

The first page of each such document shall be clearly and accurately labeled "Public", "In Camera", or "Confidential".

(c) Paper and electronic copies of and service of filings before the Commission or an Administrative Law Judge in adjudicative proceedings.

(1) Each document filed before the Commission or an Administrative Law Judge in an adjudicative proceeding, except documents covered by § 4.2(a)(1)(i), shall be filed with the Secretary of the Commission; shall comply with the requirements of § 4.2(b); and shall include a paper original (in 12-point font with 1-inch margins), one paper copy (if before the Administrative Law Judge) or twelve (12) paper copies (if before the Commission), and an electronic copy in Adobe portable document format or such other format as the Secretary may direct.

(2) If the document is labeled "In Camera" or "Confidential", it must include as an attachment either a motion requesting in camera or other confidential treatment, in the form prescribed by § 3.45, or a copy of a Commission, Administrative Law Judge, or federal court order granting such treatment. The document must also include as a separate attachment a set of only those pages of the document on which the in camera or otherwise confidential material appears and comply with all other requirements of § 3.45 and any other applicable rules governing in camera treatment.

(3)(i) If the document is labeled "Public", the electronic copy shall be filed as the Secretary shall direct, or through such electronic system as the Commission may provide.

(ii) If the document is labeled "In Camera" or "Confidential", the electronic copy shall be submitted on a compact disc (CD) or digital video disc (DVD) so labeled, which shall be physically attached to the paper original, and shall not be transmitted to the Commission by e-mail or any other electronic system.

(iii) Each electronic copy filed pursuant to § 4.2(c)(1) shall include a certification by the filing party that the copy is a true and correct copy of the paper original, and that a paper copy with an original signature is being filed with the Secretary of the Commission on the same day by other means.

(4) Sensitive personal information, as defined in § 3.45(b), shall not be included in, and must be redacted or omitted from, filings where the filing party determines that such information is not relevant or otherwise necessary for the conduct of the proceeding.

(5) A paper copy of each document filed in accordance with this section in an adjudicative proceeding shall be served by the party filing the document or person acting for that party on all other parties pursuant to § 4.4, at or before the time the original is filed.

(d) Paper and electronic copies of other documents filed with the Commission. Each paper or electronic document filed with the Commission, and not covered by § 4.2(a)(1)(i), § 4.2(a)(1)(ii), or § 4.2(c), shall be filed with the Secretary of the Commission, and shall be clearly and accurately labeled as required by § 4.2(b).

(1) Each such paper document shall be signed, and shall be accompanied by an electronic copy on a compact disc (CD) or digital video disc (DVD) in Adobe portable document format or such other format as the Secretary shall direct.

(2) Each such document filed pursuant to § 2.7(d), § 2.7(f), § 2.41(f), or § 2.51 shall also include twelve (12) paper copies of the signed paper original.

(3) Each such document labeled "Public" may be placed on the public record of the Commission at the time it is filed.

(4) If such a document is labeled "Confidential", and it is filed pursuant to § 2.7(d), § 2.7(f), § 2.41(f), or § 2.51, it will be rejected for filing pursuant to § 4.2(g), and will not stay compliance with any applicable obligation imposed by the Commission or the Commission staff, unless the filer simultaneously files:

(i) An explicit request for confidential treatment that includes the factual and legal basis for the request, identifies the specific portions of the document to be withheld from the public record, provides the name and address of the person(s) who should be notified in the event the Commission determines to disclose some or all of the material labeled "Confidential", and otherwise conforms to the requirements of § 4.9(c); and

(ii) A redacted public version of the document that is clearly labeled "Public".

\* \* \* \* \*

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. E9-9972 Filed 4-30-09; 8:45 am]

**BILLING CODE 6750-01-S**

## DEPARTMENT OF EDUCATION

### 34 CFR Parts 668, 686, 690, and 691

**RIN 1840-AC96**

[Docket ID ED-2009-OPE-0001]

#### **Student Assistance General Provisions; Teacher Education Assistance for College and Higher Education (TEACH) Grant Program; Federal Pell Grant Program; Academic Competitiveness Grant Program and National Science and Mathematics Access To Retain Talent Grant Program**

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

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

**SUMMARY:** The Secretary amends the regulations for the Academic Competitiveness Grant (ACG) and National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Programs. These interim final regulations are needed to implement provisions of the Higher Education Act of 1965 (HEA), as amended by the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA) and the Higher Education Opportunity Act of 2008 (HEOA). The new statutory provisions are effective July 1, 2009. The Secretary also amends the regulations in the Student Assistance General Provisions, and the regulations for the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program and the Federal Pell Grant Program to implement conforming changes based on the statutory amendments to the ACG and National SMART Grant programs.

**DATES:** These regulations are effective July 1, 2009. We must receive your comments on or before June 1, 2009.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket is available on the site under "How To Use This Site."

• *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these interim final regulations, address them to Sophia McArdle, U.S. Department of Education, 1990 K Street, NW., room 8019, Washington, DC 20006–8544.

**Privacy Note:** The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at

<http://www.regulations.gov>. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

**FOR FURTHER INFORMATION CONTACT:**

Topic	Contact person and information
General information and information related to <i>rigorous secondary school programs</i> and <i>eligible majors</i> .	Sophia McArdle. Telephone: (202) 219–7078 or via the Internet: <a href="mailto:sophia.mcardle@ed.gov">sophia.mcardle@ed.gov</a> .
Information related to <i>grade level progression</i> .....	Fred Sellers. Telephone: (202) 502–7502 or via the Internet: <a href="mailto:fred.sellers@ed.gov">fred.sellers@ed.gov</a> .
Information related to <i>payments for part-time students</i> .....	Jacquelyn Butler. Telephone: (202) 502–7890 or via the Internet: <a href="mailto:jacquelyn.butler@ed.gov">jacquelyn.butler@ed.gov</a> .
Information related to <i>prior enrollment</i> .....	Carney McCullough. Telephone: (202) 502–7639 or via the Internet: <a href="mailto:carney.mccullough@ed.gov">carney.mccullough@ed.gov</a> .

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

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

**SUPPLEMENTARY INFORMATION:**

**Invitation To Comment**

We invite you to submit comments regarding these interim final regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the interim final regulations that each of your comments addresses and to arrange your comments in the same order as the interim final regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these interim final regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these interim final regulations by accessing [Regulations.gov](http://Regulations.gov). You may also inspect the comments, in person, in room 8019, 1990 K Street, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

**Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record**

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these interim final regulations. If you want to schedule an appointment for this type of aid, please contact the first person listed under **FOR FURTHER INFORMATION CONTACT**.

**Background**

These interim final regulations implement certain provisions of the HEA, as amended by the ECASLA (Pub. L. 110–227) and the HEOA (Pub. L. 110–315), which become effective on July 1, 2009. The ECASLA makes ACGs and National SMART Grants available to eligible non-citizens and students enrolled at least half-time, provides that maximum ACG and National SMART Grant awards for part-time students be proportionally reduced consistent with the requirements in the Federal Pell Grant Program, and requires grant awards and payments to be determined on the same basis as in the Federal Pell Grant Program. Furthermore, the ECASLA provides that grant awards be based on a student's grade level, instead of academic year. Additionally, the ECASLA authorizes the award of ACGs for students enrolled in a one- or two-year certificate program at a degree-granting institution and allows students who were once enrolled in an undergraduate program as part of a secondary school program of study to receive a first-year ACG if the student is otherwise eligible. Finally, the ECASLA creates three additional program options by which students can qualify for a National SMART Grant. The HEOA amends the method by which secondary

school programs of study are determined to be rigorous, while maintaining rigorous programs previously recognized by the Secretary in regulations.

**Waiver of Rulemaking**

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

Section 402(b) of the HEOA waives the negotiated rulemaking requirements in section 492 of the HEA (as well as the master calendar requirements in section 482 of the HEA) for changes made to the ACG and National SMART Grant Programs in both the ECASLA and in the HEOA. Consequently, the negotiated rulemaking requirements in section 492 of the HEA do not apply to the interim final regulations in this notice and we will not subject them to negotiated rulemaking.

We are waiving the notice-and-comment rulemaking requirements under the APA. The APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. Although these regulations are subject to the APA's notice-and-comment requirements, the

<sup>1</sup> Section 492 provides specifically that any regulations issued for the Title IV, HEA programs shall be subject to negotiated rulemaking to obtain the advice of and recommendations from individuals and groups involved in the student financial assistance programs.

Secretary has determined that it would be impracticable to conduct notice-and-comment rulemaking in time to implement these changes for the 2009–2010 award year. Waiver of rulemaking under the impracticability exemption in the APA is warranted because it would not be possible for the Department to comply with the APA's rulemaking mandates and execute its statutory duties under the HEA, as amended by the ECASLA and the HEOA.<sup>2</sup> The Department cannot both implement these changes to the ACG and National SMART Grant programs, including making awards to eligible students, by the beginning of the 2009–2010 award year, and conduct notice-and-comment rulemaking for the regulations for these programs.

In the ECASLA, enacted on May 7, 2008, Congress made a number of changes to the ACG and National SMART Grant programs that were to be effective on January 1, 2009. On August 14, 2008, Congress enacted the HEOA, which amended some of the changes made in the ECASLA and made additional changes. The HEOA provides that amendments made by the ECASLA and HEOA are effective July 1, 2009. The Department therefore has a short window to plan the administration of the changes and make awards consistent with those changes for the 2009–2010 award year.

Even on an extremely expedited timeline, the Department could not feasibly conduct notice-and-comment rulemaking and then promulgate final regulations in time to make awards for the 2009–2010 award year. Publishing a notice of proposed rulemaking, reviewing the public comments, and issuing final regulations normally takes at least six months, and this could not be accomplished prior to the statutory July 1, 2009 effective date.

In addition to developing and issuing these regulations, there are a number of other steps necessary for the Department to implement the changes to the ACG and National SMART Grant programs for the 2009–2010 award year that make rulemaking impracticable. Implementation requires the Department to make a number of

changes to the Department's financial aid systems so that students can apply for and receive ACGs and National SMART Grants for which they are eligible. The process of completing all of these steps and developing program regulations through notice-and-comment rulemaking requires far more time than that available to the Department in order to make awards to students for the upcoming 2009–2010 award year.

Based upon this information, and in order to make timely grant awards for the 2009–2010 award year, the Secretary is issuing these interim final regulations without first publishing proposed regulations for public comment.

Although the Department is adopting these regulations on an interim final basis, the Department requests public comment on these regulations. After consideration of public comments, the Secretary will publish final regulations.

### Significant Regulations

We discuss substantive issues under the sections of the interim final regulations to which they pertain. Generally, we do not address regulatory provisions that are technical or otherwise minor in effect.

#### Definitions (§ 691.2)

##### ACG and National SMART Grant Scheduled Award

**Statute:** Section 10 of the ECASLA amends section 401A of the HEA by replacing the term “academic year” with the term “year” in those provisions related to determining a student's period of eligibility for an ACG or a National SMART Grant (e.g., section 401A(b), (c)(3), (d)(1)(A)(iii), and (d)(2) of the HEA). Section 10 of the ECASLA also amends section 401A of the HEA by adding a third year of eligibility for National SMART Grants for any otherwise eligible student enrolled in a program with at least five full years of coursework (see section 401A(c)(3)(E)).

**Current Regulations:** Current § 691.2(d) defines an ACG or National SMART Grant Scheduled Award as the amount that would be paid to a full-time student for a full academic year.

**Regulations:** We are amending the definitions in § 691.2(d) to provide that an ACG Scheduled Award is the maximum amount of an ACG that would be paid to a full-time first-year student or a full-time second-year student for the applicable year. A National SMART Grant Scheduled Award is the maximum amount of a National SMART Grant that would be paid to a full-time third-year, fourth-year, or fifth-year student for the applicable year.

**Reason:** We are amending these definitions to reflect the statutory change that a student's eligibility for a grant is based on his or her grade level as a first-, second-, third-, fourth-, or fifth-year student, rather than the student's academic year.

##### Annual Award

**Statute:** Section 10(a)(3) of the ECASLA amends section 401A(c) of the HEA to provide that a student enrolled or accepted for enrollment in an institution of higher education on not less than a half-time basis may be an eligible student (see section 401A(c)(3) of the HEA). Prior to the ECASLA, only full-time students were eligible.

**Current Regulations:** None.

**Regulations:** We are amending § 691.2(d) to define the term *annual award* as the maximum ACG or National SMART Grant amount a student would receive for enrolling as a full-time, three-quarter-time, or half-time student and remaining in that enrollment status for one year.

**Reason:** We are adding this definition, in conjunction with other changes to Subpart F (Determination of Awards) of part 691, to ensure compliance with the statutory requirement that a student's payments be adjusted based on the student's enrollment status during a payment period.

##### Eligible Major

**Statute:** Section 10(a)(3)(C)(v) of the ECASLA amends the HEA by adding a new section 401A(c)(3)(D), which extends eligibility for a National SMART Grant to a student enrolled in a qualifying liberal arts curriculum. Prior to this statutory change, an eligible major for a National SMART Grant was a major in the physical, life, or computer sciences, mathematics, technology, or engineering (as determined by the Secretary pursuant to regulations), or a foreign language that the Secretary, in consultation with the Director of National Intelligence, determines is critical to the national security of the United States.

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

**Regulations:** We are amending the definition of the term *eligible major* to include, in addition to majors in physical, life, or computer sciences, mathematics, technology, engineering or a critical foreign language, a qualifying

<sup>2</sup> See *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1484, n.2 (9th Cir. 1992). The term “impracticable” has also been described as meaning “a situation in which the due and required execution of the agency functions would be unavoidably prevented by its undertaking rulemaking proceedings.” *Zhang v. Slattery*, 55 F.3d 732, 746 (2d Cir. 1995), citing *National Nutritional Foods Ass'n v. Kennedy*, 572 F.2d 377, 385 (2d Cir. 1978), citing S. Rep. No. 752, 79th Cong., 1st Sess. (1945). See also *New Jersey Dept of Envtl. Prot. v. U.S. EPA*, 626 F.2d 1038, 1046 (D.C. Cir. 1980).

liberal arts curriculum as determined by the Secretary under new § 691.17(b).

*Reason:* The amendments to the definition of the term *eligible major* implement the new statutory provision that a student may be eligible for a National SMART Grant by enrolling in a qualifying liberal arts curriculum.

#### Eligible Program

*Statute:* Section 10(a)(3)(C)(ii) of the ECASLA amends section 401A(c)(3) of the HEA by providing that an eligible student enrolled in an institution of higher education in an undergraduate certificate program at least one year in length may be eligible for an ACG (see section 401A(c)(3)(A) of the HEA). Section 10(a)(3)(C)(v) of the ECASLA also amends section 401A(c)(3) of the HEA to provide that a student enrolled in a program at a degree-granting institution of higher education that requires at least five full years of coursework may be eligible for a National SMART Grant in his or her fifth—as well as third and fourth—year of enrollment (see section 401A(c)(3)(E) of the HEA).

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

*Regulations:* We are amending the definition of an *eligible program* in § 691.2 to include, for the ACG Program, an undergraduate certificate program of at least one academic year in length. We are also amending the definition of the term *eligible program* to include a degree program with at least five full undergraduate years of coursework at a degree-granting institution of higher education (a student in this type of program would be eligible for a National SMART Grant for the third, fourth, and fifth years of the program). In order to be consistent with the statutory changes regarding the inclusion of five-year programs under the National SMART Grant Program, we are amending the definition of *eligible program* to clarify that a five-year program is an eligible program if—(a) an appropriate official of an institution of higher education with authority to approve curricula certifies

that the program requires at least five full undergraduate years of coursework to complete (as documented in the institution's records), and (b) each year of the program, including the fifth year, is not less than 24 semester hours, 36 quarter credits, or 900 clock hours. Paragraph (2)(ii)(C) of the definition clarifies that a program with a qualifying liberal arts curriculum identified as an eligible major under § 691.17(b) is not eligible as a five-year program.

*Reason:* We are amending the definition of the term *eligible program* to implement the statutory changes that a student may be eligible for an ACG if the student is enrolled in a certificate program at least one academic year in length and that a student may be eligible for a National SMART Grant for his or her fifth year in an eligible five-year program.

We are amending the definition of the term *eligible program*, for purposes of the ACG Program, to include undergraduate programs of at least one academic year in length leading to a certificate. While the statutory language refers to “a program of not less than one year for which the institution awards a certificate,” we believe that the minimum length of the program should be tied to an “academic year,” and not a “year.” This is because to qualify as an institution of higher education under 34 CFR 600.4(a)(4)(iii) of the institutional eligibility regulations, an institution must offer a certificate program that is at least one academic year in length.

With respect to the fifth-year National SMART Grant, the certification requirement reflected in new paragraph (2)(ii)(A) of the definition is required by section 401A(c)(3)(E) of the HEA. The requirement that the certification be documented in the institution's records is intended to avoid any additional reporting burden on institutions.

First-, Second-, Third-, Fourth-, and Fifth-Year

*Statute:* Section 10 of the ECASLA amends section 401A of the HEA by replacing the term “academic year” with the term “year” in those provisions related to determining a student's period of eligibility for an ACG or a National SMART Grant (e.g., section 401A(b), (c)(3), (d)(1)(A)(iii) and (d)(2) of the HEA). Section 10 of the ECASLA also amends section 401A of the HEA by adding a third year of eligibility for National SMART Grants for any otherwise eligible student enrolled in a program with five full years of coursework (see section 401A(c)(3)(E)).

*Current Regulations:* None.

*Regulations:* We are adding a new § 691.2(e)(1) to define the terms “first-year,” “second-year,” “third-year,” “fourth-year,” and “fifth-year” as a student's grade level in the student's eligible program as determined by the institution for all students in the eligible program. We are also adding a new § 691.2(e)(2) to provide that a student's grade level for purposes of the ACG and National SMART Grant programs must be the same grade level used for determining annual loan limits under the FFEL and Direct Loan programs (34 CFR parts 682 and 685).

*Reason:* New § 691.2(e)(1) implements the statutory change from use of “academic year” to “year.” It is necessary for the Department to clarify that, in using the term “year,” we mean the student's grade level. New § 691.2(e)(2) ensures the consistent treatment of students in all Title IV, HEA programs.

#### Duration of Student Eligibility— Undergraduate Course of Study (§ 691.6)

*Statute:* Section 10 of the ECASLA amends section 401A of the HEA to provide that an eligible student may only receive one ACG for each of the first or second years of an undergraduate program and one National SMART Grant for each of the third, fourth, or fifth years of a bachelor's degree program, rather than the first, second, third, or fourth academic year of the program (see section 401A(c)(3) of the HEA). In addition, section 10 of the ECASLA amends section 401A of the HEA by adding a new paragraph (c)(3)(E) to provide that a student may be eligible for a third National SMART Grant for enrollment in the fifth year of an undergraduate baccalaureate program if that program requires at least five full years of coursework.

*Current Regulations:* Current § 691.6 bases the duration of student eligibility for the ACG and National SMART Grant programs on academic year and restricts a student to one grant for each of his or her first, second, third, or fourth academic years of enrollment in an eligible program.

*Regulations:* We are amending § 691.6 to provide that a student is eligible for one ACG Scheduled Award while enrolled as a first-year student, one ACG Scheduled Award while enrolled as a second-year student, one National SMART Grant Scheduled Award while enrolled as a third-year student, one National SMART Grant Scheduled Award while enrolled as a fourth-year student, and, in the case of a program with at least five full years of

coursework, one National SMART Grant Scheduled Award while enrolled as a fifth-year student. We are providing that a fourth-year student, enrolled in a National SMART Grant-eligible program with less than five full years of coursework, continues to be a fourth-year student until he or she completes his or her first undergraduate baccalaureate course of study. We are also providing that a fifth-year student, enrolled in a National SMART Grant-eligible program with at least five full years of coursework, continues to be a fifth-year student until he or she has completed his or her first undergraduate baccalaureate course of study.

*Reason:* These interim final regulations implement the changes to the HEA by providing that the duration of a student's eligibility is based on the student's year in postsecondary education, consistent with the use of this term in the FFEL and Direct Loan programs, rather than the number of academic years the student has completed.

Under the amendments to § 691.6, a student's eligibility is based on the student's grade level rather than academic year. This change in implementation of the ACG and National SMART Grant programs will begin in the 2009–2010 award year. We believe that awards for some continuing students may be affected as they progress to the comparable point in grade level that they were previously deemed to have reached in an academic year. However, most of these students will still be eligible to receive the same amount of grant funds over their entire period of enrollment. A student who received a third-academic-year National SMART Grant Scheduled Award in the 2008–2009 award year, for example, may now be considered to be in the second-year grade level of his or her National SMART Grant-eligible program in the 2009–2010 award year. That student would no longer be eligible for a National SMART Grant until the student advances to the fourth year of his or her National SMART Grant-eligible program. However, in this example, although the student has already received a third-year National SMART Grant Scheduled Award, the student may be paid for any remaining eligibility for a second-year ACG Scheduled Award, if otherwise eligible, because only the student's grade level is the determining factor, without regard to any particular progression.

Some of these students, however, will no longer be eligible to receive the same amount of grant funds over their entire period of enrollment. For example, a student who initially enrolled in the fall

of 2008 with 30 semester hours based on Advanced Placement courses and received a first-academic-year ACG Scheduled Award in the 2008–2009 award year while earning an additional 30 semester hours, may now be considered to be in the third-year grade level of his or her eligible program in the 2009–2010 award year and would not be eligible for a second-year ACG in 2009–2010. The student could receive a third-year National SMART Grant, if he or she met other eligibility criteria.

The provision that a fourth-year student enrolled in a National SMART Grant-eligible program with less than five full years of coursework continues to be considered a fourth-year student until he or she completes his or her first undergraduate baccalaureate course of study, and that a fifth-year student in a five-year program continues to be a fifth-year student until he or she completes his or her undergraduate baccalaureate course of study is designed to provide students with the greatest amount of National SMART Grant funds possible, by allowing a student who was ineligible for some part of his or her fourth or fifth year to obtain a fourth- or fifth-year award.

For example, a student is enrolled in a program that requires full-time attendance for nine semesters, and a student normally completes a grade level by successfully completing two semesters of coursework. In the fall of 2008, the student begins her fourth year and completes the 2008–2009 fall and spring terms which are the seventh and eighth semesters of the student's program. During the 2008–2009 award year, the student did not receive a Federal Pell Grant, and as a result none of the fourth-year National SMART Grant Scheduled Award was disbursed. In the fall term of 2009, the student enrolls for the final semester of her program and receives a Federal Pell Grant. For the fall term, as part of the extended fourth year, the student would also receive a National SMART Grant disbursement from the fourth-year National SMART Grant Scheduled Award, if otherwise eligible.

#### *Enrollment Status for Students Taking Regular and Correspondence Courses (§ 691.8)*

*Statute:* The statute does not address how taking correspondence courses affects a student's enrollment status in an eligible program. Section 10(c)(2) of the ECASLA, however, amends section 401A(c)(2) of the HEA to provide that a student may be eligible for an ACG or a National SMART Grant if he or she is enrolled or accepted for enrollment in an institution of higher education on at

least a half-time basis. Before the ECASLA, only full-time students were eligible for grants under these programs.

*Current Regulations:* Current § 691.8 sets forth the circumstances under which correspondence courses may be applied toward a student's full-time enrollment status in an eligible program.

*Regulations:* We are amending § 691.8 to describe how correspondence courses may be applied toward a student's enrollment status (i.e., as a half-time, three-quarter-time, and full-time student) in an eligible program.

*Reason:* Because the statute now allows students enrolled or accepted for enrollment in an institution of higher education on at least a half-time basis to be eligible for an ACG or a National SMART Grant, it is necessary to make changes to § 691.8, regarding how correspondence courses may be applied to a student's less-than-full-time enrollment in an eligible program.

#### *Citizenship and Student Eligibility (§§ 668.33 and 691.15)*

*Statute:* Section 10(a)(3) of the ECASLA amends section 401A(c) of the HEA by removing the requirement that a student be a U.S. citizen to be eligible for an ACG or a National SMART Grant.

*Current Regulations:* Current §§ 691.15(a)(1) and 668.33(c) provide that a student must be a U.S. citizen to be eligible to receive an ACG or a National SMART Grant.

*Regulations:* We are removing the provisions in §§ 691.15(a)(1) and 668.33(c) that only U.S. citizens are eligible to receive ACGs or National SMART Grants.

*Reason:* These amendments reflect the statutory change that eliminates the requirement that only students who are U.S. citizens may qualify for assistance under the ACG and National SMART Grant programs. Moreover, this change is consistent with section 484(a)(5) of the HEA, which provides that a student who is not a United States citizen or national but who can provide evidence that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident may qualify as an eligible student for the Title IV, HEA programs.

#### *Enrollment Status and Student Eligibility (§§ 668.32, 691.2, 691.15, 691.76, and 691.80)*

*Statute:* Section 10(a)(3) of the ECASLA amends section 401A(c) of the HEA to remove the requirement that a student be enrolled full-time to receive an ACG or a National SMART Grant. Instead, a student must be enrolled at

least half-time in order to receive an ACG or a National SMART Grant.

*Current Regulations:* Current § 691.15(a)(3) provides that a student must be enrolled full-time in order to be eligible to receive an ACG or a National SMART Grant.

*Regulations:* We are removing from § 691.15(a) the requirement that a student be enrolled full-time to be eligible to receive an ACG or a National SMART Grant. Also, we are amending the general student eligibility requirements for the Title IV, HEA programs in § 668.32(a)(2) by adding the ACG and National SMART Grant programs to the list of programs that require students to be enrolled at least half-time.

We are also amending the list of definitions used in the ACG and National SMART Grant regulations to refer to the existing definitions of the terms *half-time student* and *three-quarter-time student* contained in 34 CFR 668.2 of the Student Assistance General Provisions.

Finally, we are amending §§ 691.76 (Frequency of payment) and 691.80 (Redetermination of eligibility for a grant award) to address how (a) an institution determines a student's enrollment status for payment purposes for prior payment periods, and (b) changes in a student's enrollment status, which are now permitted under the statute, are handled for purposes of recalculation of award amounts.

*Reason:* We are making the changes to §§ 691.2 and 691.15 to implement the statutory change allowing students attending at least half-time to be eligible for an award under the ACG and National SMART Grant programs.

We also believe that it is appropriate to amend the student eligibility provisions in 34 CFR part 668 (Student Assistance General Provisions) to include the ACG and National SMART Grant programs among the other Title IV, HEA programs that have the same enrollment status requirement.

The amendments to §§ 691.76 and 691.80 enable institutions to adjust ACG and National SMART Grant award payments based on a change in a student's enrollment status. These amendments are consistent with 34 CFR 690.76 and 690.80 in the Federal Pell Grant Program regulations.

*Prior Enrollment and Student Eligibility (§ 691.15)*

*Statute:* Section 10(a)(3)(C)(ii)(III) of the ECASLA amends section 401A(c)(3)(A)(ii) of the HEA to clarify that students who were enrolled in a program of undergraduate education as part of a secondary school program of

study are not subject to the prior enrollment restriction for first-year students.

*Current Regulations:* Current § 691.15(b)(1)(ii)(C) provides that a student is not eligible for a first-year ACG if the student was enrolled as a regular student in an ACG-eligible program while the student was at or below the age of compulsory attendance while he or she was in high school.

*Regulations:* We are amending § 691.15(b)(1)(ii)(C) to provide that the restriction on prior enrollment does not apply to students who were enrolled as regular students in an eligible program of undergraduate education that was also part of a secondary school program of study. We are also clarifying in new § 691.15(b)(1)(ii)(C) that transfer students who are first-year students are not considered to have been previously enrolled and, therefore, are not subject to the prior enrollment restriction.

*Reason:* These interim final regulations implement the statutory clarification concerning prior enrollment and clarify that we do not consider transfer students to have been previously enrolled.

*Rigorous Secondary School Program of Study (§ 691.16)*

*Statute:* Section 401A(f) of the HEA, as amended by section 10(a)(3) of the ECASLA and section 401(c)(3) of the HEOA, require the Secretary to recognize not less than one rigorous secondary school program of study in each State for the purpose of determining student eligibility for an ACG.

Section 401A(c)(3)(A)(i)(I) of the HEA provides that a rigorous secondary school program of study established by a State educational agency (SEA) or local educational agency (LEA) after January 1, 2006, but before July 1, 2009, and recognized by the Secretary continues to be an eligible rigorous secondary school program of study for a first-year ACG. Section 401A(c)(3)(B)(i)(I) of the HEA provides that a rigorous secondary school program of study established by an SEA or LEA after January 1, 2005, but before July 1, 2009, and recognized by the Secretary continues to be an eligible rigorous secondary school program of study for a second-year ACG. Section 401A(c)(3)(A)(i)(II)(aa) and 401A(c)(3)(B)(i)(II)(aa) of the HEA provides that a rigorous secondary school program includes any secondary school program of study that, on or after July 1, 2009, a designated official recognizes—in a report to the Secretary—as a rigorous secondary school program of study that prepares

students for college. Section 401A(c)(3)(A)(i)(II)(bb) and (c)(3)(B)(i)(II)(bb) of the HEA further provides that a rigorous secondary school program includes any secondary school program of study recognized as rigorous by the Secretary in regulations that were in effect on May 6, 2008.

*Current Regulations:* Current § 691.16(a) provides that, for an award year, the Secretary recognizes in each State at least one rigorous secondary school program of study established by an SEA or, if authorized by the State to establish a separate secondary school program of study, an LEA. Current § 691.16(d) provides that, in addition to those programs established by States and LEAs and recognized by the Secretary under § 691.16(b) and (c), the Secretary recognizes certain other secondary school programs of study as rigorous, including continued recognition of advanced or honors secondary school programs of study by the Secretary for school years subsequent to the 2005–2006 school year. Also under current § 691.16(d)(4) and (d)(5), successful completion of a secondary school program that includes at least two AP or IB courses and scoring a 3 or higher on the corresponding AP exams or a 4 or higher on the corresponding IB exams is considered by the Secretary to demonstrate that the student completed a rigorous secondary school program of study. Furthermore, under current § 691.16(d)(2), the Secretary recognizes successful completion of the following coursework to fulfill the requirement that a student complete a rigorous secondary school program of study: four years of English; three years of mathematics, including Algebra I and a higher level class such as Geometry; three years of science, including one year each of at least two of the following courses: Biology, Chemistry, and Physics; three years of social studies; and one year of a language other than English.

Current § 691.16(b)(2) allows SEAs and LEAs to request recognition of rigorous secondary school programs of study for school years beyond the immediate next school year.

Pursuant to current § 691.16(e), the Secretary publishes a list of rigorous secondary school programs of study that the Secretary recognizes.

*Regulations:* We are amending and reorganizing current § 691.16 by removing paragraphs (a) and (c) because these provisions apply to the Secretary's recognition of rigorous secondary school programs of study as established by an SEA or LEA. Effective July 1, 2009, the Secretary will no longer recognize new

rigorous secondary school programs of study submitted by an SEA or LEA; thus paragraphs (a) and (c) are no longer needed. As a result of removing paragraphs (a) and (c) of this section, we are redesignating paragraphs (b) and (d) as paragraphs (a) and (b), respectively.

We are amending current § 691.16(b) (new § 691.16(a)) to provide that, starting with the 2009–2010 award year, a designated official, consistent with State law, may recognize and report to the Secretary any secondary school programs of study that prepare students for college and that the designated official deems rigorous. Programs reported to the Secretary by designated officials under new § 691.16(a) supplement the secondary school programs recognized by the Secretary as rigorous under the current regulations.

We are amending current § 691.16(b)(1) and (2) (new § 691.16(a)(2)(i) and (ii)) such that a designated official may report to the Secretary rigorous programs for students graduating during the current award year and for students graduating during award years subsequent to the current award year.

We are amending current § 691.16(d) (new § 691.16(b)) by adding paragraph (b)(6) to include—in the list of preapproved rigorous secondary school programs of study—any rigorous programs submitted by States and recognized by the Secretary as rigorous after January 1, 2005, but before July 1, 2009.

*Reason:* The amendments to § 691.16 implement the statutory change that, instead of submitting secondary school programs of study for the Secretary's recognition as rigorous, starting with the 2009–2010 award year, designated officials report to the Secretary rigorous secondary school programs of study, including such programs of study in home schools and private schools, that prepare students for college. As indicated in the Paperwork Reduction Act of 1995 section of this notice, we are specifically requesting comments on the most effective methods by which designated officials would report information about rigorous secondary school programs of study in private schools and home schools to the Secretary and how that information would most effectively be transmitted to institutions to allow them to determine a student's eligibility for an ACG.

These interim final regulations, consistent with changes made to the HEA by the HEOA, also retain as rigorous those secondary school programs of study submitted by States after January 1, 2005 but before July 1, 2009 and recognized as rigorous by the

Secretary. Finally, the interim final regulations allow designated officials to report their rigorous programs to the Secretary for both the current and future award years.

*Eligible Majors (§§ 691.2(b), 691.15, and 691.17)*

*Declaring and Documenting a Major (§ 691.15)*

*Statute:* Section 401A(c)(3)(C) and (c)(3)(D) of the HEA, as amended by section 10(a)(3) of the ECASLA, identify the majors that are eligible for a National SMART Grant for a student in his or her third or fourth year of undergraduate education at an institution of higher education. Section 401A(c)(3)(C)(i) of the HEA provides that a student pursuing a major in the physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language (which is defined in section 103(3) of the HEA) may be eligible for a National SMART Grant. Section 401A(c)(3)(D)(i)(I) of the HEA provides that a student at an institution of higher education that offers a single liberal arts curriculum that was offered prior to February 8, 2006, under which a student is not permitted to declare a major in a particular subject area, may receive a National SMART Grant if the student studies a subject that has requirements that are at least equal to the requirements for an academic major in the physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language at another institution of higher education that offers a baccalaureate degree in that subject. Alternatively, under section 401A(c)(3)(D)(i)(II) of the HEA, a student at such institution may undertake a rigorous course of study in mathematics, biology, chemistry, and physics that consists of at least four years of study in mathematics and three years of study in the sciences, with a laboratory component in each of those years.

Under section 401A(c)(3)(E) of the HEA, as amended by the ECASLA, a student may be eligible for a National SMART Grant in his or her fifth year of undergraduate education if the student pursues a major in the physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language if an appropriate institutional official certifies that the program requires five full years of coursework.

*Current Regulations:* Current § 691.15(c)(2) requires that, to be eligible for a National SMART Grant, a student must formally declare his or her eligible major in accordance with the

institution's academic requirements. However, if under an institution's procedures, a student would not be able to formally declare a major in time to qualify for a National SMART Grant, the student must demonstrate his or her intent to declare an eligible major as documented by the institution. Under current § 691.15(c)(2), as soon as the student is able to formally declare a major, the student must do so in order to remain eligible for a National SMART Grant. In the case of a student who has declared or intends to declare an eligible major, the student must enroll in the courses necessary to complete the degree program and to fulfill the eligible major requirements.

Current §§ 691.15(d)(1) and 691.15(e) specify how an institution must document a student's declaration of an eligible major, and progress in the eligible program and major, by requiring the institution to maintain the following documentation: (a) Documentation of the declared major or, in the case of a student's intent to declare a major, a written declaration of intent provided by the student that has been received recently enough for the institution to determine that it still correctly reflects the student's stated intent; and (b) written documentation showing that the student is completing coursework at an appropriate pace in the student's declared or intended eligible program and eligible major.

*Regulations:* Section 691.15(d)(3) exempts a student enrolled in a qualifying liberal arts curriculum from the requirement that the student must declare an eligible major to receive a National SMART Grant.

We also are amending § 691.15(c)(2)(ii) and § 691.15(e) to provide that an institution need only document a student's progress in completing the program in the intended or declared National SMART Grant-eligible program.

*Reason:* Under the new statutory provision reflected in section 401A(c)(3)(D) of the HEA, a student enrolled in a qualifying liberal arts curriculum as a major is necessarily enrolled in a National SMART Grant-eligible major. Because students in a qualifying liberal arts curriculum do not declare majors, it is not possible for the institution to document the student's declaration of a major as required under the current regulations. We are, therefore, removing the documentation requirement for students in qualifying liberal arts curricula.

In addition, a major change to the National SMART Grant Program is the extension of eligibility to otherwise eligible students who are enrolled less



than full-time but at least half-time. A student who is enrolled on a less-than-full-time basis would have difficulty enrolling in a course in the eligible major each payment period as currently required because a part-time student will typically only enroll in two or three courses in a payment period. Thus, even though the part-time student could be progressing in a satisfactory manner in his or her program, the student would be ineligible for a National SMART Grant under the current requirements. Sections 691.15(c)(2) and (e), therefore, amend the current regulations to require an institution to document a student's progress in completing the program in the intended or declared National SMART Grant-eligible program rather than coursework strictly specific to the academic major's requirements each payment period.

*Determination of Eligible Majors (§§ 691.2(b) and 691.17)*

**Statute:** Section 401A(c)(3)(C) and (D) of the HEA, as amended by section 10(a)(3) of the ECASLA, identifies the majors that a student must pursue to be eligible for a National SMART Grant in his or her third or fourth year of undergraduate education at an institution of higher education.

Specifically, section 401A(c)(3)(C)(i) of the HEA provides that a student pursuing a major in the physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language is eligible for a National SMART Grant, provided the student meets other eligibility criteria.

Section 401A(c)(3)(D) of the HEA extends eligibility for a National SMART Grant to a student enrolled in a program at an institution of higher education that offers a single liberal arts curriculum leading to a baccalaureate degree that was offered prior to February 8, 2006, and under which the student is not permitted to declare a major in a particular subject area. A student in this type of program may receive a National SMART Grant if (a) the student studies a subject that has requirements that are at least equal to the requirements for an academic major in the physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language at another institution of higher education that offers a baccalaureate degree in that subject and the student has obtained a cumulative grade point average of at least 3.0 in the relevant coursework (see section 401A(c)(3)(D)(i)(I) of the HEA); or (b) the student undertakes a rigorous course of study in mathematics, biology, chemistry, and physics that consists of

at least four years of study in mathematics and three years of study in the sciences, with a laboratory component in each of those years (see section 401A(c)(3)(D)(i)(II) of the HEA).

Section 401A(c)(3)(E) of the HEA, as amended by the ECASLA, identifies the majors a student must pursue to be eligible for a National SMART Grant in his or her fifth year of undergraduate education. These majors are the same as those identified for eligibility for third- and fourth-year National SMART Grants except that the major may not be a liberal arts curriculum.

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

**Regulations:** Section 691.17(a) amends the current regulations to incorporate the new definition of a "critical foreign language" found in section 103(3) of the HEA. Current § 691.17(b) is removed and replaced with a new § 691.17(b) to include a qualifying liberal arts curriculum as an eligible major. Section 691.17(d) amends the current regulations for designating an additional eligible major by adding a requirement that an institution requesting designation of a liberal arts curriculum as an eligible major submit, in addition to the information requested in § 691.17(d)(1), information demonstrating that the liberal arts curriculum complies with the requirements in new § 691.17(b).

**Reason:** The interim final regulations are necessary to implement the statutory provisions that expand the list of majors eligible for a National SMART Grant and to provide a mechanism for an institution to request designation of a qualifying liberal arts curriculum as a National SMART Grant-eligible major.

*Calculation of a Grant (§ 691.62)*

**Statute:** Section 10(a)(3) of the ECASLA amends section 401A(c) of the HEA to provide that a student enrolled or accepted for enrollment in an institution of higher education on not less than a half-time basis may be an eligible student. Section 10(a)(4) of the ECASLA amends section 401A(d)(1)(B) of the HEA to clarify that, in any case in which a student attends on a less than full-time basis, the student's grant amount shall be reduced in the same manner as a Federal Pell Grant is reduced under section 401(b)(2)(B) of the HEA.

**Current Regulations:** Current § 691.62(b) describes the maximum ACG

and National SMART Grant Scheduled Award amounts for an eligible full-time student, but does not provide annual award amounts for three-quarter-time and half-time students.

**Regulations:** We are amending § 691.62 by adding paragraphs (c) and (d) to describe the ACG and National SMART Grant annual award amounts for full-time, three-quarter-time, and half-time students.

**Reason:** We are adding § 691.62(c) and (d) in conjunction with other changes to Subpart F, to ensure compliance with the statutory requirement that a student's payments be adjusted based on the student's enrollment status during a payment period consistent with the calculation of a payment for a payment period under the Federal Pell Grant Program.

*Calculation of a Grant for a Payment Period (§§ 691.63 and 691.66)*

*General*

**Statute:** Section 10(a)(3) of the ECASLA amends section 401A(c) of the HEA to provide that a student enrolled or accepted for enrollment in an institution of higher education on not less than a half-time basis may be an eligible student. Section 10(a)(4) of the ECASLA also amends section 401A(d)(1)(B)(i) of the HEA to provide that, in any case in which a student attends on a less than full-time basis, the student's grant amount shall be reduced in the same manner as a Federal Pell Grant is reduced under section 401(b)(2)(B) of the HEA.

**Current Regulations:** Current § 691.63 provides that an ACG or a National SMART Grant payment for a payment period is calculated only on the basis of the ACG or National SMART Grant Scheduled Award. This section does not address how an ACG Grant or a National SMART Grant payment for a payment period is calculated for less-than-full-time students.

**Regulations:** We are amending § 691.63(h) to describe how ACG and National SMART Grant payments for a payment period are calculated for full-time, three-quarter-time, and half-time students. In addition, throughout § 691.63, except as provided in § 691.63(e), we change references from "Scheduled Award" to "annual award under § 691.62" to account for a student's enrollment status as a full-time, three-quarter-time, or half-time student in calculating the student's payment for a payment period.

Finally, we are adding a new § 691.66 to address how institutions of higher education calculate an ACG and a National SMART Grant payment for a



payment period in a program of study offered by correspondence. Conforming changes are also made to § 686.25 and § 690.66.

*Reason:* We are amending § 691.63 and adding § 691.66, in conjunction with other changes to Subpart F, to ensure compliance with the statutory requirement that a student's payments be adjusted based on the student's enrollment status during a payment period and that a student enrolled at least half-time in a program of study offered by correspondence would be eligible for an ACG or a National SMART Grant.

#### Payment Period and Grade Level Progression

*Statute:* As discussed elsewhere in this notice, section 10 of the ECASLA amends the provisions of section 401A of the HEA by replacing the term "academic year" with the term "year" in those instances related to determining a student's period of eligibility for an ACG or a National SMART Grant (e.g., section 401A(b), (c)(3), (d)(1)(A)(iii) and (d)(2) of the HEA).

*Current Regulations:* Current § 691.63(h) provides that a student may not progress to the next academic year during a payment period.

*Regulations:* We are amending § 691.63(h) to provide that a student may not progress to the next year in a grade level (rather than next academic year) during a payment period.

*Reason:* We are making this change because eligibility for the ACG and National SMART Grant programs is no longer based on the student's academic year standing. Eligibility is based on "year," which refers to a student's grade level consistent with the FFEL and Direct Loan programs.

#### Executive Order 12866

##### 1. Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule); (2)

create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive order, it has been determined that this interim final regulatory action will have an annual effect on the economy of more than \$100 million. Therefore, this action is "economically significant" and subject to OMB review under section 3(f)(1) of Executive Order 12866.

#### Need for Federal Regulatory Action

These interim final regulations address a range of issues affecting students and institutions of higher education participating in the ACG and National SMART Grant programs. They are needed to implement statutory changes enacted through the ECASLA and the HEOA.

#### Regulatory Alternatives Considered

The Department cannot modify statutory program requirements through regulations. Because the interim final regulations merely implement specific statutory provisions, the Department had extremely limited discretion to consider alternative approaches. In general, as discussed in detail under the *Reason* sections that accompany the discussion of each interim final regulatory provision, the Department used this limited discretion to minimize burden and complexity and, to the extent possible, mirror comparable regulations for other student aid programs. In assessing the budgetary impact of these alternatives, the Department considered the effect of possible changes on student eligibility for ACG and National SMART Grant awards and on the size or timing of student awards. In all cases, the alternatives considered did not have a measurable effect on Federal costs.

#### Transfers

These interim final regulations broaden access to the ACG and National SMART Grant programs by implementing statutory changes that extend eligibility to part-time students who are enrolled at their institution on at least a half-time basis, eligible non-citizens, and students enrolled in certain certificate programs. The interim final regulations also allow eligible degree programs with at least five full undergraduate years to award National

SMART Grant awards in the third, fourth, and fifth years of the program. Mandatory funding for the ACG and National SMART Grant programs is provided through fiscal year 2010, after which the program would sunset. Funds for fiscal year 2010 would be used to support the 2010–2011 award year. The Department estimates that changes implemented through these interim final regulations, which become effective July 1, 2009, will result in 538,000 additional awards totaling \$448 million over award years 2009–2010 and 2010–2011. More specifically, under current estimates, expanding eligibility to less-than-full-time students, eligible non-citizens, and students at certificate programs will increase ACG awards by 209,000 in 2009–2010 and 241,000 in 2010–2011 and increase National SMART Grant awards by 43,000 in 2009–2010 and 45,000 in 2010–2011.

Other changes in these interim final regulations implement statutory changes replacing the term "academic year" with the term "year" for the purposes of determining a student's period of eligibility for an ACG or a National SMART Grant. These changes are expected to significantly simplify the process of determining eligibility for participating institutions of higher education and students.

As noted, statutory changes in program eligibility criteria implemented by these interim final regulations will increase the dollar amount of grant awards under the ACG and National SMART Grant programs by \$448 million over award years 2009–2010 and 2010–2011. This will increase Federal costs by the same amount.

Because institutions of higher education affected by these interim final regulations already participate in the ACG and National SMART Grant programs, these schools must have already established systems and procedures to meet program eligibility requirements. The interim final regulations reflect discrete changes in specific parameters associated with the Department's existing regulations for these programs, rather than entirely new requirements. Accordingly, entities wishing to continue to participate in the programs have already absorbed most of the administrative costs related to implementing these interim final regulations. Marginal costs over this baseline are primarily related to one-time changes that, while possibly significant in some cases, are an unavoidable cost of continued program participation.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section, we identify and

explain burdens specifically associated with information collection requirements. See the heading *Paperwork Reduction Act of 1995*.

#### Accounting Statement

As required by OMB Circular A–4 (available at <http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf>), in Table 1, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these interim final regulations. As shown in the table, the Department estimates that these interim final regulations will increase Federal grant payments to students by \$448 million.

**TABLE 1—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED SAVINGS**

[In millions]	
Category	Transfer
Annualized monetized transfers	\$448

#### 2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on “Plain Language in Government Writing” require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these interim final regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the interim final regulations clearly stated?
  - Do the interim final regulations contain technical terms or other wording that interferes with their clarity?
  - Does the format of the interim final regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
  - Would the interim final regulations be easier to understand if we divided them into more (but shorter) sections? (A “section” is preceded by the symbol “§” and a numbered heading; for example, § 691.16 Rigorous Secondary School Program of Study.)
  - Could the description of the interim final regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the interim final regulations easier to understand? If so, how?
  - What else could we do to make the interim final regulations easier to understand?
- To send any comments that concern how the Department could make these

interim final regulations easier to understand, see the instructions in the **ADDRESSES** section of this preamble.

#### Regulatory Flexibility Act Certification

The Secretary certifies that these interim final regulations will not have a significant economic impact on a substantial number of small entities. These interim final regulations affect institutions of higher education, States, State agencies, and individual students. The U.S. Small Business Administration (SBA) Size Standards define these institutions as “small entities” if they are for-profit or nonprofit institutions with total annual revenue below \$5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. Individuals are not defined as “small entities” under the Regulatory Flexibility Act.

A significant percentage of the schools participating in the ACG and National SMART Grant programs meet the definition of “small entities.” While these schools fall within the SBA size guidelines, these interim final regulations do not impose significant new costs on these entities.

Specific burden concerns are discussed in more detail elsewhere in this preamble, primarily in the *Paperwork Reduction Act of 1995* section.

#### Paperwork Reduction Act of 1995

Sections 691.15 and 691.16 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of these sections to OMB for its review.

##### *Section 691.15(a)—Eligibility To Receive a Grant*

The interim final regulations amend the eligibility requirements to receive an ACG or a National SMART Grant by removing several restrictive criteria. Currently, only students who are U.S. citizens are eligible to receive an ACG or a National SMART Grant. Under these interim final regulations, and consistent with other Title IV, HEA programs, in addition to U.S. citizens, students who can provide evidence from the United States Citizenship and Immigration Service, an office of the United States Department of Homeland Security, that they are in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident, may qualify as eligible non-citizens for the ACG and National SMART Grant programs.

The requirement that a student be enrolled on a full-time basis is also removed. Under these interim final regulations, students enrolled on at least a half-time or greater basis may be eligible to receive an ACG or a National SMART Grant.

The interim final regulations provide that the restriction on prior postsecondary enrollment does not apply to students who were enrolled as regular students in an eligible program of undergraduate education that was also part of a secondary school program of study. We also clarify that transfer students who are first-year students are not considered to have been previously enrolled and, therefore, are not subject to the prior enrollment restriction.

It is estimated that these changes regarding student eligibility will result in an increase in the burden hours associated with the programs through the Common Origination and Disbursement (COD) System. We estimate that the interim final regulations will increase burden for institutions of higher education by 12,412 hours, under OMB Control Number 1845–0039.

##### *Section 691.16—Rigorous Secondary School Program of Study*

The interim final regulations amend the current regulations to provide that, starting with the 2009–2010 award year, a designated official, consistent with State law, may recognize and report any information to the Secretary about rigorous secondary school programs of study that prepare students for college. These rigorous programs provide an option by which a student could meet the rigorous secondary school program of study requirement for receipt of an ACG.

Consistent with the amendments to section 401A of the HEA, rigorous programs submitted by States and recognized by the Secretary as rigorous after January 1, 2005, but before July 1, 2009, will continue to be listed in the document published annually by the Secretary listing rigorous secondary school programs of study. This listing also includes the new rigorous secondary programs of study as reported to the Department for students graduating during the current award year and for students graduating during award years subsequent to the current award year. In addition to any new programs of study, the information that designated officials report to the Department about rigorous secondary school programs of study also includes changes to previously reported rigorous programs of study or any deleted rigorous programs of study. Consistent

with the deadline set by the Secretary for reporting rigorous high school programs to the Department, we expect that 56 SEAs reporting for the State (and/or on behalf of the State's LEAs) will be reporting to the Department annually. In addition, designated officials will report information regarding the rigorous programs offered by private and home schools for an estimated 36,000 high school students who attend private high schools and

home schools for the year of the students' secondary school graduation or completion. We specifically request comments on the most effective methods by which designated officials would report information about rigorous secondary school programs of study in private schools and home schools to the Secretary and how that information would most effectively be transmitted to institutions to allow them to determine a student's eligibility for an ACG.

It is estimated that these changes regarding reporting of rigorous secondary school programs of study will result in an increase in burden hours. We estimate that the interim final regulations will increase burden for States, private high schools, home schools, and individuals by 18,280 hours, under new OMB Control Number 1845-XXXX.

#### COLLECTION OF INFORMATION

Regulatory section	Information collection	Collection
691.15 .....	This interim final regulation expands student eligibility requirements for the ACG and National SMART Grant programs.	OMB 1845-0039. This is a revision of an existing collection which is being submitted to OMB with these interim final regulations.
691.16 .....	This interim final regulation provides for States to report new, changed, or deleted rigorous secondary programs of study.	OMB 1845-XXXX. This will be a new collection. A separate 60-day FEDERAL REGISTER notice will be published to solicit comment on this form once it is developed.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by e-mail to [OIRA\\_DOCKET@omb.eop.gov](mailto:OIRA_DOCKET@omb.eop.gov) or by fax to (202) 395-6974. Commenters need only submit comments via one submission method. You may also send a copy of these comments to the Department contact named in the ADDRESSES section of this preamble.

We consider your comments on these collections of information in—

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

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

full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the interim final regulations.

#### Intergovernmental Review

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

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

#### Assessment of Educational Impact

We have determined that these interim final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available. However, in accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e-4, the Secretary requests comments on whether these interim final regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.063 Federal Pell Grants; 84.375 Academic Competitiveness Grants; 84.376 National SMART Grants; 84.379 TEACH Grants)

#### List of Subjects in 34 CFR Parts 668, 686, 690, and 691

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

Dated: April 28, 2009.

**Arne Duncan**,  
Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends parts 668, 686, 690, and 691 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. 1001, 1002, 1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

#### § 668.32 [Amended]

- 2. Section 668.32(a)(2) is amended by:
  - A. Adding the words “ACG, National SMART Grant,” after the words “For purposes of the”.
  - B. Adding the punctuation “,” after the word “FFEL”.

#### § 668.33 [Amended]

- 3. Section 668.33 is amended by:
  - A. In paragraph (a), introductory text, removing the words “paragraphs (b) and (c)” and adding, in their place, the words “paragraph (b)”.
  - B. Removing paragraph (c).
  - C. Redesignating paragraph (d) as paragraph (c).

### PART 686—TEACHER EDUCATION ASSISTANCE FOR COLLEGE AND HIGHER EDUCATION (TEACH) GRANT PROGRAM

- 4. The authority citation for part 686 continues to read as follows:

**Authority:** 20 U.S.C. 1070g, *et seq.*, unless otherwise noted.

#### § 686.22 [Amended]

- 5. Section 686.22 is amended in paragraph (f), by removing the words “or (e)” both times they appear.

#### § 686.25 [Amended]

- 6. Section 686.25 is amended by:
  - A. Removing paragraph (b)(1).
  - B. Redesignating paragraphs (b)(2)(i) and (b)(2)(ii) as paragraphs (b)(1) and (b)(2), respectively.
  - C. In paragraph (c)(2)(i), adding the words “to calculate the payment for the payment period” after the word “used”.
  - D. In paragraph (c)(2)(ii), adding the words “to calculate the payment for the payment period” after the word “used”.

### PART 690—FEDERAL PELL GRANT PROGRAM

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

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

- 8. Section 690.63 is amended by:
  - A. Revising paragraph (d)(1)(i).
  - B. In paragraph (f), removing the words “or (e)” both times they appear and removing the word “paragraphs” and adding, in its place, the word “paragraph”.

The revision reads as follows:

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

\* \* \* \* \*

(d) \* \* \*

- (1)(i) Determining his or her enrollment status for the term;

#### § 690.66 [Amended]

- 9. Section 690.66 is amended by:
  - A. Removing paragraph (b)(1).
  - B. Redesignating paragraphs (b)(2)(i) and (b)(2)(ii) as paragraphs (b)(1) and (b)(2), respectively.
  - C. In newly redesignated paragraph (b)(1), removing the parenthetical “(4)”.
  - D. In newly redesignated paragraph (b)(2), removing the parentheticals “(a)(4)” and adding, in their place, the words “paragraph (a)”.
  - E. In paragraphs (c)(2)(i) and (c)(2)(ii), adding the words “to calculate the payment for the payment period” after the word “used” both times it is used.

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

- 10. The authority citation for part 691 continues to read as follows:

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

#### § 691.1 [Amended]

- 11. Section 691.1(b) is amended by removing the words “and fourth-year” and adding, in their place, the words “, fourth-, and, in the case of a program with at least five full years, fifth-year”.
- 12. Section 691.2 is amended by:
  - A. In paragraph (a), adding, in alphabetical order, the term “Federal Family Education Loan (FFEL) Programs”.
  - B. In paragraph (b), adding, in alphabetical order, the terms “Half-time student”, “Three-quarter time student”, and “William D. Ford Federal Direct Loan (Direct Loan) Program”.
  - C. In paragraph (d), revising the definitions of “ACG Scheduled Award”, “Eligible major”, “Eligible program”, and “National SMART Grant Scheduled Award”; and adding, in alphabetical order, the definition for “Annual award”.
  - D. Adding a new paragraph (e).

The additions and revisions read as follows:

#### § 691.2 Definitions.

\* \* \* \* \*

(d) \* \* \*

**ACG Scheduled Award:** The maximum amount of an ACG that would be paid to a full-time first-year student or a full-time second-year student for the applicable year.

**Annual award:** The maximum ACG or National SMART Grant amount a student would receive for enrolling as a full-time, three-quarter-time, or half-time student and remaining in that enrollment status for one year.

\* \* \* \* \*

**Eligible major:** A major, as identified by the Secretary under § 691.17(a), in one of the physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language as defined in section 103(3) of the HEA; or a qualifying liberal arts curriculum as identified by the Secretary under § 691.17(b).

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

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

(2) For purposes of the National SMART Grant Program—

(i) Leads to a bachelor’s degree in an eligible major or is a graduate degree program in an eligible major that includes at least three years of undergraduate education; and

(ii) In the case of a five-year program, is a program that—

(A) Requires at least five full undergraduate years to complete, as certified by an appropriate institutional official in accordance with the institution’s policies and procedures and documented in the institution’s records;

(B) Contains not less than 24 semester hours, 36 quarter credits, or 900 clock hours in each year of the program, including the fifth year; and

(C) Is not a program that is a qualifying liberal arts curriculum identified as an eligible major under § 691.17(b).

(3) For purposes of paragraph (2)(ii)(A) of this definition, the appropriate official of an institution is the chief executive officer, provost, dean, academic department chairman, or other official with responsibility for setting a degree program’s coursework.

\* \* \* \* \*

**National SMART Grant Scheduled Award:** The maximum amount of a National SMART Grant that would be paid to a full-time third-year, fourth-year, or fifth-year student for the applicable year.

\* \* \* \* \*

(e)(1) As used in this part, the terms “first-year,” “second-year,” “third-

year,” “fourth-year,” and “fifth-year” refer to a student’s grade level in the student’s eligible program as determined by the institution for all students in the eligible program.

(2) A student’s grade level for purposes of the ACG and National SMART Grant programs must be the same grade level as used for determining annual loan limits under the FFEL and Direct Loan programs (34 CFR parts 682 and 685).

\* \* \* \* \*

■ 13. Section 691.6 is revised to read as follows:

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

(a) While enrolled in an ACG-eligible program, a student is eligible to receive up to one ACG Scheduled Award while enrolled as a first-year student and one ACG Scheduled Award while enrolled as a second-year student.

(b)(1) While enrolled in a National SMART Grant-eligible program, a student is eligible to receive up to one National SMART Grant Scheduled Award while enrolled as a third-year student, one National SMART Grant Scheduled Award while enrolled as a fourth-year student, and, in the case of a National SMART Grant-eligible program with five full years of

coursework, one National SMART Grant Scheduled Award while enrolled as a fifth-year student.

(2)(i) A student’s eligibility to receive up to one National SMART Grant Scheduled Award as a fourth-year student, in the case of a National SMART Grant-eligible program with less than five full years of coursework, extends from the beginning of the student’s fourth year until he or she completes his or her first undergraduate baccalaureate course of study.

(ii) A student’s eligibility to receive up to one National SMART Grant Scheduled Award as a fifth-year student, in the case of a National SMART Grant-eligible program with at least five full years of coursework, extends from the beginning of the student’s fifth year until he or she completes his or her first undergraduate baccalaureate course of study.

(c) A student may not receive more than two ACG Scheduled Awards and three National SMART Grant Scheduled Awards during the student’s undergraduate education in all eligible programs.

(Authority: 20 U.S.C. 1070a–1)

■ 14. Section 691.8 is amended by:

■ A. In paragraph (b)(1), adding the words “certificate or” after the word “or” the first time it appears.

■ B. Adding new paragraphs (c) and (d) to read as follows:

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

\* \* \* \* \*

(c)(1) Notwithstanding the limitation in paragraph (b)(3) of this section, a student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b) of this section produces an enrollment status greater than half-time.

(2) A student who would be a less-than-half-time student based solely on his or her correspondence work or based on a combination of his or her correspondence work and regular coursework is considered a less-than-half-time student and is ineligible for an ACG or a National SMART Grant.

(d) The following chart provides examples of the application of the regulations set forth in this section. It assumes that the institution of higher education defines full-time enrollment as 12 credits per term, making half-time enrollment equal to six credits per term.

Under § 691.8	Number of credit hours regular work	Number of credit hours correspondence	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.
(c) * .....	.....	.....	.....	Less-than-half-time.

\* Any combination of regular and correspondence work that is greater than zero, but less than six hours. A less-than-half-time student would be ineligible for an ACG or a National SMART Grant.

\* \* \* \* \*

■ 15. Section 691.15 is amended by:

■ A. Revising paragraph (a).

■ B. In paragraph (b)(1)(ii), removing the word “academic”.

■ C. Revising paragraphs (b)(1)(ii)(B) and (b)(1)(ii)(C).

■ D. In paragraph (b)(1)(iii), removing the word “academic”.

■ E. In paragraph (b)(1)(iii)(B), removing the words “as determined by the institution,” and removing the words “recognized by the Secretary”.

■ F. Removing paragraph (b)(1)(iii)(C) and redesignating paragraph (b)(1)(iii)(D) as paragraph (b)(1)(iii)(C). In newly redesignated paragraph (b)(1)(iii)(C), removing the word “academic” the first time it appears.

■ G. In paragraph (b)(3)(ii), removing the citation “691.16(d)(2)”, and adding, in its place, the citation “691.16”.

■ H. In paragraph (b)(5)(i), removing the words “recognized by the Secretary”.

■ I. In paragraph (c), introductory text, removing the words “third or fourth academic” and adding, in their place, the words “third, fourth, or fifth”.

■ J. Removing paragraph (c)(2)(ii).

■ K. Redesignating paragraphs (c)(2)(i)(A) and (c)(2)(i)(B) as paragraphs (c)(2)(i) and (c)(2)(ii), respectively.

■ L. In newly redesignated paragraph (c)(2)(i), removing the word “or”.

■ M. In newly redesignated paragraph (c)(2)(ii), removing the word “and” the second time it appears and adding, in its place, the word “or”.

■ N. Adding a new paragraph (c)(2)(iii).

■ O. In paragraph (c)(3), removing the punctuation “;” and adding, in its place, the punctuation “.”.

■ P. Removing paragraphs (c)(4) and (c)(5).

■ Q. Adding a new paragraph (d)(3).

■ R. In paragraph (e), introductory text, adding the words “program in the” before the word “intended”, and removing the words “and major under paragraph (c)(2)(ii) of this section”.

■ S. In paragraph (f)(1)(i), removing the words “for one academic year but less than the credit or clock hours for two academic years” and adding, in their place, the words “to be considered a second-year student”.

■ T. In paragraph (f)(1)(ii), removing the words “for one academic year” and adding, in their place, the words “to be considered a second-year student”.

■ U. In paragraph (f)(1)(ii)(B), removing the word “academic”.

The revisions and additions read as follows:

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

(a) *General.* A student who meets the requirements of 34 CFR part 668, Subpart C, is eligible to receive an ACG or a National SMART Grant if the student is receiving a Federal Pell Grant disbursement in the same award year.

(b) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(B) Has successfully completed, after January 1, 2006, a rigorous secondary school program of study under § 691.16;

(C) Has not been previously enrolled as a regular student in an eligible program of undergraduate education except as part of a secondary school program of study. A transfer student who is a first-year student is not considered to have been previously enrolled; and

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(iii) Is at an institution that offers as an eligible major a qualifying liberal arts curriculum identified under § 691.17(b); and

\* \* \* \* \*

(d) \* \* \*

(3) If the student is enrolled in a qualifying liberal arts curriculum as a major, there is no requirement to declare a major.

\* \* \* \* \*

■ 16. Section 691.16 is revised to read as follows:

**§ 691.16 Rigorous secondary school program of study.**

(a)(1) For each award year commencing with the 2009–2010 award year, the Secretary establishes a deadline for submission of information about secondary school programs of study that are recognized by a designated official, consistent with State law, to prepare students for college and that the designated official deems rigorous.

(2) The designated official may submit information pursuant to paragraph (a)(1) of this section—

(i) For students graduating during the current award year; and

(ii) For students graduating during one or more specified upcoming award years.

(b) In addition to those programs reported to the Secretary as rigorous by

the designated official under paragraph (a) of this section, the following secondary school programs of study are rigorous:

(1) Advanced or honors secondary school programs established by States and in existence for the 2004–2005 school year or later school years.

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

(i) Four years of English.

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

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

(iv) Three years of social studies.

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

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

(4) Any secondary school program for a student who completes at least two courses from an International Baccalaureate Diploma Program sponsored by the International Baccalaureate Organization, Geneva, Switzerland, and receives a score of “4” or higher on the examinations for at least two of those courses.

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

(6) Rigorous secondary school programs of study established by an SEA or, if legally authorized by the State to establish a separate secondary school program of study, an LEA, where such programs were recognized by the Secretary as rigorous after January 1, 2005, but before July 1, 2009.

(Approved by the Office of Management and Budget under control number 1845–0078)

(Authority: 20 U.S.C. 1070a–1)

■ 17. Section 691.17 is amended by:

■ A. In paragraph (a), removing the words “or, as determined under paragraph (b) of this section, critical foreign languages.” and adding, in their place, the words “critical foreign languages as defined in section 103(3) of the HEA, or a qualifying liberal arts curriculum as an eligible major as determined under paragraph (b) of this section.”

■ B. Revising paragraph (b).

■ C. Redesignating paragraphs (d)(1) and (d)(2) as paragraphs (d)(2) and (d)(4), redesignating the introductory text after the heading of paragraph (d) as paragraph (d)(1), and adding a new paragraph (d)(3).

■ D. In paragraph (e), removing the words “under paragraph (a) of this section”.

The revisions and additions read as follows:

**§ 691.17 Determination of eligible majors.**

\* \* \* \* \*

(b) *Qualifying liberal arts curriculum as an eligible major.* The Secretary may designate a baccalaureate-degree liberal arts curriculum as an eligible major if—

(1) The curriculum is the only curriculum at the institution of higher education and was offered prior to February 8, 2006;

(2) A student is not allowed to declare a major in a particular subject area; and

(3) The Secretary determines that the curriculum—

(i) Is at least equal to the requirements for an identified National SMART Grant-eligible major at an institution of higher education that offers a baccalaureate degree in that eligible major; or

(ii) Requires the student to undertake a rigorous course of study in mathematics, biology, chemistry, and physics that consists of at least four years of study in mathematics and three years of study in the sciences, with a laboratory component in each of those years.

\* \* \* \* \*

(d) \* \* \*

(3) In addition to the information in paragraph (d)(2) of this section, requests for designation of a liberal arts curriculum as an eligible major must include the information demonstrating that the liberal arts curriculum complies with the requirements described in paragraph (b) of this section.

\* \* \* \* \*

■ 18. Section 691.62 is amended by:

■ A. In paragraph (b), removing the word “academic” each time it appears.

■ B. In paragraph (b)(2), removing the words “third and fourth academic” and adding, in their place, the words “third, fourth, and fifth”.

■ C. Redesignating paragraph (c) as paragraph (f).

■ D. Adding new paragraphs (c), (d), and (e).

■ E. In newly redesignated paragraph (f), removing the words “for an academic year”.

The additions read as follows:

**§ 691.62 Calculation of a grant.**

\* \* \* \*

(c) The ACG first-year annual award for—

(1) A full-time student is the lesser of \$750 or a reduced ACG Scheduled Award as determined under paragraph (a)(2) of this section;

(2) A three-quarter-time student is the lesser of \$562.50 or 75 percent of a reduced ACG Scheduled Award; and

(3) A half-time student is the lesser of \$375 or 50 percent of a reduced ACG Scheduled Award.

(d) The ACG second-year annual award for—

(1) A full-time student is the lesser of \$1,300 or a reduced ACG Scheduled Award as determined under paragraph (a)(2) of this section;

(2) A three-quarter-time student is the lesser of \$975 or 75 percent of a reduced ACG Scheduled Award; and

(3) A half-time student is the lesser of \$650 or 50 percent of a reduced ACG Scheduled Award.

(e) The National SMART Grant annual award for—

(1) A full-time student is the lesser of \$4,000 or a reduced National SMART Grant Scheduled Award as determined under paragraph (a)(2) of this section;

(2) A three-quarter-time student is the lesser of \$3,000 or 75 percent of a reduced National SMART Grant Scheduled Award; and

(3) A half-time student is the lesser of \$2,000 or 50 percent of a reduced National SMART Grant Scheduled Award.

\* \* \* \*

■ 19. Section 691.63 is amended by:

■ A. In paragraph (b)(1), removing the word “Confirming” and adding, in its place, the word “Determining”, and removing the word “full-time”.

■ B. In paragraph (b)(2), removing the word “Determining” and adding, in its place, the words “Based upon that enrollment status, determining”, and removing the words “Scheduled Award; and” and adding, in their place, the words “annual award under § 691.62; and”.

■ C. In paragraph (b)(3)(ii), removing the words “Scheduled Award” and adding, in their place, the words “annual award”.

■ D. In paragraph (b)(3)(ii)(A), removing the words “Scheduled Award” and

adding, in their place, the words “annual award”.

■ E. In paragraph (c)(1), removing the word “Confirming” and adding, in its place, the word “Determining”; and removing the word “full-time”.

■ F. In paragraph (c)(2), removing the word “Determining” and adding, in its place, the words “Based upon that enrollment status, determining”, and removing the words “Scheduled Award;” and adding, in their place, the words “annual award under § 691.62;”.

■ G. In paragraph (c)(3), removing the words “Scheduled Award” and adding, in their place, the words “annual award”, and adding in the denominator of each equation the words “of instructional time” immediately after the word “weeks”.

■ H. In paragraph (c)(4)(ii), removing the words “Scheduled Award” and adding, in their place, the words “annual award” each time they appear.

■ I. Removing paragraph (d)(2).

■ J. Redesignating paragraphs (d)(1)(i) and (d)(1)(ii) as paragraphs (d)(1) and (d)(2), respectively.

■ K. Revising newly redesignated paragraphs (d)(1) and (d)(2).

■ L. In paragraph (d)(3), removing the words “Scheduled Award” and adding, in their place, the words “annual award”.

■ M. In paragraph (e)(1), removing the word “full-time” and adding, in its place, the word “half-time”.

■ N. In paragraph (f), removing the words “Scheduled Award” and adding, in their place, the words “annual award” both times they appear, removing the word “paragraphs” the first time it appears and adding, in its place, the word “paragraph”, and removing the words “or (e)” both times they appear.

■ O. Revising paragraph (h).

The revisions read as follows:

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

\* \* \* \*

(d) \* \* \*

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her ACG or National SMART Grant annual award under § 691.62; and

\* \* \* \*

(h) *Payment period and grade level progression.* A student may not progress to the next year during a payment period. The student’s payment for the payment period—

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

(2) Is calculated based on the student’s credit or clock hours for the payment period, and weeks of instructional time in the payment period.

\* \* \* \*

**§ 691.64 [Amended]**

■ 20. Section 691.64(b) is amended by removing the words “an academic” and adding, in their place, the word “a”.

**§ 691.65 [Amended]**

■ 21. Section 691.65 is amended by:

■ A. In the section heading, removing the words “: Attendance at more than one institution during an academic year”.

■ B. In paragraph (c), removing the word “academic” the first time it appears; and removing the words “that academic year” and adding, in their place, the words “the student’s year at the second institution”.

■ C. In paragraph (d), removing the word “academic”.

■ D. In paragraph (f), removing the words “an academic” and adding, in their place, the word “a”.

\* \* \* \*

■ 22. Section 691.66 is added to read as follows:

**§ 691.66 Correspondence study.**

(a) An institution calculates the ACG or National SMART Grant for a payment period for a student in a program of study offered by correspondence courses without terms, but not including any residential component, by—

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

(2) Determining the student’s half-time annual award determined under § 691.62; and

(3) Multiplying the student’s half-time annual award by the lesser of—

(i)

$$\frac{\text{The number of credit hours in the payment period}}{\text{The number of credit hours in the program's academic year}}$$



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

(b) For purposes of paragraph (a) of this section—

(1) The institution must make the first payment to a student for an academic year, as calculated under paragraph (a) of this section, after the student submits 25 percent of the lessons or otherwise completes 25 percent of the work scheduled for the program or the academic year, whichever occurs last; and

(2) The institution must make the second payment to a student for an academic year, as calculated under paragraph (a) of this section, after the student submits 75 percent of the lessons or otherwise completes 75 percent of the work scheduled for the program or the academic year, whichever occurs last.

(c) In a program of correspondence study offered by correspondence courses using terms but not including any residential component—

(1) The institution must prepare a written schedule for submission of lessons that reflects a workload of at least 30 hours of preparation per semester hour or 20 hours of preparation per quarter hour during the term;

(2)(i) If the student is enrolled in at least 6 credit hours that commence and are completed in that term, the student's half-time annual award determined under § 691.62 is used to calculate the payment for the payment period; or

(ii) If the student is enrolled in less than 6 credit hours that commence and are completed in that term, the student is not eligible for an ACG and National SMART Grant;

(3) A payment for a payment period is calculated using the formula in § 691.63(d) except that paragraphs (c)(1) and (c)(2) of this section are used in lieu of § 691.63(d)(1) and (2), respectively; and

(4) The institution must make the payment to a student for a payment period after that student completes 50 percent of the lessons or otherwise completes 50 percent of the work scheduled for the term, whichever occurs last.

(d) Payments for periods of residential training must be calculated under § 691.63(d) if the residential training is offered using terms and credit hours or § 691.63(e) if the residential training is offered using credit hours without terms.

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

#### § 691.75 [Amended]

■ 23. Section 691.75 is amended by:

■ A. In paragraph (a)(3), removing the words “a full-time” and adding, in their place, the words “at least a half-time”.

■ B. In paragraph (b)(2), removing the word “academic”, and removing the citation “691.15(b)(1)(iii)(D)”, and adding, in its place, the citation “691.15(b)(1)(iii)(C)”.

■ C. In paragraph (c), removing the citation “691.15(b)(1)(iii)(D)”, and adding, in its place, the citation “691.15(b)(1)(iii)(C)”.

■ D. In paragraph (d)(1)(i), removing the word “academic”, and removing the citation “691.15(b)(1)(iii)(D)”, and adding, in its place, the citation “691.15(b)(1)(iii)(C)”.

■ 24. Section 691.76 is amended by revising paragraph (b) to read as follows:

#### § 691.76 Frequency of payment.

\* \* \* \* \*

(b) The institution may pay funds in one lump sum for all the prior payment periods for which the student was eligible under § 691.15 within the award year. The student's enrollment status must be determined according to work already completed.

\* \* \* \* \*

■ 25. Section 691.80 is amended by revising paragraph (b) to read as follows:

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

\* \* \* \* \*

(b) *Change in enrollment status.* (1) If the student's enrollment status changes from one payment period to another within the same award year, the institution must recalculate the student's award for the new payment period taking into account any changes in the cost of attendance.

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

(ii)(A) If a student's projected enrollment status changes during a payment period before the student begins attendance in all of his or her classes for that payment period, the

institution must recalculate the student's enrollment status to reflect only those classes for which the student actually began attendance.

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

\* \* \* \* \*

[FR Doc. E9-10094 Filed 4-30-09; 8:45 am]

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 38

RIN 2900-AN29

#### Headstones and Markers

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is amending existing regulations regarding the authority to provide Government-furnished memorial headstones and markers. Memorial headstones or markers are provided in certain circumstances to memorialize eligible veterans and certain family members whose remains are not available for interment. Pursuant to Sec. 810 of Public Law 110-389, the Veterans' Benefits Improvement Act of 2008, eligibility for a memorial headstone or marker for placement in a national or State veterans cemetery has been extended to a veteran's surviving spouse who had a subsequent remarriage and whose remains are unavailable for interment. Previously, a memorial headstone or marker could be provided for a veteran's surviving spouse who had a subsequent remarriage only if that remarriage was terminated by death or divorce. This final rule is necessary to incorporate a statutory amendment into VA regulations.

**DATES:** *Effective Date:* May 1, 2009.

*Applicability Date:* The amendment to 38 CFR 38.630 applies to eligible surviving spouse deaths occurring on or after October 10, 2008.

**FOR FURTHER INFORMATION CONTACT:** Joe Sturm, Legislative and Regulatory Division, National Cemetery