

GEN-90-33

90-G-184

90-L-136

Questions & Answers - Changes to Higher Education Act of 1965, as Amended

United States Department of Education

Washington, D.C. 20201

September 1990

ASSISTANT SECRETARY
FOR POSTSECONDARY EDUCATION
OFFICE OF STUDENT FINANCIAL ASSISTANCE

SUMMARY: This letter provides additional information concerning the changes made by Pub. L. 101-164, Pub. L. 101-166 and Pub. L. 101-239.

Dear Colleague:

Enclosed are a number of Questions and Answers concerning changes to the Higher Education Act of 1965, as amended (the Act), that were made by Pub. L. 101-164 (Department of Transportation Appropriations Act, 1990), Pub. L. 101-166 (the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1990) and Pub. L. 101-239 (the Omnibus Budget Reconciliation Act of 1989). Initial guidance on the general aspects of these statutes was provided in Dear Colleague letters GEN-89-58 and 90-S-61.

If you have further questions, please contact the Regional Office or the guarantee agency serving your State.

Sincerely,

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Acting Deputy Assistant Secretary
for Student Financial Assistance

Enclosure

Questions and Answers - Pub. L. 101-164, Pub. L. 101-166 and Pub. L. 101-239

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I. Changes Resulting From Pub. L. 101-164 and Pub. L. 101-166

A. Pub. L. 101-164: Pell Grant - Special Conditions.

Q-1. A financial aid administrator's authority under section 479A of the Higher Education Act of 1965 (the Act), to make individual adjustments based on adequate documentation, to a student's expected family contribution under the Pell Grant program was rescinded. Instead, Pub. L. 101-164 provides that any student whose family circumstances meet a special condition criterion shall have his or her Pell Grant Index (PGI) calculated using the expected income for the 1990 calendar year instead of by the standard procedure of using base year income for the 1989 calendar year. What are the special conditions for the 1990-91 award year, and how will students apply?

A-1. The special conditions for the 1990-91 award year are the same as those for the 1989-90 award year. The application procedure is also the same as the one for the 1989-90 award year (*i.e.*, students will use the Student Aid Report (SAR) or the Correction Application for Federal Student Aid [AFSA] to apply.) The special conditions regulations for the 1990-91 award year were published in the *Federal Register* on April 5, 1990.

B. Pub. L. 101-166: Pell Grant - Less than half-time Students.

Q-2. For purposes of the 1989-90 award year, Dear Colleague Letter P-89-31 (paragraph 3) states that a student who is attending on a less than half-time basis on or after January 1, 1990, may not receive a Pell Grant "unless the student received a Pell Grant for a period of enrollment beginning before January 1, 1990" (no enrollment status specified). However, Dear Colleague Letter GEN-89-58 (page 2, paragraph 2) states that a Pell Grant may be received by the student "only if he or she received a Pell Grant for a payment period beginning before January 1, 1990, based on an enrollment status of less than half-time." Which is correct?

A-2. The correct guidance is that contained in Dear Colleague Letter GEN-89-58. Dear Colleague Letter P-89-31 simply repeats the statutory language. Further review of the statute resulted in the clarification contained in GEN-89-58.

Q-3. For the 1990-91 award year, a Pell Grant cannot be awarded to any student who is attending on a less than half-time basis. For the 1989-90 award year, a student who is attending on a less than half-time basis on or after January 1, 1990 may receive a Pell Grant in accordance with §411(b)(6)(B) of the Act, but only if he or she received a Pell Grant for a payment period beginning before January 1, 1990 based on an enrollment status of less than half-time. What is meant by "...received a Pell Grant for a payment period beginning before January 1, 1990...?"

A-3. "Received" refers to the disbursement of the Pell Grant award. However, the timing of the disbursement is not the key factor. The key factor is that the payment period for which the disbursement is made must begin before January 1, 1990. Thus, a delay in the disbursement of an award for such a payment period (as a result of the verification process, for example) would not affect a less than half-time student's eligibility to receive a Pell Grant. Furthermore, for purposes of this provision, if the student received a disbursement for such a payment period, and subsequently was determined to have been ineligible for that disbursement, the student is considered not to have received the disbursement and would not be eligible to receive a Pell Grant for less-than-half-time enrollment after January 1, 1990.

II. Changes Resulting From Pub. L. 101-239

A. Financial Aid Administrator Discretion.

Q-4. Does this provision, which prohibits systemic changes in the exercise of professional judgment, also rescind ED's policy guidance in Dear Colleague Letter GEN-89-49 (September, 1989) regarding the financial aid administrator's (FAA) authority in the development of a "dependent care" allowance? Is it still permissible for the FAA to include the costs of food and shelter for dependents in the "dependent care" allowance in situations where the family's available income is less than the standard maintenance allowance?

A-4. The change in the law has not rescinded the FAA's authority in this area.

B. GED Program Required for Ability-to-Benefit Students.

Q-5. Section 487(a)(11) of the Act states that an institution that admits students on the basis of their ability to benefit from the education or training provided by the institution (as determined under §484(d) of the Act) must make available to these students a program that is proven successful in assisting students in obtaining a certificate of high school equivalency (*i.e.*, a GED). Does the requirement that institutions make a GED program available apply only to schools participating in the SLS program?

A-5. The requirement applies to institutions which participate in any Title IV program other than the SSIG and Byrd Scholarship programs, and admit ability-to-benefit students.

Q-6. Must an institution document the availability of a GED program that is proven successful in each student's file?

A-6. No. A policy statement indicating the availability of such a program is sufficient. The institution must provide information regarding the availability of the program to affected students in accordance with 34 CFR 668.44(a)(4)(i) governing student consumer information. Some examples of recommended formats for providing this information include admissions and student orientation materials.

Q-7. What is meant by the term "program that is proven successful" as used in §487(a)(11) of the Act?

A-7. The institution must demonstrate satisfactorily, upon the request of the Secretary, that the GED program is proven successful. A program that is proven successful includes but is not limited to GED programs conducted by State and local secondary school authorities and other programs for which the school has documentation that statistically demonstrates the success of its students in the program.

Q-8. Please provide a clear definition of the term "make available" to students as used in §487(a)(11) of the Act. Does this imply that an institution must pay for the GED program? Does it mean that the program must be on campus or in the same city, county, or State as the institution?

A-8. The institution is not required to offer the GED program itself, nor is it required to pay the costs of the program. Students may be charged for enrollment in such a program. However, the program must be offered at a place that is convenient for the institution's students, and the institution must take reasonable steps to ensure that its students have genuine access to the program, such as coordinating the timing of its program offerings with that of the GED program and providing the names and phone numbers of program representatives.

Q-9. What are the consequences to an institution's or student's eligibility if there is no proven successful GED program available?

A-9. The availability of the GED program is an institutional compliance matter rather than a student eligibility issue. Therefore, there are no immediate adverse consequences to a student's eligibility. The consequences to an institution are the same as those for any violation of the Title IV

regulations or statutes. That is, the institution may be denied eligibility to participate in the Title IV programs or may be subject to a fine or the limitation, suspension, or termination of its participation in the Title IV programs.

Q-10. Must an institution document a student's receipt of a high school diploma or GED or may it rely on a student's certification that he or she has a high school diploma or GED?

A-10. For purposes of Title IV eligibility, the institution may rely upon the student's certification unless it has conflicting information in its files. However, the institution must ensure that it retains in its files a copy of the certification by which the student claimed to have a high school diploma or GED. An institution may require that the student provide supporting documentation. The Department strongly encourages, but does not require, an institution to collect such documentation.

Q-11. May ability-to-benefit students use Pell Grants or other types of financial assistance to pay for GED programs?

A-11. No. Pell Grant or other Title IV funds may not be used to pay for GED programs.

Q-12. What if a student does not wish to attend a GED program or wishes to attend another GED program that the institution has not determined to have "proven successful"?

A-12. The Act does not require a student to attend a GED program. However, an institution may require, as part of the institution's admission requirements, that a student attend a GED program.

C. Deferment and Loan Eligibility Under the Guaranteed Student Loan and the Perkins Loan Programs During Medical Internship or Residency.

Q-13. The second sentence of section II.3.a. of Dear Colleague letter GEN-89-58 refers only to Stafford and SLS loans, but the rest of the material in section II.3. also applies to Perkins loan borrowers. Does the deferment prohibition for borrowers serving in medical internship or residency programs apply to Stafford, SLS, and Perkins borrowers?

A-13. Yes. The reference to "...Stafford and SLS..." in the 2nd sentence of section II.3.a. is an error.

Q-14. Does the recent change to §464(c)(2)(A)(i) of the Act, which now excludes in-school deferments for Perkins loan borrowers who are serving in a medical internship or residency program, apply only to new Perkins loans made after January 1, 1990?

A-14. The amended statutory provision excluding in-school deferments for Perkins loan borrowers carrying at least one-half the normal full-time academic workload while serving in a medical internship or residency program applies to all Perkins loan borrowers, regardless of when the loan was made. This exclusion, which also applies to National Direct Loan and Defense Loan borrowers, was effective as of January 1, 1990, except it does not apply to any portion of a deferment period completed prior to January 1, 1990.

Q-15. What does the term "serving in a medical internship or residency program," as used in §§427(a)(2)(C)(i), 428(b)(1)(M)(i), and 464(c)(2)(A)(i) of the Act, mean?

A-15. The term "serving in a medical internship or residency program" means that the borrower is in a medical internship or residency program, not necessarily actively deferring repayment of loans. The medical internship or residency program would be one that would otherwise qualify the borrower for an internship deferment.

Q-16. What is meant by the term "medical internship" for purposes of deferment and loan eligibility? For example, a student is required to complete an internship in psychology in order to complete a program of study. Would this be considered a "medical internship"?

A-16. The term "medical internship" is limited to those internships or residencies required of doctors of medicine, osteopathy, and optometry. Internships completed as part of the requirements of a graduate or postgraduate degree program are not covered by these restrictions. For example, an internship required of a Ph.D. candidate in a clinical psychology program would not be covered. However, an internship or residency in psychiatric medicine following the completion of an M.D. degree would be covered.

Q-17. Dear Colleague letter GEN 89-58 indicates that the deferment and eligibility restrictions in §§427(a)(2)(C)(i), 428(b)(1)(M)(i), and 464(c)(2)(A)(i) of the Act do not apply to dental interns and residents. Do these borrowers continue to be eligible to receive in-school deferments and additional Stafford, SLS, PLUS, and Perkins loans if they are considered to be "enrolled students" by their institutions?

A-17. Yes. Borrowers completing dental internships or residencies may continue to qualify for in-school deferments under the Stafford, SLS, and Perkins loan programs if they are considered by their institutions to be either full- or half-time students, as applicable, in the program. In addition, borrowers in dental internships or residencies who are considered enrolled students continue to be eligible to borrow under the Stafford, SLS, and Perkins loan programs.

Q-18. Section 2001(a)(4) of Pub. L. 101-239 specifies that this provision "...shall not apply...to any portion of a [deferment period]...that is completed prior to January 1, 1990.]" What action, if any, must a lender or institution take in the case of a medical intern or resident who began a period of in-school deferment that was certified by the institution and began prior to January 1 but is scheduled to end after January 1?

A-18. Neither the lender nor the institution is required to take any action. Dear Colleague letter GEN-89-58 specified that a lender or, in the case of a Perkins loan borrower, the institution, is not required to attempt to identify such borrowers or to take affirmative steps to terminate their deferment status. However, institutions are reminded that under the provisions of the law they may not certify a borrower's eligibility for such a deferment on or after January 1, 1990. This includes the certification of deferment forms on or after January 1, 1990 for periods of enrollment completed prior to January 1, 1990.

Q-19. Many medical interns and residents have never entered repayment on their Stafford or SLS loans because they have been considered to be "enrolled" students and thus have maintained an in-school status. May medical interns and residents continue to be considered "enrolled" for purposes of repayment of Stafford and SLS loans?

A-19. No. Medical interns and residents may no longer be certified as "enrolled" students for the purpose of repayment of Stafford and SLS loans. Institutions must report medical interns and residents who have previously maintained an in-school status as "not enrolled" in the completion of their next Student Status Confirmation Report (SSCR). The date of the borrower's status change and, therefore, the start of the borrower's grace period or the resumption of the borrower's repayment period should be the institution's completion date of the SSCR unless the lender has been notified previously by the institution of the borrower's change in status.

Q-20. Does the new deferment limitation for medical interns and residents in §§427(a)(2)(C)(i), 428(b)(1)(M)(i), and 464(c)(2)(A)(i) of the Act impact a borrower's eligibility for other forms of deferment for which he or she may qualify?

A-20. The fact that a medical intern or resident can no longer qualify for an in-school deferment has no bearing on the borrower's eligibility for an internship or other form of deferment. Therefore, the two-year limit for the internship deferment does not include time spent before January 1, 1990, in an in-school deferment during the internship or residency period.

Q-21. Dear Colleague letter GEN 89-58 specifies in several places that lenders and guarantee agencies may rely on the institution's certification of borrower status. May a lender or guarantee agency rely on an institution's certification as it relates to the new restrictions on in-school deferment and loan eligibility for medical interns and residents?

A-21. Yes. A lender may continue to rely upon an institution's certification. The institution is responsible for not providing in-school deferment or loan certifications to ineligible borrowers.

Q-22. Some medical interns and residents are also concurrently enrolled in Ph.D. programs. Do these borrowers continue to qualify for in-school deferment?

A-22. Yes. These borrowers may continue to receive in-school deferments. Such a borrower is eligible for an in-school deferment based on the borrower's half-time or full-time enrollment in a Ph.D. program, not because he or she is completing a medical internship or residency program.

Q-23. Does the deferment prohibition under §428(b)(1)(M)(i) apply to interns or residents under graduate fellowship programs?

A-23. Yes. A borrower who is engaged solely in a medical internship or residency program could not receive a graduate fellowship deferment.

D. Forbearance Under the Guaranteed Student Loan Programs During Medical and Dental Internship or Residency.

Q-24. Must a lender grant forbearance in 12-month intervals for the time remaining in the borrower's internship or residency program? In granting forbearance under §428(b)(1)(V) of the Act, is a program official required to certify the length of time remaining in the borrower's internship or residency? If not, what additional information must the lender collect prior to granting the forbearance?

A-24. Lenders are now required to grant forbearance to a borrower who is serving in a medical or dental internship or residency program and who has already received the maximum two-year internship deferment as provided under §427(a)(2)(c)(vii) or §428(b)(1)(M)(vii). The borrower must request forbearance in writing for each 12-month period. The internship program official must certify the length of time remaining in the program or 12 months, whichever is less.

Q-25. Section 428(b)(1)(V) of the Act requires, in part, that this forbearance "... be agreed upon in writing by the parties to the loan with the approval of the insurer...." In order to properly grant a forbearance, must the guarantor approve each individual forbearance?

A-25. No. A guarantee agency must, pursuant to statute, provide for this particular forbearance situation as part of its guarantee program. However, the guarantee agency is not required to approve individual forbearances.

Q-26. May a borrower use the "internship forbearance" without having used two years of the internship deferment?

A-26. No. The "internship forbearance" is available only to borrowers who have exhausted their eligibility for the internship deferment. See §428(b)(1)(V)(i)(II).

Q-27. Can a deferment form be treated as a request for forbearance if the borrower is not eligible for an internship deferment?

A-27. No, but the deferment and forbearance request form may be combined.

Q-28. Once the borrower has exhausted his or her eligibility for the internship deferment, may the lender automatically grant the borrower forbearance?

A-28. No. The lender must obtain a request in writing for the forbearance from the borrower.

Q-29. Do the recent amendments to the Act require the granting of "forbearance" to Perkins loan borrowers serving in a medical internship or residency program?

A-29. The "internship forbearance" provisions apply only to the Stafford and SLS loan programs. The Act and the Perkins loan regulations do not provide for forbearance but do provide for a "hardship" deferment for Perkins loan borrowers. We encourage institutions to give consideration to Perkins loan borrowers who file for "hardship" deferments while still serving in a medical internship or residency program after receiving a two-year internship or residency deferment.

E. Restricted SLS Eligibility for Students at High Default Institutions.

Preliminary guidance on this issue was provided in Dear Colleague letter GEN-89-58 (December 1989) and 90-S-61 (March 1990). The following are additional questions posed to the Department on this issue.

Q-30. Generally, §428A(a)(2) of the Act prohibits students from borrowing SLS loans at institutions with default rates of 30 percent or more. Dear Colleague letter GEN 89-58 refers to the notification to institutions of FY 1987 default rates exceeding 30 percent. To which institutions does this restriction apply?

A-30. The language of §428A(a)(2) of the Act differs from the regulatory language of the June 5, 1989 default reduction regulations that were the basis of the fiscal year 1987 and 1988 default rate notification letters to institutions. The statutory provision restricting SLS eligibility for students at high default institutions applies to institutions with fiscal year default rates of 30 percent or above.

Q-31. Will institutions that were notified of a fiscal year default rate of 30 percent or above based on fewer than 30 borrowers be subject to the SLS restriction for high default institutions?

A-31. No. Section 435(m) of the Act requires a three-year average to calculate a cohort default rate for institutions with less than 30 borrowers. Institutions with less than 30 borrowers were provided with fiscal year 1987 and 1988 rates for their information. They are not subject to the statutory restriction on SLS loans or to other default reduction regulatory requirements for institutions with fiscal year default rates above 30 percent until the three-year average rate can be calculated.

Q-32. Do students at a high default institution regain eligibility to borrow under the SLS program when the institution is notified that its fiscal year default rate has dropped below 30 percent? If yes, how is an institution to certify SLS loan applications for students who commenced attendance prior to the institution's notification that its rate has dropped?

A-32. Yes, a student would regain eligibility when the institution is notified that its rate has dropped below 30 percent. When certifying an SLS application for a student who commenced attendance while the institution was subject to the SLS restriction, the institution may include in the loan period the borrower's period of enrollment prior to the institution's notification, but not prior to the beginning of that academic year.

Q-33. Section 2003(a)(3)(B) of Pub. L. 101-239 permits a student who was enrolled on the date of enactment (December 19, 1989) at a high default institution in a program of study for which he or she had previously borrowed an SLS to continue to borrow under the SLS program to complete that program. Are the terms "program of study" and "program of instruction" used interchangeably in paragraph 2 of Section II.B.5 of Dear Colleague letter GEN 89-58? May the student continue to borrow if he or she has previously borrowed an SLS for the same program of study (e.g., nursing) at another institution?

A-33. The terms "program of study" and "program of instruction" are used interchangeably in paragraph two of section II.B.5 of Dear Colleague letter GEN-89-58. However, the student must have borrowed previously for the same program of study at the institution that is subject to the sanction; having previously borrowed an SLS for study in another program or at another institution does not qualify the student to continue borrowing under the SLS program.

Q-34. How is the term "program of study" defined for purposes of determining if a borrower may obtain additional SLS loans under this exception? For example, if a student is enrolled in a two-year A. A. degree program in accounting or a five-year pharmacy program and obtained an SLS loan for his or her first year in the program, may he or she borrow again for each of the remaining years of that program? If a student obtained an SLS loan for the first year of a paralegal program, but then transferred to a court reporting program (at the same institution), would the student be eligible for additional SLS loans?

A-34. The term "program of study" is the degree or certificate program in which the student was enrolled on the later of the date of enactment of this provision or the date the institution received notification that its default rate is 30 percent or above. In the first two examples provided in the question, the student's program would be the entire two- or five-year program. The student would be eligible to receive additional SLS loans for the period of enrollment required to complete the program. In the last example, the student would not be considered to be in the same program of study for which the previous SLS loan was received and would therefore be ineligible to borrow additional SLS loans unless the institution's fiscal year default rate dropped to less than 30 percent while the student was enrolled.

Q-35. Would a previous SLS borrower who was on an approved leave of absence or scheduled academic break on the date of enactment of this provision remain eligible to borrow under SLS?

A-35. A student on an approved leave of absence or scheduled academic break would remain eligible to receive additional SLS loans if he or she is enrolled in the same program of study when he or she returned to the institution and had previously borrowed an SLS loan for that program of study.

Q-36. The exception provided in the statute to allow previous SLS borrowers to continue to borrow to complete a program of study complicates determination of borrower eligibility at institutions with default rates of 30 percent or above. May lenders and guarantee agencies rely upon an institution's certification of a borrower's continuing eligibility under this provision?

A-36. Yes. It is the responsibility of an institution that is subject to the restriction to certify loan applications only for eligible borrowers.

Q-37. Will the Department notify lenders and guarantee agencies if an institution successfully appeals its fiscal year rate and is no longer subject to the SLS restriction?

A-37. The Department will notify guarantee agencies of any change in an institution's fiscal year default rate that affects the institution's default reduction requirements at the same time the institution is notified. Guarantee agencies are responsible for notifying lenders participating in their programs of such changes.

Q-38. Should guarantee agencies incorporate an edit in their computer systems in an attempt to identify SLS applications submitted by borrowers from institutions with default rates of 30 percent or above?

A-38. Institutions are responsible for the correct certification of loan applications. Guarantee agencies may, but are not required to, incorporate such an edit in their systems. However, a guarantee agency should include this area of program compliance in future institutional program reviews.

Q-39. What is the status of an SLS loan received by a borrower if an institution that is subject to this restriction incorrectly certifies SLS eligibility?

A-39. The loan is an ineligible loan for which the institution would be liable. The borrower remains responsible for repaying the loan according to the terms and conditions of the promissory note, but the Secretary will waive 34 CFR 682.412 so that the borrower will not be harmed by the incorrect action of the institution.

F. Reduced Annual SLS Loan Amounts.

Q-40. Section 428A(b)(1) of the Act, as amended by Pub. L.101-239, establishes a new minimum period within which a student may borrow the annual loan limit under the SLS program. This minimum period is the greater of (a) the student's academic year, as defined in 34 CFR 668.2, or (b) nine consecutive months. Does this minimum period apply only if both the most recent SLS received and the SLS loan currently being applied for are made on or after January 1, 1990 (the effective date of the new "minimum period" requirement)?

A-40. No. With respect to the loan currently being applied for, the minimum period for the borrower (i.e., the greater of the length of the academic year or nine consecutive months) runs from the beginning of the loan period for the most recent SLS loan received, notwithstanding the date that the most recent loan was made. If the borrower has not borrowed the statutory annual SLS loan limit, the borrower could borrow up to that limit during the minimum period. If the institution determines that the borrower has already received the annual loan limit during the minimum period, the institution may not certify another SLS application for the borrower until nine months have elapsed from the beginning of the loan period on the most recent SLS loan received even if the student has advanced a grade level or the institution has entered a new academic year.

Q-41. When may the institution certify a second SLS loan application for a borrower given the minimum period requirement? How is the application to be certified?

A-41. A student is prohibited from borrowing more than the statutory SLS annual loan limit until the minimum period (i.e., the academic year or nine months, whichever is greater) for the student has elapsed. In most cases this will be a period of nine consecutive calendar months. Therefore, the institution's certification of the student's second SLS may not take place earlier than the first day of the tenth month following the first day of the loan period on the student's first SLS loan. In certifying the application, the institution may include any period of enrollment prior to the date of certification which was not covered by a previous SLS as long as the student remains eligible. However, the

loan period on the current application being certified may not overlap any portion of the previous loan period. For example, a student who received an SLS loan for the annual maximum for a period beginning January 1 through July 31, 1990 may not receive another SLS until October 1, 1990. The earliest that the institution may certify a subsequent SLS application for the student is October 1, 1990. However, the loan period on the application being certified may include the student's period of enrollment beginning August 1, 1990, provided the student maintained eligibility and the loan period being applied for has not expired.

Q-42. If the loan period on a student's second application includes the student's enrollment period prior to the date of certification because the student has been continuously enrolled, how is the institution to determine when it can certify a third or subsequent application? Does the aid administrator determine that nine months have elapsed by counting from the first day of the loan period on the application for the most recent loan received (*i.e.*, the second loan application)?

A-42. No. If the institution has elected to include an enrollment period prior to the first day of the tenth month (*i.e.*, the day the student regains eligibility based on the SLS annual loan limits and the day the school may first certify the second application), the minimum period for the third loan is counted from the first day of the tenth month to ensure that the student does not receive more than the SLS annual loan limit in a nine-month period. If the institution has not elected to include an enrollment period prior to the first day of the tenth month, the minimum period for the third loan is still counted from the day the borrower regains eligibility (*i.e.*, the first day of the tenth month).

Q-43. Has nine months been established as the minimum academic year or minimum loan period now that SLS annual statutory limits are based on a new minimum period of the academic year or nine months, whichever is greater? Is a program that is less than nine months in duration subject to reduced SLS limits? Are reduced annual SLS loan limits calculated by determining what percentage of nine months a program represents ?

A-43. The term academic year is defined in 34 CFR 668.2 as the period of time during which a full-time student is expected to complete at least two semesters, two trimesters, or three quarters; twenty four semester hours or thirty six quarter hours; or 900 clock hours. The reference to a standard of nine consecutive months for purposes of the SLS annual loan limits has not changed the definition of an academic year or required a nine-month minimum loan period on SLS applications. Reduced loan limits in the SLS program apply to programs of study that are less than the institution's stated academic year, which may or may not be nine consecutive months in duration. For example, a 300-clock hour and a 600-clock hour program at an institution with an academic year of 900 clock hours would be subject to reduced SLS loan limits. An institution determines the reduced SLS annual limit for the program by determining what portion of the academic year the short-term program represents.

Example:

Clock Hours - 900 clock-hour academic year;

300 clock-hour program = 1/3 of an academic year = \$1,500

Credit Hours without Standard Terms - 36 quarter-hour academic year;

24 quarter-hour program = 2/3 of an academic year = \$2,500

Q-44. Will a student enrolled less than full-time in a program of study be subject to reduced SLS annual loan limits if it takes the student longer than nine months to complete the program because of his or her level of enrollment?

A-44. Reduced annual SLS loan limits are based on the length of the program of study in which the student is enrolled and its relationship to the length of the institution's academic year, not the student's level of enrollment in the program or the length of time it may take the student to complete the program. Therefore, a student enrolled on a half-time basis in a program of study that is longer than an academic year would not be subject to reduced loan limits. However, a student enrolled on a half-time basis in a program of study that is shorter than an academic year would be subject to reduced loan limits regardless of the length of time that it took the student to complete the shorter program.

Q-45. Does the new SLS annual loan maximum based on an institution's academic year or nine months, whichever is greater, now preclude an institution with a program that is longer than one academic year but shorter than two academic years length from certifying one SLS loan application for the academic year and a second application for the remaining hours in the student's program? Is a student in such a program subject to reduced SLS loan limits?

A-45. An institution may continue to certify an SLS loan application for a student in a program that is longer than an academic year with a loan period that corresponds to the academic year. A second application for the student's remaining hours in the program may be certified provided the student is enrolled and eligible on the first day of the tenth month following the first day of the loan period on the student's previous loan application. For example, an institution with a 900 clock-hour academic year may certify an SLS application for a student enrolled in a 1200 clock-hour program for the academic year. However, the institution may not certify a second SLS application for the student's

remaining 300 clock hours in the program until nine months have elapsed from the first day of the loan period of the most recent SLS loan received (i.e., the application certified for the academic year). If, in this example, it takes the student only seven months to complete the 900 clock-hour academic year, two more months must elapse before the student may borrow again under the SLS program for the remaining 300 clock hours. A student in this program is not subject to reduced SLS annual loan limits because the program length (1200 clock hours) is greater than the institution's academic year (900 clock hours).

Q-46. Does the new minimum standard for SLS loan limits affect an institution's ability to use a nine-month expected family contribution (EFC) under the Congressional Methodology to package Title IV student assistance if its academic year is slightly less than or greater than 9 months?

A-46. No. The change in SLS annual loan limits has no bearing on the EFC used to package Title IV assistance.

Q-47. A student borrows under the SLS program for enrollment in a program of less than an academic year and is subject to reduced SLS loan limits. The student then either transfers to another program or completes the initial program and enrolls in a new program that is an academic year or more in length within the nine-month minimum period. Is that student now subject to the \$4,000 annual maximum and eligible to receive additional SLS funds?

A-47. No. The statute specifies that the SLS loan limits, including the reduced limits, apply to a period of at least nine consecutive months.

Q-48. Is a student who enrolls in a succession of programs that are less than a full academic year in length always subject to reduced SLS loan limits? Or does this restriction apply only if the student has not successfully completed the first year of undergraduate education? When are such students considered to have completed the first year of undergraduate education?

A-48. A student who enrolls in one or more programs of less than a full academic year in length is always subject to reduced SLS loan limits and is always considered to be in the first year of a program of undergraduate education because the determination in such cases is based on the

educational level of the program, not the educational level of the student. A student who has received a graduate or professional degree and who subsequently enrolls in a short-term program of less than an academic year is considered to be a first-year student despite his or her previous level of education.

Q-49. May required remedial courses be considered part of a student's program for the purpose of determining whether the program is a full academic year in length?

A-49. Only courses that are required components of the degree or certificate program, including remedial courses, may be considered to be part of the student's program of study for determining SLS annual loan limits.

Q-50. A student is admitted into a 900 clock-hour program on the basis of ability-to-benefit and earns a GED after completing 300 hours. Is the SLS annual loan limit for the student based on the 900 clock-hour program in which the student enrolled or the 600 clock hours remaining in the program after the student received the GED?

A-50. The SLS annual loan limit for this student is based on the 900 clock-hour program in which the student is enrolled. However, pursuant to §428A(a)(1) of the Act, the institution may not certify the SLS application until the student receives the GED or high school diploma.

Q-51. Is a student who transfers into a program of study that is less than a full academic year (*e.g.*, 24 credits) in length eligible to borrow under the SLS program if the student is required, because of transfer credits, to take only 18 credits to complete the program? If the student is eligible to borrow, is he or she subject to reduced SLS annual loan limits?

A-51. The fact that a student is not required to complete the entire program because of transfer credits or other forms of advanced academic standing does not make the student ineligible to borrow under the SLS program, provided the student is an eligible student enrolled in an eligible program. Since the program of study that the student is enrolled in at the transfer institution is less than a full academic year in length, all students in the program are subject to a reduced SLS loan limit. The applicability of reduced loan limits is based on the length of the program as it relates to the length of the institution's academic year, not on the student's standing in the program.

Q-52. Is the "nine consecutive months" minimum period a month-specific or day-specific standard?

A-52. The minimum period for a loan is counted from the date of the beginning of the enrollment period for which the loan is intended (*i.e.*, the loan period) and ends on the same date at least nine months later. For example, the minimum period for a student who borrows the maximum SLS annual limit for a loan period that begins on September 15, 1990 would end on June 15, 1991. The institution may certify the next SLS loan application for the student on June 16, 1991.

G. Multiple Disbursement Requirements for Stafford and SLS Loans.

1. Multiple Disbursement Requirements.

Q-53. Do the new multiple disbursement requirements for Stafford and SLS loans supersede all previous multiple disbursement requirements? Do these requirements apply to all Guaranteed Student Loan (GSL) program loans?

A-53. The new multiple disbursement provisions supersede all previous multiple disbursement requirements and are effective for Stafford and SLS loans guaranteed on or after January 1, 1990 and made for periods of enrollment beginning on or after that date. Loans made for attendance at foreign institutions, PLUS, and Consolidation loans are not subject to the new multiple disbursement requirements.

Q-54. The statutory language of the multiple disbursement provisions indicates that the requirements apply to loans "made" to cover the cost of instruction for periods of enrollment beginning on or after January 1, 1990. Dear Colleague letter GEN-89-58 further states that it applies also to loans guaranteed after that date. Does this mean that loans guaranteed prior to that date for periods of enrollment on or after January 1, 1990, regardless of the date of disbursement, are not subject to the new requirements?

A-54. The provisions apply to all Stafford and SLS loans guaranteed on or after January 1, 1990 and made for periods of enrollment beginning on or after that date. Loans guaranteed prior to January 1, 1990 are not covered by the new requirements.

Q-55. Must a loan be multiply disbursed regardless of the loan amount or the length of the period of enrollment (e.g., a loan period of one quarter/semester or a summer session)?

A-55. Section 428G(a)(1) of the Act states that these requirements apply to "any loan made, insured, or guaranteed under this part that is made for any period of enrollment." However, as noted in Dear Colleague letter GEN-89-58, a lender may deliver the proceeds of all disbursements of the loan in a single check if the first disbursement of the loan is scheduled to be made on or after the earliest date that the second disbursement can be made.

Q-56. On page 10 of Dear Colleague letter GEN-89-58 it states: "If the date on which the first disbursement is made occurs on or after the earliest date that the second disbursement could be made, the lender may deliver the proceeds of all disbursements of the loan using a single check." In making this determination, may a lender use the exception provided for advancing disbursement dates so that the disbursement can be delivered at the beginning of a scheduled term (i.e., up to 30 days prior to the beginning of the semester, quarter, or similar academic division)?

A-56. The lender may include the 30 days in determining whether a single check can be used to deliver the proceeds of all loan disbursements.

Q-57. May a lender disburse the first installment of an SLS loan to a first-year undergraduate borrower up to 30 days prior to the first day of the period of enrollment for which the loan is intended even though the institution can not deliver the proceeds to the borrower until 30 days after the first day of the student's program of study? How does an institution comply with the Department's earlier guidance on prompt delivery of loan proceeds (i.e., within 45 days) to a first-time SLS borrower who is subject to delayed delivery?

A-57. As noted in section II.B.7.b. of Dear Colleague letter GEN-89-58 the earliest date that a lender may disburse the first installment for any loan to a student borrower is 30 days prior to the first day of the period of enrollment for which the loan is made. See 34 CFR 682.207(b)(1). In providing a disbursement schedule to a lender in a delayed delivery situation, the institution should ensure that the first installment of the loan will be disbursed no earlier than the first day of class in the student's period of enrollment. The institution must deliver the loan proceeds to the borrower no later than 45 days after the institution's receipt of the loan check.

Q-58. The statute now requires that the student provide the lender with a statement from the institution setting forth a disbursement schedule for the borrower's Stafford and/or SLS loan. Must the borrower sign the disbursement schedule provided to the lender in order to meet this requirement?

A-58. The student is not required to sign the disbursement schedule. The institution may provide the schedule to the lender on behalf of its students.

Q-59. What are the approved methods for an institution to provide lenders with disbursement schedules? May the institution provide standard disbursement dates based on its academic calendar?

A-59. The institution may provide individual disbursement schedules for its students using the disbursement schedule item included in the Stafford or SLS application forms certified by the institution. An institution may also provide standard disbursement schedules either directly to the lenders or to the guarantee agency if the agency has agreed to serve as an agent on behalf of its lenders for this purpose. An institution may also provide written authorization to the guarantee agency to act as its agent in establishing disbursement schedules based on information provided by the institution that meet the statutory requirements.

Q-60. Are there any restrictions on the type of disbursement schedule an institution may establish?

A-60. The schedule provided by the institution must be consistent with the requirements of §428G of the Act. Unless the student is assessed institutional charges at established points in the program or academic year, a disbursement schedule for a clock-hour program or credit-hour program without standard academic terms must be based on the minimum statutory requirements for multiple disbursement. Institutions with standard academic terms must develop a schedule based on that academic calendar.

Q-61. If the institution fails to provide the lender with a disbursement schedule, may the lender establish one based on the minimum statutory requirements?

A-61. No. Section 428(a)(2)(A)(i)(III) of the Act now requires the student to provide a disbursement schedule. The Secretary has authorized institutions to provide the schedule on behalf of its students. See Q-58. Under §428G(c)(1) of the Act a lender may not disburse a loan for which a schedule is required (i.e., all Stafford and SLS loans certified on or after January 1, 1990) without first receiving a disbursement schedule.

Q-62. May a lender rely upon the schedule provided by the institution?

A-62. Yes. The lender may rely on, and must disburse according to, the schedule provided by the institution unless the schedule appears to violate statutory requirements. The institution is providing disbursement dates to the lender, not anticipated delivery dates; the institution should allow for necessary mail time in establishing the disbursement schedule it provides to the lender.

2. Disbursement and Endorsement Requirements.

Q-63. Prior to delivering the first installment of an SLS loan to a borrower who has not successfully completed the first year of a program of undergraduate education and is therefore subject to the 30-day delayed delivery requirement, the institution must determine and "certify" that the student continues to be enrolled, is in attendance, and is maintaining satisfactory academic progress. Does this simply mean verifying that this is the borrower's status? Must an institution submit a certification statement to the lender or guarantee agency?

A-63. No certification statement must be submitted to the lender or guarantee agency. However, prior to releasing loan proceeds the institution must note in the borrower's file that it determined that the borrower is eligible to receive those funds.

Q-64. How is an institution to determine that a student is "in attendance"?

A-64. The Department is not prescribing the method by which an institution determines that a student is in attendance. However, an institution must have a system in place to determine this prior to the delivery of SLS loan proceeds.

Q-65. How is an institution expected to determine that a borrower is making satisfactory progress 30 days into a loan period?

A-65. Any time Title IV funds are delivered to a student or credited to his or her account the institution must verify that the student is eligible to receive those funds. For borrowers subject to this requirement, the institution must develop a satisfactory progress standard for the first 30-day period against which it evaluates a borrower prior to delivering SLS loan proceeds. The institution must note in the borrower's file that the borrower is making satisfactory progress based on that standard.

Q-66. Should an SLS borrower who has completed one academic year of education in a program at a vocational institution (i.e., at least 900 clock hours) be considered to have completed the first year of a program of undergraduate education and thus no longer be subject to the SLS delayed delivery requirement?

A-66. The student would be required to complete the amount of credit in his or her program of study normally required by the institution for the student to advance in academic standing as measured on an academic year basis.

Q-67. If a borrower's loan period begins with the second quarter or semester of a student's program of study so the student is already beyond the 30th day "after the borrower begins a course of study," must the institution delay delivery of the first installment of the borrower's SLS loan for 30 days after the beginning of the loan period?

A-67. If a borrower who would normally be subject to the 30-day delayed delivery requirement applies for an SLS loan for a period of enrollment that begins after the borrower's completion of 30 days of the same program at the same institution, delayed delivery of SLS loan proceeds would no longer be required.

Q-68. If lenders are allowed to continue to disburse SLS loan proceeds up to 30 days prior to the period of enrollment for which the loan is intended and the institution is now required to delay delivery to a first-time SLS borrower for 30 days, the borrower will be responsible for the interest accruing on the loan disbursement for as long as 60 days during which the borrower does not have access to those SLS funds. What action can be taken by the institution or borrower to prevent this?

A-68. Lenders must disburse according to the schedule provided by the institution. To minimize the interest that will accrue on SLS loans that are subject to delayed delivery, institutions are encouraged provide the lender with a schedule that will ensure that the first disbursement of the SLS loan will be made just prior to the 30th day of the borrower's enrollment in his or her program of study.

Q-69. Does the second paragraph of section II.B.7.b. of Dear Colleague letter GEN-89-58 mean that the Act prohibits the delivery of the proceeds of a late first disbursement of an SLS loan for a borrower who is subject to the new delayed delivery requirements under all circumstances?

A-69. No. The prohibition applies only to a first disbursement of a covered loan received for a borrower who left the institution during the first 30 days of the borrower's enrollment in the program of study. If the first disbursement of a covered SLS loan is received by the institution for a borrower who left the institution after successfully completing the first 30 days of his or her program of study, the institution may deliver the proceeds of the late first disbursement in accordance with the requirements of 34 CFR 682.604(e).

3. Withholding By Lenders of Second and Subsequent Disbursements.

Q-70. The second paragraph of section II.B.7.c. of Dear Colleague letter GEN 89-58 indicates that the making of late second or subsequent disbursements of a Stafford or SLS loan is now prohibited because §428G(d) of the Act now states that a lender may not disburse the second or subsequent disbursement of a Stafford or SLS loan after it is informed that the student has ceased to be

enrolled at the institution. Does this prohibition apply to students who have "ceased to be enrolled" because they have graduated or successfully completed the period of enrollment for which the loan was intended?

A-70. No. The lender may make a late second or subsequent disbursement on a Stafford or SLS loan in accordance with guarantee agency policy after the lender learns that the student has left the institution if the student has graduated or successfully completed the period of enrollment for which the loan was intended.

Q-71. May a guarantee agency, in accordance with 34 CFR 682.207(d) and 682.604(e), still authorize disbursement of a second or subsequent disbursement after the end of the period of enrollment for which the loan was made provided the student completed the period of enrollment?

A-71. Yes. The prohibition to withhold a second or subsequent disbursement when a student has ceased to be enrolled does not apply to disbursement after the end of the period of enrollment if the student maintained eligibility for the entire period of enrollment.

Q-72. The second paragraph of section II.B.7.c. of Dear Colleague letter GEN 89-58 states that the provision prohibiting the lender from disbursing a second or subsequent disbursement of a Stafford or SLS after it is informed that the student has ceased to be enrolled does not prohibit a lender from disbursing the proceeds of the first disbursement of the loan after the borrower has left the institution. What actions must an institution take if it receives a single check containing both disbursements because the notification to the lender was not received in time for the lender to prevent the disbursement?

A-72. If the student is not a first-time SLS borrower, the institution may deliver the amount of the first disbursement to the student under the guarantee agency's existing late disbursement procedures and return the amount of the second disbursement to the lender with a written statement describing the reason for the return of the loan funds. If the student is a first-time SLS borrower subject to the delayed delivery requirements, the institution may deliver a late first disbursement to the borrower only under the circumstances outlined in A-69 above.

4. Students Receiving Overawards.

Q-73. Does the new provision in §428G(d) of the Act regarding overawards of Stafford and SLS loans apply only to overawards that result from other Title IV aid awarded to the student or does it

extend to all other aid received? Is the provision applicable to overawards resulting from a reduction in the student's cost of attendance due to a change of enrollment or program of study or a change in a family's financial circumstances that increases the family's expected family contribution (EFC) and thus reduces the student's financial need?

A-73. An overaward can result from aid received from any form of assistance defined as estimated financial assistance in 34 CFR 682.200. An institution is required to have a system of coordination in place to identify all forms of assistance a student may receive even if it is not administered through the financial aid office. Since an institution may, but is not required to, adjust costs based on a student's change of enrollment or program after a student has been awarded Title IV aid, it is not required to identify overawards resulting from these changes. However, an institution must eliminate any overaward that may result from a recalculation of a family's EFC based on the institution's receipt of financial information not considered in the original calculation of the EFC.

Q-74. In determining whether an overaward exists and whether Stafford or SLS loan proceeds must be returned to a lender, may the institution use the student's SLS or PLUS to cover the family's EFC up to the amount of the EFC to reduce or eliminate the overaward? May a non-subsidized Stafford loan also be used to cover EFC? Similarly, if the student's award package includes campus-based aid, may the institution reduce or eliminate the overaward by adjusting or cancelling any undisbursed campus-based loan or grant?

A-74. The new overaward provision in the Stafford and SLS loan programs does not prohibit the institution, as part of the Title IV aid packaging process, from attempting to reduce or eliminate the overaward by using a student's SLS or PLUS or a non-subsidized Stafford loan to cover the family's EFC. However, the institution must repay Stafford or SLS funds to a lender to eliminate an overaward before adjusting or cancelling a student's undisbursed campus-based grants or loans.

Q-75. Is an institution permitted to use any tolerance similar to the \$200 tolerance allowed in the campus-based programs overaward provisions when making a determination that a student has received an overaward of a Stafford or SLS loan?

A-75. No. The Department has concluded that since the statute is specific on when an overaward is created, there is no statutory authority permitting the Secretary to allow a tolerance.

Q-76. How is it possible for the institution to return to the lender "only the portion of the (undelivered) disbursement for which the student is ineligible" as directed in section II.B.7.d. of Dear Colleague letter GEN-89-58 when program regulations prohibit the institution from endorsing the loan check on behalf of a student?

A-76. The institution would have to obtain the student's endorsement, credit the student's account, and promptly send a payment to the lender for the portion of the loan for which the student is ineligible.

Q-77. How is "promptly" defined when returning an overaward of any Stafford or SLS loan to the lender?

A-77. If the original loan check is returned uncashed to the lender, "promptly" is defined, consistent with the treatment of loan proceeds under 34 CFR 682.604(d)(3), as within 30 days of the institution's determination that an overaward exists and the borrower is ineligible to receive the disbursement. When returning an ineligible portion of a disbursement that represents an overaward, the institution must, consistent with the requirements of 34 CFR 682.607, refund the overaward to the lender within 60 days of the institution's determination that an overaward exists.

Q-78. Must the lender refund the insurance premium and origination fee to the borrower's account if the institution has returned to the lender only the portion of the original disbursement for which the student is ineligible?

A-78. If the institution has negotiated the original loan check because the student is eligible for a portion of the original disbursement, the lender need not refund the insurance premium and origination fee attributable to the amount returned to the lender, *i.e.*, the portion for which the student is ineligible. If the student is ineligible for the entire amount disbursed or the institution otherwise chooses to return the original loan check, the lender must refund to the student's account the insurance premium and origination fee attributable to the amount returned. See 34 CFR 682.202(c)(4)(i) and 682.401(b)(6)(iii)(A).

H. GED Required of Ability-to-Benefit Students Under the SLS Program.

Q-79. A student is admitted to an institution on the basis of the ability to benefit from the education or training offered by the institution and obtains a GED after two-thirds (600 clock hours) of the student's 900 clock-hour program. May the institution, when certifying an SLS loan application for the student after receipt of the GED, include in the loan period the student's period of enrollment in the program prior to his or her receipt of the GED?

A-79. Yes. When certifying an SLS application for the student, the institution may include in the loan period the student's period of enrollment prior to receipt of the GED but not prior to the beginning of the academic year.

Q-80. If the Department does not require documentation of the student's receipt of a high school diploma or GED, but the institution's accrediting agency does, must the institution wait to certify the SLS application until the documentation is received?

A-80. The institution may certify an SLS application for the student based on the student's certification of receipt of the high school diploma or GED unless the accrediting agency requires receipt of supporting documentation (*i.e.*, transcript or copy of GED certificate) prior to the student's admission to the institution as a regular student.

Q-81. May an institution certify an SLS application for an ability to benefit student prior to the student's receipt of the GED or high school diploma as long as SLS funds are not delivered to the student prior to verification of the student's eligibility?

A-81. Because a student admitted to the institution under ability to benefit provisions is an ineligible borrower under the SLS program until the student receives the GED or high school diploma, the institution may not certify an SLS application prior to the student's receipt of the GED or diploma.

CLARIFICATION OF QUESTION #74 FROM DCL GEN-90-33

As indicated in the answer to Question #74 of the DCL GEN-90-33, where a Stafford/SLS check creates an overaward, it (or a portion of the amount of the check) must be returned to the lender before adjusting or cancelling other undisbursed Title IV aid. (An exception to this rule allows an institution to reduce an unearned CWS award if the student is no longer able to accept the award due to extenuating circumstances. If the overaward is eliminated in this manner, no further action is required.)

However, an institution would NOT have to return Stafford/SLS loan proceeds before adjusting any campus-based awards if the overaward resulted from an outside scholarship or other aid being received after the loan proceeds had already been delivered to the student. The institution would follow current campus-based regulations (34 CFR 674.14, 675.14, and 676.14) and policies for handling overawards, including consideration of the institution's own policies regarding its priority for returning funds to a specific campus-based or other program.

The following examples illustrate the scenarios discussed.

#1 Award package (all disbursed to student's account except CWS):

CWS	500
PERKINS	1000
PELL	1000
SEOG	<u>400</u>
TOTAL	2900 (Assume \$1,000 unmet need at this point)

A \$1,000 Stafford is pending. Before the Stafford loan check arrives, a \$500 church scholarship is received that was not considered at the time the student was awarded the above aid. The student's remaining need is now \$500. The Stafford loan check arrives. If the full amount were used, there would be a \$500 overaward that must be eliminated because the GSL programs do not have a \$200 overaward tolerance for undelivered loan proceeds. Therefore, ideally, the student will sign the Stafford loan check, the remaining need will be covered, and \$500 will be returned to the lender.

ADJUSTMENTS TO THE CWS AWARD:

When the Stafford loan check arrives, the institution learns that the student must care for a parent in the evenings and will be unable to accept a CWS position. The institution withdraws the \$500 CWS award (none of the award has yet been earned) and the overaward is eliminated. No further action with regard to the Stafford loan check is required because the overaward has been eliminated.

#2 Award Package (Aid disbursements made to student's account except CWS)

CWS	500 (300 unearned at this point)
PERKINS	1000 (500 undisbursed at this point)
PELL	1000
SEOG	400 (200 undisbursed at this point)
STAFFORD	<u>1000</u>
TOTAL	3900 (Assume full need is met)

A \$500 church scholarship is received that was not considered at the time the student was awarded the above aid. The total resources now exceed the student's need by \$500 and is an overaward. The excess resources over the \$200 campus-based tolerance must be repaid. Assuming that the student does not have an increased need, the institution must cancel any undisbursed loan, grant (except Pell) or unearned CWS, or combination of aid by \$300 (\$500 excess resources minus \$200 campus-based tolerances.) Some options include:

- A. Remove \$300 from the CWS award
- B. Remove \$200 of the SEOG award and reduce the CWS by \$100
- C. Reduce the Perkins Loan by \$300