balances (particularly if those balances contain loan proceeds) in this manner even with the student's permission. The commenter's contention was based on the following reasons.

The commenter's first reason was based on the Secretary's failure to specify a dollar amount of prior-year charges. As a result, the commenter believed that fly-by-night schools, whose motivation is to maximize profits rather than maintain credibility with the Department, would take advantage of this provision. The commenter indicated that while a university might define a "minor charge" as up to \$10 in library fines, a high-cost trade school could define it as several hundred dollars of overpriced vocational equipment. The commenter warned that the Secretary will be left to assess the reasonableness of school practices in program reviews, i.e., after the fact and after the student's loan proceeds have been used.

The commenter's second reason was that prior-year charges may have been unpaid because they were contested by the student. The commenter saw no valid reason to allow the school to determine the validity of the charges and then use loan proceeds to cover them. The commenter asserted that the fact that the borrower has to give permission for these sorts of charges provides little comfort since the authorization will probably be a generic, blanket authorization given at the beginning of the term with a sheaf of other forms before specific charges are ever incurred.

Further, the commenter noted that in order to accommodate this change in the regulation, § 668.165(b)(1) has also been amended to delete the current generic bar on applying title IV, HEA program funds "to any charges assessed the student in a prior award year or period of enrollment." Thus, it appeared to the commenter that the proposed rules open the door to using current year funds to pay for prior year tuition, room, board, or other miscellaneous charges. For these reasons, the commenter urged the Secretary to leave the regulation as currently written.

Discussion: The Secretary offers the following guidance with respect to the comments dealing with student authorizations. An authorization must contain an explanation of the provisions regarding the activities that an institution seeks to perform on behalf of a student. This does not mean that the authorization must detail every aspect pertaining to an activity. On the other hand, the Secretary does not consider acceptable a blanket authorization

which only identifies the activities to be performed.

Regarding the comment that an institution must first credit a student's account with title IV, HEA program funds before the institution may use any balance that remains to pay for prioryear charges, the Secretary notes that while this is technically correct, it has broader implications. The proposed language "provided that a student has or will have a title IV, HEA program credit balance" was intended to extend the benefits of this provision to institutions that draw down funds after a student starts classes. These institutions would have the assurance that agreed-to prioryear charges will be paid.

The Secretary has carefully considered the arguments made by student legal services asking the Secretary to retract the proposed prioryear charges provisions. The Secretary acknowledges that while it may be possible for an unscrupulous school to benefit from an abuse of these provisions, the Secretary notes that prior-year balances occur mainly at established two- and four-year schoolssuch schools can not be characterized as

"fly-by-night."

In response to comment that the current prohibition on the payment of prior-year charges has now created problems for students and institutions, the Secretary reminds institutions that title IV, HEA program funds have never been permitted to be used to pay prioryear charges. However, it appears from these comments, and from comments previously received on the cash management regulations, that some institutions were either unaware of or ignored this prohibition. The Secretary does not wish to admonish institutions that otherwise administer the title IV, HEA programs properly, but believes that had these institutions structured student billing and accounting systems that identified and prevented the payment of prior-year charges with current year funds, they would not now be experiencing difficulties brought about by the policy change allowing for the payment of these charges under limited circumstances.

Moreover, the Secretary cannot in these regulations make the changes that would be necessary to allow institutions to use a student's funds without restriction. To do so would require changes in the statutory provisions that limit, without permission, the use of a student's title IV, HEA program funds to specified allowable charges and in the Secretary's longstanding interpretation of the precepts underlying need analysis and award determinations. The proposal to allow for the payment of prior-year

charges under limited circumstances is consistent with current law and, as a policy matter, was formulated merely as an administrative convenience to students and institutions in recognition of a problem that the Secretary believes should not occur with regularity or involve large sums of money. The Secretary did not intend to take sides in disputes between students and institutions regarding the legitimacy of prior-year charges. In putting forth this proposal, the Secretary was mindful of the need to protect student rights while at the same time meeting the administrative needs of institutions.

To this end, the Secretary will keep the general prohibition against using a student's current year title IV, HEA program funds to pay for prior-year charges. The Secretary will allow for payment of minor prior-year charges as proposed, but with one modification. The modification addresses the comments regarding whether a student may authorize in advance a specific amount of funds to pay for prior-year charges and whether the Secretary will establish a dollar amount for these charges. The Secretary believes that it would be difficult to determine in advance what the specific amount should be, and whether the payment of that amount in a future period would create financial problems for a student. Such a determination should be made in view of the student's circumstances when the situation arises. However, an institution may consider prior-year charges that do not exceed \$100 to be minor without making this determination and may obtain a student's authorization in advance to pay for these charges should they occur.

Changes: Section 668.165(b)(1) is revised to reinstate the general prohibition that a student's current year title IV, HEA program funds may not be used to pay for prior-year charges. This section is also amended by removing proposed paragraph (b)(3)(iv)(C) and adding a new paragraph (e) that provides that an institution may use a student's current year funds to pay for minor prior-year charges if the student's current year institutional charges are satisfied and the institution obtains the student's permission. In addition, an institution may consider prior-year charges that do not exceed \$100 to be minor. To pay prior-year charges for amounts over \$100, an institution must determine if that payment would prevent the student from paying for his or her educational expenses.