DEPARTMENT OF EDUCATION

34 CFR Parts 600, 667, 668, and 674

Institutional Eligibility Under the Higher Education Act of 1965, as Amended; State Postsecondary Review Program; Student Assistance General Provisions; Federal Perkins Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the following regulatory provisions to correct minor technical errors and to conform with self-implementing statutory provisions: the institutional eligibility regulations contained in Part 600, Subparts A and C; the allotment formula and funding procedures regulations contained in Part 667, Subpart B of the State Postsecondary Review Program regulations; the student eligibility regulations contained in Part 668, Subpart A of the Student Assistance General Provisions regulations; the standards for participation regulations contained in Part 668, Subpart B; the student consumer information regulations contained in Part 668, Subpart D; the verification regulations contained in Part 668, Subpart E; the fine, limitation, suspension, and termination proceedings regulations contained in Part 668, Subpart G; the cash management regulations contained in Part 668, Subpart K; and the Federal Perkins Loan Program regulations contained in Part 674, Subpart A.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Rachael Sternberg, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3053, Washington, D.C. 20202. Telephone: (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following sections are amended for clarification and consistency throughout the title IV, HEA programs, and to correct technical errors and omissions in the text of the final regulations:

Section 600.7 is amended to address an omission from current regulations addressing the effect of a bankruptcy filing on the institution's eligibility. Current regulations address the effect of filing for relief in bankruptcy on institutional eligibility, but omit explanation of the effect of an involuntary petition filed against the institution or its affiliates. In filing an involuntary petition, creditors seek a judicial ruling that an entity is in such financial straits that it must be treated, for the benefit of the creditors, like an entity that needs and voluntarily seeks protection in bankruptcy. Section 600.7 is therefore amended to clarify that an institution is subject to the statutory exclusion from eligibility only after the institution or its affiliate voluntarily files for relief in bankruptcy or there has been an order for relief entered as a result of an involuntary petition for relief against the institution or its affiliate.

Section 600.30(a) describes the events that an institution must report to the Secretary; as recently published, paragraph (a)(7) would have the institution report the ''exercise'' of substantial control by an individual or entity that previously lacked such control. This appeared to change prior requirements that the institution report the acquisition of substantial control by such an individual, rather than the first exercise of such control. This change was not intentional, and the provision is revised to continue the requirement that the institution report the acquisition of substantial control by one who did not have that power.

Section 600.31 is revised to correct inadvertent errors in the percentages of ownership interest that would be deemed to constitute control of a closely-held corporation; paragraph (c)(1)(ii) of this section describes a 50% interest as sufficient to give control over such a corporation; this should read ''greater than'' a 50% interest. Similarly, current regulations refer to a change ''of'' ownership and control, yet many of the changes addressed in this section are really changes within the current ownership of an institution, and section 498 of the HEA itself refers to changes ''in'' ownership and control. The regulatory references are revised here to refer to changes ''in'' ownership and control, in order to more accurately reflect this fact.

Section 668.7 is also amended as a result of recent changes set forth in the Bankruptcy Reform Act of 1994 (Pub. L. 103–394). The Bankruptcy Reform Act of 1994 prohibits a school, lender, guarantor, or the Department of Education from denying an applicant eligibility for title IV, HEA program assistance on the grounds that the applicant failed to repay a debt that was discharged or dischargeable in bankruptcy. This amendment took effect on October 22, 1994, the date of enactment of the law, and superseded those provisions of § 668.7(f) that provided that a borrower was considered to remain in default on a title IV, HEA program loan discharged in bankruptcy and therefore was ineligible for new loan assistance unless the borrower made satisfactory arrangements to repay the debt. Section 668.7(f) is therefore amended here to conform with existing law: a student whose loan or grant overpayment is discharged or determined to be dischargeable qualifies for new title IV, HEA grant, loan, and work study assistance without regard to the prior default on that loan or unpaid status on that grant overpayment.

Bankruptcy law establishes a number of exceptions to discharge that can apply to student loans and grant overpayments, but the most pertinent of these, found in 11 U.S.C. 523(a)(8), addresses the dischargeability of student aid debts in particular. The legislative history of 11 U.S.C. 523(a)(8) and cases interpreting that provision make clear that this provision of bankruptcy law, which is unaffected by the new amendments, makes title IV, HEA student aid debts presumptively non-dischargeable in bankruptcy until the borrower files a complaint in the bankruptcy proceeding and obtains a court decision that the debt qualifies for discharge under either of the two exceptions in 11 U.S.C. 523(a)(8). An applicant for student aid who claims that a defaulted prior student loan or an unpaid grant overpayment obligation is dischargeable or was discharged in bankruptcy must provide the institution with the appropriate documentation to prove that claim.

To reduce unnecessary burden on potential title IV, HEA applicants, the regulation as revised permits the holder of the debt to accept what it deems to be satisfactory proof that the debt would qualify for a determination of dischargeability under 11 U.S.C. 523(a)(8)(A) based on the fact that the debt first became due for the requisite period—currently seven years—prior to the filing of the petition in bankruptcy. The holder of the loan or grant obligation can typically determine the duration of the repayment with reliability from its own records. If the holder of the loan or grant obligation is satisfied that these records establish that the debt was in repayment for the requisite period, there is no need to require the applicant to secure a judicial determination of that fact. It has been a common practice to accept this showing as sufficient to consider a title IV, HEA program debt to be dischargeable, and this regulation reflects and incorporates that practice. However, where the duration of the repayment period is in