transfers (EFT), the commenter contended that students have lost their key means of control over loan proceeds, *i.e.*, their power to refuse to endorse the loan check. Amplifying this point, the commenter asserted that when the EFT process is used, timely, clear notice that the loan proceeds have been credited to the student's account is the equivalent of requesting a check endorsement—it triggers the student's ability to refuse the loan in whole or part. Thus, the commenter concluded that adequate, verifiable notice of receipt of loan proceeds has serious legal and financial implications for borrowers. Moreover, the commenter implied that adequate and verifiable notice is notably absent in the proposed rules, despite the preamble explanation that the Secretary expects schools to ''have a means of documenting that the student or parent received this information.'' According to the commenter, the reality is that schools will use, or purport to use, telephone or in-person conversations as the means of notification and document that notification with notes to a borrower's file. Armed with only notes of such alleged contacts, the Secretary would be hard pressed to prove violations of the disclosure rule. The commenter concluded by saying the minimal requirement that schools notify a student in witting that his or her account has been credited—implicit notice that the borrower's legal liability for loan has begun—should not be abandoned.

Discussion: The Secretary disagrees that requiring a ''return receipt'' for e-mail transmissions expands any documentation requirements. In fact, the Secretary believes the opposite is true.

As a general rule, in the absence of any documentation specified by the Secretary to satisfy a particular requirement, an institution must be able to document that it satisfied that requirement. Thus, the Secretary believes that the burden and cost of documenting that a written notification was mailed to a student far exceed the burden and cost of a receipted e-mail notification.

With regard to whether e-mail should be subject to a return receipt requirement because there is no corresponding proof of delivery for notices sent by regular mail, the Secretary notes that the courts have developed a presumption that mail deposited with the U.S. Postal Service is actually received (*See, Cook* v. *Providence Hospital,* 820 F.2d 176,n.3 (6th Cir. 1987); and *McPartlin* v. *Commissioner,* 653 F.2d 1185, 1191 (7th Cir. 1981)). The same presumption does not apply to e-mail messages.

In response to the comment by student legal services, the Secretary disagrees that the proposed change minimizes borrower rights. Rather, in recognition of the less burdensome and more cost effective methods afforded by electronic technologies, the Secretary sought only to expand the means by which an institution may notify a student or parent. That the notice may now be provided by additional, equivalent means has no bearing on borrower rights.

The purpose of the notice, whether that notice is provided in writing or electronically, is to remind students of their loan obligation and to give students the opportunity to replace credited loan proceeds with other funds thereby reducing their loan when an institution return the loan proceeds. The Secretary wishes to make clear that an institution cannot be compelled to return loan proceeds that were properly disbursed or delivered to the student solely at the request of a student.

On the other hand, the Secretary agrees that telephonic and in-person conversations are not adequate and verifiable methods of providing notice.

The Secretary did not propose that this requirement apply to Federal Perkins Loan Program funds because under that program the student had to sign for each loan advance. However, since the Secretary has decided to eliminate this Federal Perkins Loan Program requirement, this section is amended to provide that an institution must also notify a borrower that his or her account was credited with Federal Perkins loan funds.

Changes: Section 668.165(b)(1) is amended to clarify that an electronic notice must be the equivalent of a written notice by incorporating the NPRM preamble statement that if an institution notifies a student or parent electronically, it must request a return receipt and maintain a record of that receipt. In addition, the phrase ''by other means'' is removed to preclude the use of telephone or in-person conversations as the sole means by which an institution may notify a student. Also, this section is revised to include notification to Federal Perkins Loan Program borrowers.

Comments Regarding Prior-Year Charges

Comments: Most of the commenters supported the proposal allowing an institution, under limited circumstances and with a student's permission, to use a student's current year title IV, HEA program funds to pay for minor prior year charges. A few of these commenters, mostly business officers, stated that the current prohibition on the payment of prior-year charges has created difficulties for many students and institutions, resulting in increased transaction costs. These commenters believed that the proposed change will allow for smoother processing of student accounts and expedite the registration process. One commenter, writing on behalf of a higher education association, suggested that a student be asked to approve a specific amount of funds that an institution could use to pay for prior-year charges when the institution obtains the student's permission. The commenter believed that this would protect the student's need to have sufficient current year funds to pay for living and other necessary expenses. Another commenter suggested that after this provision is tested, some room for refinement may become evident, such as whether it is necessary to actually credit funds for current year charges before identifying that funds will be left over to pay prior year balances. Still another commenter questioned the role and authority of an aid officer in determining whether the payment of ''minor prior-year charges'' would hamper a student's ability to satisfy current year obligations, particularly when the aid officer and the student are not in agreement as to the amount of funds needed for current obligations.

While the majority of commenters appreciated that the Secretary did not specify a dollar amount for minor prior-year charges, a few commenters lamented this lack of specificity. One of these commenters argued that the small dollar amount involved in most cases where this provision would apply does not warrant the administrative burden associated with obtaining a student's permission. Instead, the commenter suggested that the Secretary define minor prior-year charges as falling between $250 to $500 and not require written permission from the student.

Two commenters argued that the cost and burden imposed by this proposal on students and institutions is unwarranted since any outstanding balance must be paid before a student is allowed to enroll or continue at an institution. These commenters suggested that the Secretary either simplify the process under which prior-year charges may be paid or, notwithstanding the concerns expressed by the Secretary in the NPRM, allow these charges to be paid without restriction.

One commenter writing on behalf of a student legal services organization contended that schools should not be allowed to control student credit