

**DEPARTMENT OF EDUCATION****34 CFR Part 668****Student Assistance General Provisions****AGENCY:** Department of Education.**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the Student Assistance General Provisions regulations. These technical amendments are necessary to clarify the regulations and to remove the procedural requirement that recipient institutions include in any request for funds the Catalog of Federal Domestic Assistance (CFDA) number identifying the source of the funds and the amount of funds sought for each program included in the request. The Secretary takes action to defer this change in light of the information technology currently available to recipient institutions and the Department.

**EFFECTIVE DATE:** These regulations take effect on October 17, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Kolotos, U.S. Department of Education, 600 Independence Avenue, SW., ROB-3, room 3045, Washington, DC 20202-5346. Telephone: (202) 708-7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 668.163 (Requesting funds) contains a requirement that each institution include in any request for cash the CFDA number identifying the source of the requested funds and the amount of funds for each program for which funds are sought in the request (61 FR 61796; December 1, 1995). The Secretary has continued to evaluate methods of requesting funds in light of refinements in information technology now available to recipient institutions and to the Department, and has decided to defer any change in this aspect of the procedure for requesting cash until future award years. At that time, the Secretary plans to make available to institutions a more precise yet easily used request method that will better identify the program authorization under which funds are requested. The procedural requirement for identification by CFDA number will therefore no longer be necessary.

Changes to § 668.163(a)(3) were previously made in regulations promulgated on June 30, 1995 (60 FR 34432) with the expressed intent of clarifying the procedures for payment under the reimbursement funding

method. The language adopted there unfortunately suggested that the procedures had been changed rather than merely clarified. Under the reimbursement funding method, the Department reimburses an institution for the amounts the institution has expended by disbursing its own funds for the purpose of providing grant, loan, or work study assistance to its students under Title IV of the Higher Education Act of 1965, as amended (HEA). That disbursement may be made, as provided in program regulations, either by check or by credit to the student's account for tuition and other charges then owed, or, with the consent of the student, for later payment to the student. Until the disbursement has been made, however, the institution has no reimbursement claim against the Department. The revised language, which referred to the disbursements as those that the institution "will" make immediately after receiving payment from the Department was intended to reference situations where the institution had credited student accounts but not yet paid the student. This revised language did not accurately describe this procedure. The Secretary therefore corrects § 668.163(a)(3) to restore a description of reimbursement requirements as they have been consistently understood and applied by the Department.

Under those reimbursement procedures, the institution has been required to disburse fully any amounts for which it seeks reimbursement, including amounts paid to students directly or credited, by student consent, to their accounts for later payment. For reimbursement purposes, however, the Secretary now considers an institution to have made a disbursement for which a reimbursement claim is authorized when the institution has credited the student's account for later payment to the student. The Secretary recognizes the propriety of this claim because of the nature of the obligation the institution incurs by making that credit. By crediting the student's account, the institution incurs a legal obligation to pay the student the amount credited, to the extent that the student remains eligible. The institution remains legally obligated to make that payment even if, by the process of administrative offset, the Department applies funds otherwise payable to the institution for that approved reimbursement claim to satisfy a debt owed by the institution.

**Waiver of Proposed Rulemaking**

In accordance with 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 Secretary has determined that these amendments to § 668.163(a) to revise and clarify the procedure for presenting cash requests to the Department are procedural rules under the exemption from rulemaking requirements in 5 U.S.C. 553(b)(A) and do not require publication for public comment.

**Executive Order 12866**

These regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those determined by the Secretary to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

**Regulatory Flexibility Act Certification**

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Entities affected by these regulations are institutions of higher education that participate in the Title IV programs under the HEA. These regulations, however, would not have a significant impact on any entities affected. They do not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations clarify existing requirements and relieve unnecessary regulatory burden.

**Paperwork Reduction Act of 1995**

These proposed regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

**Assessment of Educational Impact**

Based on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

## List of Subjects in 34 CFR Part 668

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

Dated: September 12, 1996.

Richard W. Riley,

*Secretary of Education.*

(Catalog of Federal Domestic Assistance Number not applicable.)

The Secretary amends Part 668 of Title 34 of the Code of Federal Regulations as follows:

**PART 668—STUDENT ASSISTANCE  
GENERAL PROVISIONS**

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

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.163 is amended by removing paragraph (a)(2)(iii) and revising paragraph (a)(3) to read as follows:

**§ 668.163 Requesting funds.**

(a) \* \* \*

(3) *Reimbursement payment method.* Under the reimbursement payment method—

(i) An institution must first make disbursements to students and parents for the amount of funds those students and parents are eligible to receive under the Federal Pell Grant, Direct Loan, and campus-based programs before the institution may seek reimbursement from the Secretary for those disbursements. The Secretary considers an institution to have made a disbursement if the institution has either credited a student's account or paid a student or parent directly with its own funds;

(ii) An institution seeks reimbursement by submitting to the Secretary a request for funds that does not exceed the amount of the actual disbursements the institution has made to students and parents included in that request;

(iii) As part of the institution's reimbursement request, the Secretary requires the institution to—

(A) Identify the students for whom reimbursement is sought; and

(B) Submit to the Secretary or entity approved by the Secretary documentation that shows that each student and parent included in the request was eligible to receive and has received the title IV, HEA program funds for which reimbursement is sought; and

(iv) The Secretary approves the amount of the institution's reimbursement request for a student or parent and pays the institution that amount, if the Secretary determines with regard to that student or parent that the institution—

(A) Accurately determined the student's eligibility for title IV, HEA program funds;

(B) Accurately determined the amount of title IV, HEA program funds paid to the student or parent; and

(C) Submitted the documentation required under paragraph (a)(3)(iii) of this section.

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