

student's immigration status remains valid.

Changes: Section 668.133(b) is revised to delete the provision requiring a student to present evidence of immigration status in years subsequent to an award year in which secondary confirmation with INS was used to confirm the student's eligible noncitizen status.

Subpart K—Cash Management

Section 668.163 Requesting Funds

Comments: None. Proposed rulemaking waived under 5 U.S.C. 553 (b)(A).

Discussion: The Secretary amends § 668.163, which describes the procedures under which institutions request and receive title IV, HEA program funds. The amendment requires an institution to include in any request for cash (1) the Catalog of Federal Domestic Assistance (CFDA) number identifying the source of program funds, and (2) the amount of funds for each CFDA number included in that request. Under current practice, an institution reports its expenditure of title IV, HEA funds, by program, on a quarterly basis. However, to monitor the expenditure of Federal appropriations, the Department of the Treasury and the Office of Management and Budget require the Department of Education to report on a monthly basis the amount and source of program funds provided to participating institutions. Obviously, the Secretary cannot provide to Treasury and OMB an accurate and timely report of the Department's use of appropriated funds, unless institutions identify the title IV, HEA funds by program and amount when those funds are requested.

The Secretary will use the information provided by this new report format not only to give more timely reports of amounts provided to institutions, but will consider whether this information can be used to reduce the number of expenditure reports institutions would otherwise be required to make. Moreover, this minor procedural change poses almost no additional burden on institutions.

In accordance with this subpart and the procedures contained in the *Recipients Guide for the Department of Education Payment Management System*, under the advance payment method, an institution must first determine its immediate disbursement needs before submitting a request for cash; under the reimbursement payment method, an institution requests funds for specific students whom the institution demonstrates to the satisfaction of the Secretary are eligible

to receive the requested amount of program funds. In either case, the institution will know both the program for which it seeks funds and the amount needed to make disbursements to students. This change merely requires the institution to disclose that information on a standardized form.

Changes: Section 668.163(a)(2) and (3) are amended to require that in any request for cash, an institution must identify the title IV, HEA program under which the institution requests funds by its appropriate Catalog of Federal Domestic Assistance (CFDA) number and the total amount of program funds for each CFDA number included in the request.

Section 668.164 Maintaining Funds Comments Regarding UCC-1 Filings

Comments: Most of the commenters agreed with the proposal to eliminate the UCC-1 filing requirement for institutions that are backed by the full faith and credit of a State, and for bank accounts that do not contain the phrase "Federal funds" in their name.

One commenter writing on behalf of business officers opined that the term "backed by the full faith and credit of the State" is a poor designator of institutional control, estimating that about one-half of all public institutions would not meet this requirement due to the diversity of governing arrangements for State-supported institutions. According to the commenter, these State-supported institutions pose no greater risk to Federal funds than other public institutions that technically satisfy the proposed requirement. One other commenter echoed these sentiments, adding that a UCC-1 filing is not appropriate for government agencies. Another commenter expressed concern that many State auditors and offices of general counsel are interpreting the phrase "backed by the full faith and credit of the State" quite literally and concluding that it does not apply to State schools. All of these commenters recommend that the Secretary modify the proposed requirement to exempt all public institutions from having to file UCC-1 statements.

One commenter writing on behalf of business officers stated that a UCC-1 filing is unnecessary for any institution because institutions are otherwise required to provide written notification to their bank of the accounts that contain Federal funds.

Discussion: The commenters have convinced the Secretary that for the purpose of protecting Federal funds, a UCC-1 filing is not necessary for public

institutions, regardless of whether these institutions are backed by the full faith and credit of the State.

The Secretary disagrees with the commenter that written notification to the bank in which the account is maintained provides sufficient protection of Federal funds. The abuse cited by the Secretary in the final regulations for the cash management regulations (see, 59 FR 61724), that certain institutions have used or misrepresented Federal funds to obtain a loan or secure credit, may continue to occur where an institution seeks to obtain a loan or credit from a bank other than the bank to which it provided written notification. It is this situation where a UCC-1 filing provides an additional safeguard because it serves to alert other banks or potential creditors that the institution's account contains Federal funds.

Changes: Section 668.164(a)(2) is revised to exempt all public institutions from filing a UCC-1 statement.

Section 668.165 Disbursing Funds

Comments Regarding Electronic Notification of Student and Parent Borrowers

Comments: Most commenters supported the proposal under which an institution could notify a student or parent borrower that his or her account was credited with Direct Loan or FFEL Program funds electronically or through the use of telecommunications devices. Two commenters contended that the "return receipt" requirement for documenting notifications transmitted via electronic mail (e-mail), as discussed in the preamble to the proposed rules, departs from and exceeds the documentation requirements for written notifications delivered by regular mail. The commenters saw no reason why a return receipt should be required for e-mail transmissions when no corresponding proof of delivery is required for notifications sent by regular mail.

For the following reasons, one commenter writing on behalf of a student legal services organization strongly urged the Secretary to delete the proposed electronic notification provisions. First, the commenter contended that electronic notification would allow schools short on time or resources to cut corners on notice to students, thereby diminishing a borrower's rights. At worst, it would open the door to abuse by unscrupulous schools or individuals who want to minimize borrower knowledge about his or her control over loan funds. Given the increasing use of electronic funds