rule's potential impacts on small business and has concluded that this regulation will not have a signficant impact on a substantial number of small entities. In a cost analysis accompanying the March 28, 1986 proposal, EPA compared potential costs of compliance to its 1982 implementation criteria for a Regulatory Flexibility Analysis. Under the most stringent regulatory scenario, neither costs nor impacts of the proposed rule met the criteria for significant impact. Therefore, this final rule does not require a Regulatory Flexibility Analysis.

Accordingly, I hereby certify that this proposed rule will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must estimate the paperwork burden created by any information collection request contained in the proposed or final rule.

The information collection requirements in this final rule have been approved by OMB in accordance with the Paperwork Reduction Act of 1980 and were assigned OMB Control Nos. 2050–0009, 2050–0002, and 2050–0007.

List of Subjects

40 CFR Part 144

Administrative practice and procedure, Confidential business information, Hazardous waste, Indian lands, Reporting and record-keeping requirements, Surety bonds, Water supply.

40 CFR Part 264

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 265

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

49 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: November 16, 1987.

Lee M. Thomas,

Administrator.

Therefore, Title 40 of the Code of Federal Regulations is amended as follows:

PART 144—REQUIREMENTS FOR THE UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for Part 144 is revised to read as follows:

Authority: 42 U.S.C. 300(f) et seq.; and 42 U.S.C. 6901 et seq.

2. In § 144.1, paragraph (h) is added to read as follows:

§ 144.1 Purpose and scope of Part 144.

* * * * *

(h) *Interim Status Under RCRA for Class I Hazardous Waste Injection Wells.* The minimum national standards which define acceptable injection of hazardous waste during the period of interim status under RCRA are set out in the applicable provisions of this Part, Parts 146 and 147, and § 265.430 of this chapter. The issuance of a UIC permit does not automatically terminate RCRA interim status. A Class I well's interim status does, however, automatically terminate upon issuance to that well of a RCRA permit, or upon the well's receiving a RCRA permit-by-rule under § 270.60(b) of this chapter. Thus, until a Class I well injecting hazardous waste receives a RCRA permit or RCRA permit-by-rule, the well's interim status requirements are the applicable requirements imposed pursuant to this Part and Parts 146, 147, and 265 of this chapter, including any requirements imposed in the UIC permit.

3. In § 144.31, paragraph (g) is revised to read as follows:

§ 144.31 Application for a permit; authorization by permit.

* * * * *

(g) *Information Requirements for Class I Hazardous Waste Injection Wells Permits.* (1) The following information is required for each active Class I hazardous waste injection well at a facility seeking a UIC permit:

(i) Dates well was operated.

(ii) Specification of all wastes which have been injected in the well, if available.

(2) The owner or operator of any facility containing one or more active hazardous waste injection wells must submit all available information pertaining to any release of hazardous waste or constituents from any active hazardous waste injection well at the facility.

(3) The owner or operator of any facility containing one or more active Class I hazardous waste injection wells must conduct such preliminary site investigations as are necessary to determine whether a release is occurring, has occurred, or is likely to have occurred.

PART 264—STANDARDS FOR THE OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

4. The authority citation for Part 264 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

5. Section 264.100 is amended by redesignating paragraph (e) (1) and (2) as (e) (3) and (4), by adding new paragraphs (e) (1) and (2), and by revising the introductory text of paragraph (e) to read as follows:

§ 264.100 Corrective action program.

* * * * *

(e) In addition to the other requirements of this section, the owner or operator must conduct a corrective action program to remove or treat in place any hazardous constituents under § 264.93 that exceed concentration limits under § 264.94 in groundwater:

(1) Between the compliance point under § 264.95 and the downgradient property boundary; and

(2) Beyond the facility boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the Regional Administrator that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. The owner/operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis.

* * * * *

6. In § 264.101, paragraph (c) is added to read as follows:

§ 264.101 Corrective action for solid waste management units.

* * * * *

(c) The owner or operator must implement corrective actions beyond the facility property boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the Regional Administrator that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such actions. The owner/operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. Assurances of financial responsibility for such corrective action must be provided.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

7. The authority citation for Part 265 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

§ 265.1 [Amended].

8. In § 265.1 paragraph (c)(2) is removed and reserved.

PART 270—EPA-ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

9. The authority citation for Part 270 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

10. In § 270.1, the introductory text of paragraph (c) is revised and paragraphs (c)(5) and (c)(6) are added to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) *Scope of the RCRA Permit Requirement.* RCRA requires a permit for the "treatment," "storage," and "disposal" of any "hazardous waste" as identified or listed in 40 CFR Part 261. The terms "treatment," "storage," "disposal," and "hazardous waste" are defined in § 270.2. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to § 265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal as provided under § 270.1(c) (5) and (6). If a post-closure permit is required, the permit must address applicable Part 264 Groundwater Monitoring, Unsaturated Zone Monitoring, Corrective Action, and Post-closure Care Requirements of this chapter.

* * * * *

(5) *Closure by removal.* Owners/operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under Part 265 standards must obtain a post-closure permit unless they can demonstrate to the Regional Administrator that the closure met the standards for closure by removal or decontamination in § 264.228, § 264.280(e), or § 264.258, respectively. The demonstration may be made in the following ways:

(i) If the owner/operator has submitted a Part B application for a post-closure permit, the owner/operator may request a determination, based on information contained in the application, that section 264 closure by removal standards were met. If the Regional Administrator believes that § 264 standards were met, he/she will notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in paragraph (c)(6) of this section.

(ii) If the owner/operator has not submitted a Part B application for a post-closure permit, the owner/operator may petition the Regional Administrator for a determination that a post-closure permit is not required because the closure met the applicable Part 264 closure standards.

(A) The petition must include data demonstrating that closure by removal or decontamination standards were met, or it must demonstrate that the unit closed under State requirements that met or exceeded the applicable 264 closure-by-removal standard.

(B) The Regional Administrator shall approve or deny the petition according to the procedures outlined in paragraph (c)(6) of this section.

(6) *Procedures for closure equivalency determination.* (i) If a facility owner/operator seeks an equivalency demonstration under § 270.1(c)(5), the Regional Administrator will provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner/operator within 30 days from the date of the notice. The Regional Administrator will also, in response to a request or at his/her own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the equivalence of the Part 265 closure to a Part 264 closure. The Regional Administrator will give public notice of the hearing at least 30 days before it

occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.)

(ii) The Regional Administrator will determine whether the Part 265 closure met 264 closure by removal or decontamination requirements within 90 days of its receipt. If the Regional Administrator finds that the closure did not meet the applicable Part 264 standards, he/she will provide the owner/operator with a written statement of the reasons why the closure failed to meet Part 264 standards. The owner/operator may submit additional information in support of an equivalency demonstration within 30 days after receiving such written statement. The Regional Administrator will review any additional information submitted and make a final determination within 60 days.

(iii) If the Regional Administrator determines that the facility did not close in accordance with Part 264 closure by removal standards, the facility is subject to post-closure permitting requirements.

11. In § 270.4, paragraph (a) is revised to read as follows:

§ 270.4 Effect of a permit.

(a) Compliance with an RCRA permit during its term constitutes compliance for purpose of enforcement, with Subtitle C of RCRA except for those requirements not included in the permit which become effective by statute, or which are promulgated under Part 268 of this chapter restricting the placement of hazardous wastes in or on the land.

* * * * *

12. In § 270.10, paragraph (k) is added and an OMB number is added at the end of the section to read as follows:

§ 270.10 General application requirements.

* * * * *

(k) The Director may require a permittee or an applicant to submit information in order to establish permit conditions under §§ 270.32(b)(2) and 270.50(d) of this chapter.

(Approved by the Office of Management and Budget under control numbers 2050–0009, 2050–0002, and 2050–0007)

13. In § 270.14, the introductory text of paragraph (c) is revised, paragraph (d) is added and an OMB number is added at the end of the section to read as follows:

§ 270.14 Contents of Part B: General requirements.

* * * * *

(c) *Additional information requirements.* The following additional information regarding protection of groundwater is required from owners or operators of hazardous waste facilities containing a regulated unit except as provided in § 264.90(b) of this chapter:

* * * * *

(d) Information requirements for solid waste management units.

(1) The following information is required for each solid waste management unit at a facility seeking a permit:

(i) The location of the unit on the topographic map required under paragraph (b)(19) of this section.

(ii) Designation of type of unit.

(iii) General dimensions and structural description (supply any available drawings).

(iv) When the unit was operated.

(v) Specification of all wastes that have been managed at the unit, to the extent available.

(2) The owner or operator of any facility containing one or more solid waste management units must submit all available information pertaining to any release of hazardous wastes or hazardous constituents from such unit or units.

(3) The owner/operator must conduct and provide the results of sampling and analysis of groundwater, landsurface, and subsurface strata, surface water, or air, which may include the installation of wells, where the Director ascertains it is necessary to complete a RCRA Facility Assessment that will determine if a more complete investigation is necessary.

(Approved by the Office of Management and Budget under control numbers 2050–0009, 2050–0002, and 2050–0007)

14. In § 270.41, paragraph (a)(3) is revised to read as follows:

§ 270.41 Major modification or revocation and reissuance of permits.

* * * * *

(a) * * *

(3) *New statutory requirements or regulations.* The standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause as follows:

(i) Director may modify the permit when the standards or regulations on which the permit was based have been changed by statute or amended standards or regulations.

(ii) Permittee may request modification when:

(A) The permit condition to be modified was based on a promulgated regulation under Parts 124 of this chapter, Parts 260—268 of this chapter, or Part 270 of this chapter; and

(B) EPA has revised, withdrawn, or modified that portion of the regulation on which the permit condition was based; or

(C) A permittee requests modification in accordance with § 124.5 of this chapter within 90 days after **Federal Register** notice of the action on which the request is based.

(iii) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA-promulgated regulations if the remand and stay concern that portion of the regulations on which the permit condition was based or if a request is filed by the permittee in accordance with § 124.5 of this chapter within 90 days of judicial remand.

* * * * *

15. In § 270.60, paragraph (b)(3) is revised and an OMB number is added at the end of the section to read as follows:

§ 270.60 Permits by rule.

* * * * *

(b) * * *

(3) For UIC permits issued after November 8, 1984:

(i) Complies with 40 CFR 264.101; and

(ii) Where the UIC well is the only unit at a facility which requires a RCRA permit, complies with 40 CFR 270.14(d).

* * * * *

(Approved by the Office of Management and Budget under control number 2050–0007)

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

16. The authority citation for Part 271 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

17. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

§ 271.1 Purpose and scope

* * * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register	Effective date
[*insert date of publication*].	Codification Rule for the 1984 RCRA Amendments.	[insert *FR* reference].	[*insert thirty days after publication.*

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