GEN-92-21

CB-92-17
SG-92-17
92-L-148
92-S-69
92-G-21

Major Changes Due to Higher Education Amendments of 1992

United States Department of Education
Washington, D.C. 20202
October 1992

SUMMARY: This letter contains information about the major changes to the student financial assistance programs mandated by the Higher Education Amendments of 1992.

Dear Colleague:

The Higher Education Amendments of 1992 (Pub. L. 102-325) were signed into law by President Bush on July 23, 1992. Numerous changes to the federal student financial aid programs were made by this legislation; some of the provisions became effective on the date of enactment, while other provisions become effective at later dates. In general, the law extends the programs through Fiscal Year 1997.

The purpose of this letter is to provide the student financial aid community with information on the major program changes mandated by the law. This letter outlines the changes for each of the federal student financial aid programs listing them in order of the dates they become effective. While some changes are self-implementing and supersede current regulations, other changes will require that new regulations be published. As further detailed instructions on the various provisions are developed, the Office of Postsecondary Education will provide additional guidance. In addition, where required, we are continuing with the negotiated rulemaking process. Throughout, we will continue to solicit your views on regulatory changes mandated by the law in the *Federal Register.*

We appreciate your assistance and cooperation as we work to implement the Higher Education Amendments of 1992.

Sincerely,

William L. Moran
Acting Deputy Assistant Secretary
for Student Financial Assistance

TABLE OF CONTENTS

Federal Family Education Loan Program

I. Provisions Effective on the Date of Enactment

XXVI. Presidential Access Scholarships (PAS) -- Effective for the 1993-94 Award Year

XXVII. Federal Pell Grant Program -- Effective for the 1993-94 Award Year

XXVIII. Robert C. Byrd Honors Scholarship Program -- Effective for the 1993-94 Award Year

Federal Family Education Loan Program

I. Provisions Effective on the Date of Enactment

A. Program Name Change

The Higher Education Amendments of 1992 (Amendments) rename the Guaranteed Student Loan Program the Federal Family Education Loan Program (FFELP). The individual program names have been changed to the Federal Stafford Loan, Federal Supplemental Loans for Students (SLS), Federal PLUS Loan, and Federal Consolidation Loan programs.

Changes in the names of loans or programs authorized by Title IV, Part B of the Higher Education Act (HEA), as amended, should be made to any application or other document used in making loans that is printed after the date of enactment of the Amendments (July 23, 1992).

B. Definitions

1. Estimated Financial Assistance - §428(a)(2)(C)

For the purpose of determining a borrower's eligibility for interest benefits, the Amendments revise the definition of "estimated financial assistance" to include any veterans' education benefits paid because of enrollment in an institution of higher education, as well as veterans' education benefits as defined in §480(c). In the loan certification process, institutions currently are required to include as estimated financial assistance those veterans' benefits not included in the need analysis formula. The changes made to Part F of the HEA by the Amendments that exclude veterans' benefits from the needs analysis formula do not become effective until July 1, 1993. As a result, until the change to Part F is effective, the change in the definition of estimated assistance could lead to institutions double counting an applicant's veterans' benefits. The Secretary believes this result would be contrary to statutory intent. Therefore, veteran's benefits should not be included as "estimated financial assistance" until the changes in the need analysis formula are effective on July 1, 1993.

2. Repayment period - §428(b)(7)

The HEA now includes a new provision that defines when the repayment period begins for each of the FFEL programs. The repayment period begins for each of the loan programs as follows:

(a) a Federal Stafford loan on the day after the expiration of the six-month grace period that follows after the student ceases to be enrolled on at least a half-time basis, unless the borrower requests and is granted a repayment schedule that allows the borrower to begin repayment at an earlier date;

(b) an unsubsidized Federal Stafford loan, on payments of principal, on the day after the expiration of the six-month grace period that follows after the student ceases to be enrolled on at least a half-time basis, unless the borrower requests and is granted a repayment schedule that allows the borrower to begin repayment at an earlier date. (Payments of interest are the responsibility of the borrower during the in-school and grace periods but may be allowed to accrue and be capitalized.)

(c) a Federal SLS loan on the day of the last disbursement of the loan proceeds; and

(d) a Federal PLUS or Federal Consolidation loan on the day the loan is disbursed.

These repayment periods exclude any period in which the borrower is granted an authorized deferment or forbearance.

3. Eligible Institution - §435(a)

The definition of "eligible institution" has been changed to mean an institution of higher education as defined in §481 of the HEA. An institution with a cohort default rate above specified thresholds is not an eligible institution under §435(a)(2) of the HEA. The Amendments also repealed the separate definitions of "institution of higher education" and "vocational school" that appeared previously as §435(b) and (c) of the HEA. As a result of these changes, a hospital or health-care facility that offers at least a one-year training program for graduates of accredited health-professions programs is no longer an eligible institution in the FFEL program unless it satisfies the requirements of another category of eligible institution (e.g., institution of higher education, proprietary institution of higher education, or a postsecondary vocational institution).

For purposes of an in-school deferment, the HEA also now specifies that an eligible institution includes any institution, whether or not it participates in any Title IV program or has lost its eligibility to participate in the FFELP because of a high default rate.

4. Eligible Lender - §435(d)

The Amendments repeal the eligibility of a trust company as an eligible lender. The definition of an eligible lender now includes a bank that is subject to examination and supervision by an agency of the United States that makes student loans as a trustee under an express trust that operated in the program before January 1, 1975 and was an eligible lender before July 23, 1992.

An institution may be an eligible lender only if its cohort default rate does not exceed 15 percent. Further, the institution may only use special allowance payments and interest payments received on loans that it originated for need-based grant programs for its students or for reasonable administrative expenses directly related to the FFEL program.

5. Temporarily Totally Disabled - §435(g)

The Amendments repeal the definition of "temporarily totally disabled." However, the deferment for temporarily totally disabled borrowers and the definition remains in effect for borrowers who are not eligible for the new deferments added by the Amendments.

The new deferment provisions apply to first-time borrowers whose first disbursement of a FFELP loan is made on or after July 1, 1993.

6. Cohort Default Rate - §435(m)

The Amendments have made the following changes to the definition of "cohort default rate."

(a) For an institution that has fewer than 30 of its current and former students entering repayment during the fiscal year, the definition has been changed to provide that the cohort default rate is the **percentage** of the institution's current and former students who entered repayment on a Federal Stafford or Federal SLS loan in any of the three most recent fiscal years and who default before the end of the fiscal year immediately following the year in which they entered repayment. Previously, the cohort default rate for institutions with less than 30 borrowers was the **average** of the rate calculated for the three most recent fiscal years.

(b) For purposes of calculating the cohort default rate, a Federal SLS loan will not be considered to have entered repayment until the borrower has ceased to be enrolled at an eligible institution on at least a half-time basis. Previously, for cohort default rate purposes, these borrowers were treated as being in repayment as soon as the loan was disbursed. The HEA also now requires the lender of a Federal SLS loan to provide the guaranty agency with the information necessary for the agency to determine when the borrower entered repayment on the Federal SLS loan.

(c) The Secretary is required to promulgate regulations to prevent an institution from evading the consequences of a high default rate through measures such as branching, consolidation, change of ownership or control, or any similar device. The Department will examine the provisions of current 34 CFR §668.15 to determine if any changes are necessary.

C. <u>Interest Rates, Special Allowance Rules, and Rebates of Excess Interest</u>

A summary chart of the provisions relating to applicable interest rates, special allowance rules, and rebates of excess interest (windfall profits) is in Appendix A.

1. <u>Variable Interest Rates for New Federal Stafford Loan Borrowers - §427A(e)</u>

The HEA now provides that for any Federal Stafford loan (subsidized or unsubsidized) for which the first disbursement is made on or after October 1, 1992 for a borrower who has no outstanding balance of principal or interest on any FFEL program loan on the date the promissory note is signed, the applicable rate of interest is determined on June 1 of each 12-month period and is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to June 1, plus 3.1 percent. The applicable interest rate may not exceed 9 percent. Based on this formula, the applicable interest rate for Stafford loans disbursed to such borrowers on or after October 1, 1992 is 6.94 percent. This rate will continue to apply through June 30, 1993. An official notice of this rate will be published in the *Federal Register.*

2. <u>Rebates of Excess Interest on Federal Stafford Loans - §427A(f)</u>

(a) <u>Excess Interest on 10 Percent Federal Stafford Loans</u>

A Federal Stafford loan (subsidized and unsubsidized) made on or after July 23, 1992 to a new borrower at 8 percent interest, increasing to 10 percent after four years of repayment under §427A(e) of the Act, is subject to a rebate of excess interest paid if the sum of the average of the bond equivalent rates of 91-day Treasury bills auctioned for that quarter, plus 3.25 percent, is less than the applicable interest rate of 10 percent. This treatment of excess interest also applies to 8/10 percent borrowers who borrowed prior to July

23, 1992 when the borrower's interest rate increases to 10 percent. The adjustment to excess interest must be calculated quarterly using the formula provided in §427A(f)(2) of the HEA and credited annually to the borrower's account as specified in §427A(f)(5) no later than 30 days following the last day of the calendar year in which the quarter falls for which the credit is being made. No credit can be made to a borrower's account if the borrower is more than 30 days delinquent on the loan on the last day of the calendar year.

(b) <u>Excess Interest on Other Federal Stafford Loans to Borrowers with Outstanding Balances</u>

For a Federal Stafford loan (subsidized and unsubsidized) made on or after July 23, 1992 to a borrower who, on the date he or she signs the promissory note, has an outstanding balance of principal or interest on any other FFELP (formerly GSLP) loan, the HEA now provides that the borrower is eligible to receive a rebate of excess interest if the sum of the average of the bond equivalent rates of 91-day Treasury bills auctioned for that quarter, plus 3.1 percent, is less than the borrower's applicable interest rate. A borrower who receives a second or subsequent Federal Stafford loan at 8/10 percent will be subject to a rebate on the loan both when the borrower's applicable rate is 8 percent and when it increases to 10 percent. A Stafford borrower who has previously borrowed at 7, 8, or 9 percent is eligible for a rebate of excess interest on any new Stafford loan received on or after July 23, 1992. Stafford loans made to new borrowers on or after October 1, 1992 with a variable interest rate are not subject to the requirement to rebate excess interest. The amount of adjustment of interest to be made on such loans for any quarter is--

1. the applicable interest rate **minus** the **sum** of
   (i) the average of the bond equivalent rates of 91-day Treasury bills auctioned for such calendar quarter and
   (ii) 3.1 percent
   multiplied by
2. the outstanding principal balance of the loan (not including unearned interest added to principal) at the end of such calendar quarter
   divided by
3. four (4).

During any period in which the borrower is eligible to have interest payments paid by the Secretary, the excess interest must be refunded to the Department by the lender using Form 799. During any other period, the lender must use the provisions of §427A(f)(5) to credit the borrower with the rebate of excess interest. A change in the borrower's status (for example, from in-school status to repayment status where the borrower becomes responsible for interest payments) during a quarter will require the lender to pro-rate the period to determine correctly the excess interest due to the Secretary and the borrower.

3. Federal PLUS and Federal SLS Interest Rates - §427A(c)

The Act provides that for Federal PLUS and Federal SLS loans for which the first disbursement is made on or after October 1, 1992, the applicable interest rate is determined on July 1 of each 12-month period and is equal to the bond equivalent rate of 52-week Treasury-bills auctioned at the final auction held prior to June 1, plus 3.1 percent. The applicable interest rates on Federal PLUS and Federal SLS loans may not exceed 10 and 11 percent respectively. Based on this formula, the applicable variable interest rate for Federal SLS and Federal PLUS loans made on or after October 1, 1992 is 7.36 percent. This rate will continue to apply through June 30, 1993. An official notice of this rate will be published in the *Federal Register*.

D. Limitations on Interest Paid to Lenders Prior to Disbursement of a Loan - §428(a)(3)(A)

The HEA provides that a lender may not receive interest on a loan that is disbursed by check for any period earlier than 10 days prior to the first disbursement of the loan, or earlier than 3 days prior to the first disbursement of the loan for loans disbursed by electronic funds transfer (EFT). The Secretary interprets the use of the term "disbursement" in this context to mean delivery of the loan to the borrower by the institution. If a lender is unable to determine the exact date a loan is delivered to a borrower, that lender should begin to bill the Secretary according to the following schedule:

First Disbursements: For New Borrowers Subject to Delayed Delivery--

Disbursed by check: the 21st day of the borrower's period of enrollment.

Disbursed by EFT: the 28th day of the borrower's period of enrollment.

If the borrower's application shows no prior loan and the borrower is reported as being in grade level 1, the lender may assume that the borrower's loan is subject to delayed delivery.

Continuing Borrowers --

Disbursed by check: 10 days prior to the first day of the borrower's period of enrollment.

Disbursed by EFT: the 24th day prior to the borrower's period of enrollment.

For these purposes, "period of enrollment" is the loan period provided by the institution in the institutional section of the loan application. For loans disbursed to new borrowers on or after the 31st day of the borrower's period of enrollment, the lender may begin billing the Secretary three (3) days after the date of disbursement. For loans disbursed to continuing borrowers after the start of the period of enrollment, the lender may begin billing the Secretary three (3) days after the disbursement. Lenders must continue to disburse FFELP loans according to the schedule provided by the institution.

E. Disbursement to Borrowers Enrolled in Study-Abroad Programs - §428(b)(1)(N)

The HEA has been amended to provide that loan proceeds for borrowers who are in a study-abroad program that is approved for credit by a home institution must, at the borrower's request, be disbursed directly to the borrower. Alternatively, at the borrower's request, the loan proceeds may be disbursed to the borrower's home institution if the borrower provides a power-of-attorney to an individual not affiliated with the institution to endorse the borrower's check or complete an EFT authorization. A lender should continue to disburse loan proceeds directly to students attending eligible foreign institutions.

F. Guaranty Agency Financial and Compliance Audit - §428(b)(2)(D)

Under the HEA, a guaranty agency now must arrange for an independent financial and compliance audit to be conducted on at least an annual basis. This requirement supersedes the requirement in 34 CFR §682.410(b) that guaranty agency audits be conducted biennially. The first of these annual audits must cover the agency's activities for a period that includes July 23, 1992. However, if an agency is currently submitting audits on a biennial basis, and the second year of its biennial cycle starts on or before July 23, 1992, a biennial audit should be submitted that includes July 23, 1992, and the agency's next audit will be an annual audit.

G. Notification of Borrower Repayment Period - §428(b)(2)(E)

The HEA now provides that a guaranty agency must require its lenders to notify borrowers of the date on which the repayment period on their loans begins no later than 120 days after the borrower has left the eligible institution.

H. <u>Notification of Loan Sales and Transfers - §428(b)(2)(F)</u>

The HEA now requires that if a loan is sold, transferred, or assigned to another holder and there will be a change in the identity of the party to whom the borrower must send subsequent payments or direct any communications concerning the loan, both the transferor and transferee must, within 45 days from the date the transferee acquires a legally enforceable right to receive payment from the borrower on the loan, separately notify the borrower of: 1) the sale or other transfer; 2) the identity of the transferee; 3) the name and address of the party to whom subsequent payments or communications must be sent; and 4) the telephone numbers of both the transferor and transferee. The notifications from the transferor and transferee may not be mailed in the same envelope. The telephone number of a loan servicer acting as an agent of the transferor or transferee may be provided in lieu of the lender's telephone number. This provision is identical to the requirements of 34 CFR §682.208(e), except that the law requires that a separate notice must be sent to the borrower by each party to the sale or transfer. The Department will amend the regulations to reflect the statutory requirement.

The HEA also now requires that if a loan is sold, transferred, or assigned to another holder, the transferor must notify the guaranty agency of the sale, transfer, or assignment and must provide the agency with the address and telephone number by which contact may be made with the holder. Such notifications should take place within 45 days of the date the transferee acquires a legally enforceable right to receive a payment from the borrower.

Finally, upon the request of an institution, the guaranty agency must notify the last institution the student attended (prior to the beginning of the repayment period on the loan) of any sale, transfer, or assignment of the loan to another holder and the address and telephone number by which contact may be made with the new loan holder concerning repayment of the loan. This rule only applies if the borrower is in a grace period or in repayment status.

I. <u>Prohibited Inducements by Guaranty Agencies - §428(b)(3)</u>

The HEA prohibits guaranty agencies from offering, directly or indirectly, any premiums, payments, or other inducements to any lender or any agent, employee, or independent contractor of any lender or guaranty agency to administer or market any FFEL program loan in an effort to secure the designation of the guaranty agency as the insurer of the loan. This restriction does not apply to unsubsidized Federal Stafford loans or loans made under a guaranty agency's lender-of-last-resort program. The terms "premium" and "inducement" do not include services guaranty agencies provide to lenders in their programs to help lenders process loans. Rather, it applies only to payments or other types of inducements intended specifically to serve as a marketing or promotional tool for the agency. An example of one type of prohibited inducement would be a guaranty agency's offer to pay a lender, which does not hold loans guaranteed by the agency, a fee for each application forwarded for the agency's guarantee as part of a marketing appeal in an effort to secure that lender's participation in the agency's program. In light of these new restrictions, any agency that has questions about the legality of any marketing or promotional plan it is using or had planned to use, should submit its plan to the Department for a policy determination.

J. Use of State Licensing Boards for Skip-Tracing - §428(b)(6)

The HEA authorizes a guaranty agency to enter into an agreement with each appropriate state licensing board. Under the agreement, the state licensing board will provide the agency with the address of a student borrower, if known to the board, when the location of the student borrower is unknown or unavailable to the guaranty agency. The agency is expected to request and use information from the licensing boards as part of its preclaims and supplemental preclaims efforts, as well as in post-default collection efforts.

K. Guaranty Agreement for Reimbursement of Losses - §428(c)

1. Section 428(c)(1)(A) of the HEA now prohibits a guaranty agency from filing a claim with the Secretary prior to 270 days after a loan becomes delinquent or later than 45 days after the agency discharges its insurance obligation on the loan. An agency should examine and revise its lender claim filing and payment procedures to ensure it complies with this provision.

2. Section 428(c)(2)(G) of the HEA prohibits the Secretary from making any reimbursement to a guaranty agency when a default claim is based on an inability to locate the borrower, unless the guaranty agency, at the time for filing for reimbursement, demonstrates to the Secretary that diligent attempts have been made to locate the borrower through the use of reasonable skip-tracing techniques in accordance with the Department's regulations. The Secretary will prepare the addition of a certification statement to Form 1189 requiring the agency to certify, under threat of penalty (including loss of reinsurance), that the lender and agency have undertaken all reasonable skip-tracing efforts prior to payment of a default claim on a "skipped" borrower.

L. Guaranty Agency Agreement - §428(c)(2)(H)

The HEA now requires a guaranty agency to furnish an institution, upon request, with information about students who received FFEL program loans for attendance at the institution and for whom the agency has received a request from the lender for preclaims collection assistance. Previously, lenders (rather than guaranty agencies) were required to provide information to institutions when the lender requested preclaims assistance from the guaranty agency. The information that must be provided to the institution by the guaranty agency includes the name, address, and social security number of the borrowers for whom preclaims assistance was requested. A guaranty agency may charge the institution a reasonable fee for providing the requested information. The Department will issue regulations governing the assessment of the fee. The institution may use this information only to remind students of their obligation to repay and the institution is prohibited from sharing this information for any other purpose.

M. Information on Defaults - §428(k)

In conducting skip-tracing activities, the HEA requires guaranty agencies to use any information provided by an institution about a borrower's location.

N. Loan Assignment - §428(c)(8)

In determining whether to require assignment of a guaranty agency's loans, the HEA now requires the Secretary to develop criteria, in consultation with the guaranty agency, to determine whether the agency has made adequate loan collection efforts. In determining whether an agency's collection efforts are adequate, the Secretary is required to consider the agency's record of success in collecting its defaulted loans, the age of the loans, and the amount of any recent payments on the loans. Until such time as regulations are published in this area, the guidance for mandatory assignment contained in "Dear Guaranty Agency Director" letter 91-G-201 will continue to apply.

O. Guaranty Agency Fiscal Requirements - §428(c)(10)

1. Minimum Reserve Levels - §428(c)(10)(A),(B),(C), and (D)

Each guaranty agency is required to maintain a minimum reserve level of at least 0.5 percent of the total attributable amount of all outstanding loans guaranteed by the agency for the agency's fiscal year that begins in 1993. The minimum reserve level required increases to 0.7 percent for fiscal year 1994; 0.9 percent for fiscal year 1995; and 1.1 percent for each fiscal year that begins on or after January 1, 1996. Outstanding loans transferred to a guaranty agency from another agency pursuant to a plan of the

Secretary in response to the insolvency of the latter agency are not included in the calculation of the "total attributable amount of all outstanding loans." Thus, loans transferred by the Higher Education Assistance Foundation are not included in this calculation.

The HEA also requires the Secretary to collect, on an annual basis, financial information from each guaranty agency to enable the Secretary to evaluate the financial solvency of the agency. The information collected is expected to include, at a minimum, the level of the agency's current reserves, cash disbursements, and accounts receivable.

If: (1) a guaranty agency falls below the required minimum reserve level in any two consecutive years; or (2) the agency's federal reinsurance payments are reduced to 80 percent; or (3) the Secretary determines that the agency's administrative or financial condition jeopardizes the agency's ability to fulfill its responsibilities as a guarantor, the Secretary must require the guaranty agency to submit and implement a management plan acceptable to the Secretary. The agency must submit its management plan to the Secretary within 30 working days of any one of the listed conditions. The management plan must identify the means by which the agency will improve its financial and administrative conditions to the required levels within 18 months.

2. <u>Terminating a Guaranty Agency Agreement - §428(c)(10)(E),(G), and (H)</u>

Under §428(c)(10) of the HEA the Secretary may terminate a guaranty agency's participation in the FFEL program if: (1) an agency that is required to submit a management plan fails to submit a plan that is acceptable to the Secretary; (2) the Secretary determines that the agency has failed to improve substantially its administrative or financial condition; or (3) the Secretary determines that the agency is in danger of financial collapse. The Secretary may not take any action to terminate an agency from the FFEL program if it is backed by the full faith and credit of the state in which the agency is the primary guarantor. In addition, prior to taking action, the Secretary must provide an agency notice and opportunity for a hearing. This authority is in addition to and does not replace the Secretary's authority under applicable regulations and agreements.

3. <u>Secretary's Assumption of Guaranty Agency Functions - §428(c)(10)(F)</u>

The HEA provides that if the Secretary terminates a guaranty agency's agreement, the Secretary shall assume the functions of the agency. In performing such functions, the Secretary is authorized to: (1) permit the transfer of guarantees to another guaranty agency; (2) revoke the agreement of the agency as of a specified date so as to require the merger, consolidation, or termination of the agency; (3) transfer guarantees to the Department for payment using the agency's claim standards; (4) design and implement a plan to restore the viability of the guaranty agency; (5) provide the guaranty agency with additional advance funds to meet the immediate cash needs of the agency and to ensure the uninterrupted payment of claims; and (6) take any other necessary action to ensure the continued availability of loans and avoid disruption of the loan program.

P. Lenders-of-Last-Resort - §428(j)

1. The HEA requires a guaranty agency to develop rules and operating procedures for the agency's lender-of-last-resort (LLR) program. The program must be designed to ensure that--

(a) the program establishes operating hours and application methods designed to facilitate application by students;

(b) information about the availability of loans is made available to institutions of higher education in the state;

(c) appropriate steps are taken to ensure that borrowers receiving loans are counseled appropriately on their loan obligations; and

(d) the guaranty agency notifies the Secretary when the agency believes, or has reason to believe, that the Secretary might need to exercise the Secretary's authority to request the Student Loan Marketing Association to make LLR loans.

2. The HEA does not require a guaranty agency or eligible lender to make LLR loans for attendance at an institution that--

(a) has a cohort default rate that exceeds 25 percent for the most recent fiscal year for which a rate has been calculated by the Secretary;

(b) has not been eligible for, and has not been participating in the FFEL program during the most recent 18 consecutive months; or

(c) is currently subject to an emergency action or limitation, suspension, or termination by any guaranty agency or the Secretary.

Until July 1, 1994 this new LLR limitation provision does not apply to institutions that have been designated as historically black colleges and universities, tribally-controlled community colleges, or Navajo community colleges.

Notwithstanding the limitations on LLR service, the statute also provides that the Secretary may require a guaranty agency or other eligible lender to provide LLR loans if there are, in the judgment of the Secretary, exceptional mitigating circumstances that would make the application of these limitations inequitable. Any institution whose students are denied LLR services by the designated guaranty agency required to provide such services may request the Secretary to require the agency to provide loans under its LLR program.

In implementing these provisions, the Secretary has decided to use the definition of "exceptional mitigating circumstances" outlined in 34 CFR 668.15(g) as a guide in evaluating requests for LLR services by institutions with default rates that exceed 25 percent. See 56 Fed. Reg. 33332, 33339-33341 (July 19, 1991). An institution whose students are denied LLR services based on the institution's default rate must provide the information specified in those regulations to support its request to the Secretary. An institution whose students are denied LLR services on the basis of conditions 2(a) or 2(b) noted above may also request the Secretary to require that LLR services be provided. Those institutions must submit documentation proving to the satisfaction of the Secretary that the school has the necessary financial and administrative capability to participate in the FFELP and is offering educational programs of recognized quality. The Secretary will make a case-by-case determination on each request submitted on these grounds. A guaranty agency that intends to deny LLR services to an institution's students on the basis of this provision must inform the institution of its planned action prior to implementing the restriction. If the institution appeals, the guaranty agency must continue to provide LLR services until the Secretary has acted on the appeal. For an institution affected by these restrictions as of July 23, 1992 and notified by the agency of its impending loss of such services, the institution must submit any appeal to the Secretary no later than November 30, 1992. The Secretary will act on the institution's appeal no later than January 15, 1993. An institution notified after November 30, 1992 by a guaranty agency of an impending loss of LLR services must submit an appeal to the Secretary no later than 30 days after the date of the guaranty agency's notice to the institution. The Secretary will take action on the institution's appeal no later than 45 days following the Department's receipt of the institution's complete appeal. The Department will consider its experience with these procedures in evaluating whether the procedures should be changed through regulation.

Q. Limitation, Suspension, and Termination Actions - §428(b)(1)(T)

Before the enactment of the Amendments, section 428(b)(1)(T) of the HEA prohibited a guaranty agency from having eligibility requirements for institutional participation that were more onerous than those in effect on January 1, 1985 under the Federal Insured Student Loan (FISL) program.

The Amendments have deleted the prior language in §428(b)(1)(T). The Amendments have added a new provision authorizing a guaranty agency to limit the total number of loans or volume of loans made to students attending a particular eligible institution during an academic year. As a result of this change, guaranty agencies must develop and submit for the Secretary's approval their standards for institutional participation. After an agency has admitted an institution into its program in accordance with its standards, the agency may only limit, suspend, or terminate the institution pursuant to criteria, rules, or regulations which are substantially the same as regulations with regard to emergency actions, limitation, suspension, or termination issued by the Secretary.

The HEA also now authorizes a guarantee agency to limit, suspend, or terminate eligibility of an eligible institution if:

1. the institution is ineligible, under the Secretary's regulations for emergency action, limitation, suspension, or termination of eligible institutions, or is ineligible pursuant to criteria, rules, or regulations issued under the guaranty agency's student loan insurance program that are substantially the same as regulations on emergency action, limitation, suspension, or termination of such eligibility issued by the Secretary;

2. there is a state constitutional prohibition affecting the eligibility of the institution;

3. the institution fails to make timely refunds to students as required by the Secretary's regulations, or has not satisfied, within 30 days of issuance, a final judgment obtained by a student owed a refund;

4. the institution, or the owner, director, or officer of the institution, is found guilty or liable in any criminal, civil, or administrative proceeding pertaining to the administration of state or federal student financial assistance funds; or

5. the institution, or the owner, director, or officer of the institution, has any unpaid financial liabilities involving the improper acquisition, expenditure, or refund of state or federal student financial assistance funds.

If a guaranty agency limits, suspends, or terminates the participation of an eligible institution, the action taken will apply to all locations or branches of the institution, unless the Secretary finds, within 30 days of receiving notice of the action, that the guaranty agency's action did not comply with limitation, suspension, or termination requirements.

R. Guaranty Agency Agreement Requirements - §428(b)(1)(W),(X), and (Y)

1. The HEA provides guaranty agencies the authority to require a participation agreement between the guaranty agency and each eligible institution within the state in which it is the designated guarantor as a condition for guaranteeing loans for students attending the institution.

2. The guaranty agency must provide assurances that the agency will implement all requirements for uniform and standardized forms and procedures required in §432(l) of the HEA.

3. The guaranty agency must provide the information required by the Secretary under §428(c)(10) of the HEA and maintain reserve funds determined by the Secretary to be sufficient in relation to the guaranty agency's obligations.

S. Audits of Lenders - §428(b)(1)(U)

Under the HEA, a guaranty agency must require a compliance audit of each lender in its program at least once a year and covering the period since the most recent audit. The audit must be conducted by a qualified, independent organization or person in accordance with standards established by the U.S. Comptroller General for the audit of governmental organizations and programs. An audit conducted under Chapter 75 of Title 31 satisfies the audit standards. The results of the audit must be submitted to the Secretary by the lender within six months of the end of the audit period. If the lender submits to the Secretary the results of an audit conducted for other purposes that the Secretary determines provides the same information as the audits required by the HEA, the Secretary may waive this provision.

The first audit under this provision must cover the lender's first fiscal year that begins after the date of enactment of this provision and must be submitted to the Secretary no later than six months following the close of that audit period. Further guidance on the conduct of lender audits will be provided later.

T. Forbearance

1. Mandatory Provisions for Medical Interns/Residents - §428(b)(1)(V)

The statutory provision governing forbearance for borrowers serving in medical internships/residencies has been amended to provide that a forbearance for these borrowers must be the temporary cessation of all payments unless the borrower requests forbearance in the form of an extension of time for making payments or making smaller payments than were previously scheduled.

2. Forbearance for Borrowers Generally

The provision governing forbearance for borrowers generally has been amended to prescribe that the forbearance must be a temporary cessation of all payments unless the borrower requests forbearance in the form of an extension of time for making payments or making smaller payments than were previously scheduled. Further discussion of other amendments related to forbearance for these borrowers will be discussed in a future "Dear Colleague" letter.

3. Administrative Forbearance - §428(c)(3)(D)

The statute also gives the Secretary the authority to permit a lender to grant an administrative forbearance without the agreement of the borrower under conditions authorized by the Secretary. The statute provides that such administrative forbearances will include forbearances for borrowers who are delinquent at the time an authorized deferment is granted or who are less than 60 days delinquent on a loan at the time the loan is sold or transferred. The Secretary strongly encourages lenders to grant administrative forbearance to borrowers enrolled in an institution when it closes who received a FFELP loan for the period of enrollment during which the institution closed. Until regulations are published prescribing other conditions under which administrative forbearance may be granted, lenders may grant administrative forbearance only under these conditions.

U. Sales and Transfers of Loans Prior to Disbursement Prohibited - §428G(g)

The HEA has been amended to prohibit a lender from selling or transferring a promissory note for any FFEL program loan until the final disbursement of the loan has been made. However, the sale or transfer may take place if the transaction does not result in a change in the identity of the party to whom payments on the loan will be made and the first disbursement of the loan has been made.

V. Repayment

1. Income-Contingent Repayment for Defaulted Borrowers - §428(m)

The HEA provides that the Secretary may promulgate regulations establishing income-contingent repayment of FFEL program loans, except for Federal PLUS loans. Income-contingent repayment would be required for loans for which: (1) the promissory notes contain a notice that it is subject to income-contingent repayment; and (2) the loans have been assigned to the Secretary following default.

The Secretary may publish regulations to establish the terms and conditions of the income-contingent repayment program. Those regulations must specify the schedules under which the borrower's income will be assessed for repayment of loans, must permit the discharge of the debt not later than 25 years after commencement of income-contingent repayment, and may provide for the potential collection of amounts in excess of the principal and interest on the original loan.

To implement income-contingent repayment, the Secretary must issue a formal finding that a collection mechanism is available that assures a high degree of certainty of collection of these loans and that income-contingent repayment strategies will increase the net amount the Secretary will collect. The Department is currently examining how this can be accomplished.

2. Program to Assist Borrowers in Repaying Loans - §432(k)

The HEA requires the Secretary to undertake a program to encourage private and public-sector employers to assist borrowers in repaying Title IV loans. The Secretary may provide employers with recommended options for payroll deduction of loan payments and loan-repayment employer matching programs as employee benefits. The Department will provide further information on its plans to implement this program shortly.

W. Borrower Disclosures - §433(a)&(b)

1. Before Disbursement - The HEA now provides that prior to or at the time of loan disbursement, the lender must provide the borrower with a clear and concise statement, prominently and clearly displayed in bold print, that the borrower is receiving a loan that must be repaid.

2. Before Repayment - The HEA now requires that a lender disclose to the borrower information regarding repayment, as required in §433(b) of the Act, to a Federal Stafford and Federal SLS borrower not less than 60 days nor more than 240 days before the borrower's first payment is due on the loan.

X. Bankruptcy Claims - §437(b)

The HEA now requires the Secretary to pay the amount of the unpaid balance of principal and interest owed by the borrower on a Federal Stafford (subsidized and unsubsidized), Federal SLS, Federal PLUS, and Federal Consolidation loan when the collection on the loan is stayed in any action under the Bankruptcy Code. Prior law required the Secretary to pay bankruptcy claims only on loans that were discharged in bankruptcy. The following guidance also applies to FFELP loans on which a stay of collection is in effect on or after July 23, 1992.

If a lender determines that the collection of a borrower's loan has been stayed, the lender should file a bankruptcy claim with the guaranty agency. The lender should (a) file the bankruptcy claim with the guaranty agency within 30 days of the date the lender determines that collection has been stayed (30 days from the lender's receipt of this guidance for stays previously in effect), and (b) provide the guaranty agency with the documentation required under 34 CFR §682.402(e)(1), except that the lender need not provide written evidence of its efforts to determine if the borrower filed a hardship petition. The guarantee agency must pay the claim within 90 days of the date it is filed.

Following payment of the lender's claim, the guaranty agency may submit a bankruptcy claim to the Secretary. However, the agency's payment of a bankruptcy claim to a lender and the Secretary's reimbursement of the agency does not relieve the borrower of the obligation to repay the loan once the bankruptcy action is concluded and the stay of collections is no longer in effect.

The guaranty agency must diligently contest the discharge of the loan by the bankruptcy court. An FFELP loan generally may not be discharged, unless the borrower has been in repayment status for more than seven years. However, a borrower who has not been in repayment for seven years may be granted a hardship waiver by the bankruptcy court. Therefore, if the loan is determined to be non-dischargeable by the bankruptcy court or the court makes no determination but the loan has been in repayment for less than seven years, the agency must repay the reinsurance paid by the Secretary. The agency should then treat the loan as if forbearance had been exercised from the date the bankruptcy petition was filed until the date the court held that the loan was non-dischargeable and arrange for the lender that filed the claim or another eligible lender to repurchase the loan.

Y. Debt Management Options for High-Risk Borrowers - §437A

The HEA authorizes the Secretary, to the extent funds are appropriated, to provide additional debt-management options for borrowers who are at high risk of default. A high risk of default is determined by performing a FFEL program loan debt to income analysis or assessing other high risk factors identified by the Secretary in regulations.

Under such a program, the Secretary would purchase from the current holders the notes of borrowers who are at high risk of default and who submit a request to the Secretary for an alternative payment option. The alternative repayment options may include graduated or extended repayment options and must include an income-contingent repayment option with the same conditions as the income-contingent program for defaulted borrowers if collections on these loans will increase the net amount the Secretary collects. The Secretary is authorized to enter into contracts or other agreements with private firms or other federal agencies to implement this program.

The Department is currently examining how this can be accomplished.

1. Minimum Payment for Married Couples; Minimum Payment of Interest - §428(b)(1)(L)(i)

The reference in prior law to a special minimum loan payment for a married couple has been deleted and a new clause has been inserted that provides that the minimum loan payment by any borrower may not be less than the amount of interest due and payable.

2. Commencement of Repayment of Federal SLS loans - §428A(c)(1)

The statute now requires a lender to offer a borrower of a Federal SLS loan who has also borrowed a Federal Stafford loan the option to defer the beginning of repayment of the Federal SLS loan until six months after the student ceases to be enrolled on at least a half-time basis at an eligible institution. If the borrower chooses this option, interest on the Federal SLS loan will accrue and be paid by the borrower monthly or quarterly or be capitalized no more frequently than quarterly during this period. When notifying the borrower of this option, the lender must also notify the borrower of the option to begin payments earlier than the beginning of the repayment period and provide an explanation of the difference in total cost to the borrower.

3. Commencement of 10-year Repayment Period - §428A(c)(6)

The statute now provides that the 10-year repayment period for a Federal SLS Loan begins at the time the first payment of principal is due from the borrower.

4. Rehabilitation of Defaulted Loans - §428F(a)

The HEA now requires all guaranty agencies to enter into an agreement with the Secretary to establish a loan rehabilitation program for all borrowers for whom the Secretary has paid a reinsurance claim. For a loan to be eligible to be rehabilitated, the borrower must make 12 consecutive monthly payments. A guaranty agency may not demand that the amount of a borrower's monthly payments exceed an amount that is reasonable and affordable based upon the borrower's total financial circumstances. Until the Secretary can publish regulations containing the criteria a guaranty agency must use in determining a reasonable and affordable payment amount, each agency will be allowed to develop its own criteria. If the borrower's reasonable and affordable monthly payment amount will be less than $50, the agency must document the basis for the determination in the borrower's file.

After the borrower makes 12 consecutive monthly payments, the guaranty agency or Secretary shall, if practicable, sell the loan to an eligible lender. In determining whether a sale is practicable, a guaranty agency should determine whether a borrower who has made 12 consecutive monthly payments is a good candidate for loan rehabilitation. The Secretary does not view an agency's contractual obligations with collection agents, however, as an appropriate factor to consider in determining whether a borrower's loans should be rehabilitated. On sale of the loan to an eligible lender, the borrower is no longer considered to be in default on the loan and regains eligibility for deferments and other program benefits not available to a defaulted borrower. Any lender purchasing a rehabilitated loan must establish a repayment schedule that provides for the borrower to make monthly payments at least as great as the average of the 12 consecutive monthly payments received by the agency.

Guaranty agencies must complete and sign the agreement found in Appendix B of this "Dear Colleague" letter and submit it to the Loan Branch of the Department's Division of Policy Development for signature. An agency which did not participate in the loan rehabilitation program in the past may not rehabilitate loans under this program until it receives its copy of the agreement signed by the Department. Agencies that previously signed an agreement with the Secretary to participate in the optional loan rehabilitation program may continue to rehabilitate loans under that agreement until they have received a signed new agreement from the Secretary. However, a new agreement must be in place no later than 60 days after the agency's receipt of this letter. The signed agreement should be mailed to Robert W. Evans, Director; Division of Policy Development; Policy, Training and Analysis Service; U.S. Department of Education; Room 4310, ROB-3; 400 Maryland Avenue, S.W.; Washington, D.C. 20202.

Z. Reinstatement of Title IV Eligibility for Defaulted Borrowers - §428F(b)

The HEA now requires a guaranty agency to establish a program to allow a borrower with one or more defaulted loans to regain eligibility for all Title IV student financial assistance (regardless of whether the defaulted loan has been repurchased by an eligible lender) after the borrower has made six consecutive monthly payments. In determining the monthly payment amount, a guaranty agency may not demand that a borrower make monthly payments that exceed an amount that is reasonable and affordable based upon the borrower's total financial circumstances. Until the Secretary can publish regulations identifying the criteria an agency should use in determining what is reasonable and affordable, the agency may develop and use its own criteria. If the borrower's monthly payment amount will be less than $50, the agency must document the basis for this determination in the borrower's file.

AA. Demonstration Project for Borrowers in Selected Professions or Performing National or Community Service - §428J

The Secretary is authorized to establish a demonstration program to assume the obligation to repay a Federal Stafford Loan for any new borrower who enters certain areas of the teaching or nursing professions or performs certain kinds of national or community service. Under the demonstration program, the Secretary will assume portions of the Federal Stafford loan obligations that new borrowers after October 1, 1992 incurred during the last two years of undergraduate education. A borrower is eligible if: (1) he or she is employed as a full-time teacher in certain schools; (2) he or she is employed as a full-time nurse in certain hospitals or health-care centers; or (3) he or she has agreed, in writing, to volunteer for service under the Peace Corps Act or under the Domestic Volunteer Service Act of 1973 or to perform comparable service as a full-time employee of a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of

1986. A borrower performing service as an employee of a tax-exempt organization is eligible if he or she does not receive compensation that exceeds the greater of: (a) The minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938 or (b) an amount equal to 100 percent of the poverty line for a family of two (as defined in section 673(2) of the Community Services Block Grant Act). The Secretary will forgive 15 percent of the borrower's total Stafford loan debt incurred during the borrower's last two years of undergraduate education for the first or second year of service, 20 percent for the third or fourth year of service, and 30 percent for the fifth year of service. The Secretary will promulgate regulations to implement the demonstration program. However, the Department will implement this program only if funding is made available.

BB. Forgiveness of Loans by the Secretary - §437

1. Institutions that Close While a Borrower is Enrolled or that Provide False Loan Certifications --

The HEA now provides that a borrower's obligation on a GSL program loan received on or after January 1, 1986 or a FFEL program loan, including interest and collection fees, will be discharged by the Secretary if: (1) the borrower is unable to complete his or her program of study because the institution closed; or (2) the borrower's eligibility to borrow was falsely certified by the institution. The Secretary must attempt to recover the amount of the loan forgiven, including any refund owed the student, from the institution or its affiliates.

Loans that are discharged under this provision will not preclude a borrower from receiving Title IV student assistance in the future. In addition, the period of attendance at an institution at which a student is unable to complete a course of study because the institution closes will not be considered in calculating the student's period of eligibility for additional Title IV assistance. The HEA also provides that the borrower's default on the loan prior to its discharge under these provisions will not affect a borrower's eligibility for further Title IV student assistance. The Department will publish a Dear Colleague letter shortly providing additional guidance for implementation. Until such time as this guidance is provided, lenders and guaranty agencies are strongly encouraged to provide administrative forbearance for a borrower who was enrolled when an institution closed and who received a FFELP loan on or after January 1, 1986 for a program of study at the institution that the borrower was unable to complete due to the closure.

2. Discharge of Federal PLUS Loans of Borrowers When the Student Dies - §437(d)

The statute now also provides that a Federal PLUS loan borrower's debt will be discharged by the Secretary if the student, on whose behalf the parent borrowed, dies. This provision applies to any PLUS loan that is in repayment on or after the date of enactment of the amendments. Guaranty agencies should handle these claims as they do other death claims.

CC. Authority to Regulate Servicers - §432(a)(1)

The Secretary is authorized to regulate third-party servicers by establishing minimum standards with respect to sound management and the assessment of liabilities for program violations. The Secretary will issue regulations establishing such standards, including standards for financial responsibility and accountability for FFELP participation.

DD. Civil Penalties - §432(g)

The HEA provides that the Secretary may impose a civil penalty against a lender or guaranty agency if the Secretary determines that the lender or agency has violated or failed to carry out a statute or regulation or has engaged in substantial misrepresentation. A civil penalty may be imposed only if the violation, failure, or substantial misrepresentation resulted from a material violation, failure, or misrepresentation and the lender or guaranty agency knew or should have known that its actions violated or failed to carry out the rules and regulations of the program. A lender or guaranty agency will not be held liable if, prior to notification of initiation of an action by the Secretary to impose a civil penalty, the lender or guaranty agency cures or corrects the violation or failure or notifies the person who received the substantial misrepresentation of the actual nature of the financial charges involved. The Amendments also changed the appeal rights provided on a civil penalty. The lender or agency will receive notice and opportunity for a hearing before a Department official, but the hearing will not be, as previous law required, on the record before an administrative law judge.

EE. Designation of Lenders, Servicers, and Guaranty Agencies for Exceptional Performance of Due Diligence in Loan Collection - §428I

1. Authority - §428I(a)

The HEA provides that whenever the Secretary determines that an eligible lender, servicer, or guaranty agency has a compliance performance rating in loan collection that equals or exceeds 97 percent, that entity shall be designated as an exceptional performer by the Secretary. The compliance performance rating is equal to the percent of all due diligence requirements applicable to each loan, on average, with respect to loans serviced by a lender or servicer or on which collection was attempted by the guaranty agency. The compliance performance rating will be determined annually based on the compliance and financial audit submitted for this purpose. To maintain its status as an exceptional performer, the lender, guaranty agency, or servicer, must undergo a quarterly compliance audit that demonstrates that it meets the standard for continued designation as an exceptional performer. The Department will publish regulations to implement these provisions of the law.

2. Payments to Lenders and Servicers - §428I(b)(1)

Each guaranty agency will pay 100 percent of the unpaid principal balance and interest of all loans for which claims are submitted for payment by an eligible lender or servicer (as agent for an eligible lender) for the one-year period following the Secretary's notification to the guaranty agency that such lender or servicer has been designated by the Secretary for exceptional performance or until the agency receives notice from the Secretary that the designation has been revoked.

3. Additional Review or Repurchase - §428(c)(1)(D)

Section 428(c)(1)(D) of the HEA specifies that reinsurance payments made on claims originally submitted by an eligible lender, servicer, or guaranty agency designated for exceptional performance in loan collection under §428I of the Act may not be subject to additional review by the Secretary or repurchase by the guaranty agency for any reason other than a determination by the Secretary that the eligible lender, servicer, or guaranty agency engaged in fraud or other purposeful misconduct in obtaining the exceptional performance designation.

4. Audits of Lenders and Servicers - §428I(c)(1)

Each eligible lender or servicer that wishes to be designated by the Secretary for exceptional performance in loan collection must have a financial and compliance audit conducted annually by a qualified independent organization from a list of qualified organizations provided by the Secretary in accordance with standards established by the U.S. Comptroller General and the Secretary. To maintain its status as an exceptional lender or servicer, the lender or servicer must undergo a quarterly compliance audit at the end of each quarter, (except for the quarter in which status as an exceptional lender or servicer is established) and submit the results of the audit to the Secretary and appropriate guaranty agencies. A lender's or servicer's designation for exceptional performance will be revoked by the Secretary if the required quarterly compliance audit is not submitted by the deadline established by the Secretary or if the audit shows that the lender or servicer did not maintain 97 percent or higher compliance with program regulations, as reflected in performance of due diligence requirements applicable to each loan, on average, for two consecutive months or 90 percent compliance for one month.

5. Compliance Standards - §428I(c)(7)

The HEA requires the Secretary to promulgate regulations, after consultation with lenders, servicers, and guaranty agencies, that contain the due diligence standards to be used in determining an entity's compliance rating. These regulations must contain a list of specific elements that will provide an indication of any deterioration in an entity's collection systems.

6. Guaranty Agency - §428I(b)(4)

The Secretary will pay each guaranty agency designated for exceptional performance in collection of defaulted loans the appropriate percentage on loans for which the agency has submitted reinsurance claims. This level of reimbursement to the agency applies to the one-year period following the guaranty agency's receipt of its exceptional performance designation. The agency's designation will be based on the results of an annual financial and compliance audit of the agency's defaulted loan portfolio conducted by a qualified independent organization or person from a list of qualified organizations and persons provided by the Secretary.

7. Audit of Guaranty Agencies - §428I(d)

Each guaranty agency desiring a designation for exceptional performance must have a financial and compliance audit of its defaulted loan portfolio conducted annually by a qualified independent organization or person. The Secretary may require quarterly sample audits to determine continued qualification for designation as an exceptional guaranty agency.

8. Compliance Standards - §428I(d)(5)&(6)

As with lenders and servicers, a guaranty agency's designation as an exceptional performer must be revoked if it fails to satisfy the appropriate due diligence performance standard. Also, the HEA provides that the Secretary may revoke the designation of a guaranty agency as an exceptional performer if the Secretary has reason to believe the agency secured its designation through fraud or the agency fails to comply with applicable regulations.

An agency's exceptional performance designation may be revoked at any time, upon 30-days notice and an opportunity for a hearing, if there is a finding that the agency failed to maintain an acceptable overall level of regulatory compliance.

FF. Default Rates of Lenders, Holders, and Guaranty Agencies - §430(e)(1)

The HEA has been amended to require the Secretary to publish annually a list containing the cohort default rate for each originating lender, subsequent holder, and guaranty agency participating in the program. For purposes of lender rates, the Secretary plans to publish a rate for loans originated by each lender and loans currently held by each lender. The Secretary also is required to publish an average cohort rate for all institutions within each state. The cohort default rates for lenders, holders, and guaranty agencies will be calculated according to the definition contained in §435(m) of the HEA except that it will exclude loans in repayment that have been canceled due to teaching, nursing, or performing national community service and loans made under a lender-of-last resort program. The Secretary must provide each organization with the opportunity to correct any errors in its default rate information.

GG. Common Forms and Formats

1. Common Application Form and Promissory Note - §432(m)(1)

The HEA requires the Secretary, in cooperation with representatives of guaranty agencies, eligible lenders and organizations involved in student financial assistance to develop and prescribe a common application form and promissory note to be used by borrowers in applying for FFELP loans. The forms must meet certain requirements and must be approved by the Secretary within 360 days after enactment of the Amendments.

2. Common Deferment Form - §432(m)(2)

The Secretary, in cooperation with representatives of guaranty agencies, institutions of higher education, and lenders, shall prescribe a common deferment reporting form to be used to process deferments of Title IV loans.

3. Common Reporting Formats - §432(m)(3)

The Secretary is required to promulgate regulations to require lenders and guaranty agencies to report information on all aspects of loans in uniform formats so that direct comparisons of data submitted by lenders, servicers, or guaranty agencies can be made.

HH. Duration of Authority to Report FFELP Loan Information to Credit Bureaus - §430A(f)

The statute now provides that a consumer reporting agency may make a report containing information received from the Secretary, guaranty agency, or holder of a loan regarding the status of a FFELP loan until:

- seven years from the date on which the Secretary or guaranty agency paid a claim to the holder of the loan,
- seven years from the date the Secretary, guaranty agency, eligible lender, or subsequent holder first reported the account as a default to the consumer reporting agency, or
- for a borrower who enters repayment after defaulting on a loan and defaults again on the loan, seven years from the date the loan enters default the second time.

II. Guaranty Agency Excess Reserves - §422(e)

1. Correction for Erroneous Data Used to Calculate Excess Guaranty Agency Reserves --

The statute requires the Secretary to pay a guaranty agency the amount of reimbursement of reinsurance claims filed between September 1, 1988 and December 31, 1989 that were previously withheld or canceled to satisfy the agency's obligation to eliminate excess cash reserves under prior law. An agency is eligible for such reimbursement if its maximum cash reserve as determined between September 1, 1988 and December 31, 1989 was miscalculated because of erroneous financial information provided to the Secretary by the guaranty agency, the erroneous information is verified as such, and the correct information is provided in an audited financial statement of the reserve fund, signed by a certified public accountant and provided to the Secretary prior to January 1, 1993.

The HEA provides that the amount of the reimbursement to the agency is the amount of reimbursement for claims that were withheld or canceled to satisfy the agency's obligation to eliminate excess cash reserves that exceeds the amount that would have been withheld or canceled if the maximum excess cash reserves had been calculated with correct data.

2. Reimbursement of Claims Canceled or Withheld to Agencies with Projected Insolvency - §422f

The HEA requires the Secretary, within 30 days of enactment of the Amendments, to repay the full amount of claims canceled or withheld from a guaranty agency that:

1. Was required to eliminate excess cash reserves;

2. Submitted an appeal of the requirement to eliminate excess reserves and received a partial waiver from the Secretary;

3. Had payments withheld or canceled to satisfy the requirement to eliminate excess cash reserves; and

4. Received a review report from the Department prior to January 1, 1992 that projected the agency's insolvency during or before 1996 and cited the elimination of the agency's excess reserves as a factor in the projected insolvency.

The Department reviewed its records to identify the agencies affected by this provision and has made the required payments.

JJ. Simplification of the Lending Process for Borrowers - §485C

The HEA has been amended to provide that, to the extent possible, a lender, in cooperation with a borrower, should treat all similar loans made to a borrower under the same section of Title IV, Part B of the HEA as one loan for billing purposes. This includes submitting one bill to the borrower on all loans for a monthly or similar payment period. Also, if a borrower receives a deferment on any of these loans, the deferment is to be extended to the total amount of all of the borrower's loans. Finally, the HEA requires the guaranty agency to make every effort to ensure that the borrower's loans are maintained by one lender, holder, guaranty agency, and servicer to eliminate the need for multiple contacts with the borrower.

KK. Statute of Limitations on Student Loan Collection - Title XV, Part H of the Amendments

The Amendments deleted the sunset provision for the repeal of the statute of limitations on Title IV student loan collections. The repeal had been scheduled to expire on November 15, 1992. As a result, there is no statute of limitations on collection of Title IV student loans.

II. Provisions Effective October 1, 1992

A. Unsubsidized Federal Stafford Loans for Middle-Income Borrowers - §428H

Section 428H has been added to the HEA to provide for unsubsidized Federal Stafford Loans for Middle-Income Borrowers who do not qualify for federal interest subsidies under the Federal Stafford Loan program. Any student who meets the requirements for student eligibility under §484 of the HEA is entitled to borrow an unsubsidized Federal Stafford loan. Guaranty agencies must ensure that all such borrowers are provided with access to unsubsidized Stafford Loans to cover the cost of instruction for periods of enrollment beginning on or after October 1, 1992. For institutions using standard terms, the period of enrollment will be the next scheduled term commencing on or after October 1, 1992 (e.g., semester, quarter, etc.). For institutions not using standard terms, the period of enrollment would include those programs with scheduled start dates on or after October 1, 1992. The terms and conditions of loans made under the subsidized Federal Stafford Loan program apply to unsubsidized Federal Stafford loans made under §428H unless otherwise specified.

The combination of subsidized and unsubsidized Federal Stafford loans for a borrower may not exceed the annual and aggregate limits for loans under the Federal Stafford Loan program. A borrower's unsubsidized Federal Stafford loan amount is determined by calculating the difference between the borrower's cost of attendance for the period of enrollment for which the loan is intended and the amount of estimated financial assistance, including the amount of subsidized Federal Stafford loan for which the borrower qualifies, for the period of enrollment.

An unsubsidized Federal Stafford loan borrower is required to pay a combined origination fee and insurance premium of 6.5 percent on the principal amount of the loan. The cost will be deducted proportionately from each disbursement of the loan. Each lender making unsubsidized Federal Stafford loans must transmit all combined origination fees and insurance premiums authorized to be collected to the Secretary by adjusting Form 799 or, if appropriate, by paying these fees to the Department in accordance with the guidance provided in "Dear Colleague" letter 91-L-142 dated October 1991.

Borrowers who received unsubsidized Stafford loans under programs that existed prior to the enactment of the Amendments will continue to borrow at the interest rate at which they have borrowed previously.

The provisions of section 428H of the Act are effective for unsubsidized Federal Stafford loans made to cover the cost of instruction for periods of enrollment beginning on or after October 1, 1992. The Department is currently revising all required reporting forms to capture information on unsubsidized Stafford loans.

B. Interest and Special Allowance on Loans That Have Not Been Consummated - §428(a)(7)

For loans made on or after October 1, 1992, lenders may not charge interest or receive interest subsidies or special allowance payments on loans for which the disbursement checks have not been cashed or for which electronic funds transfers have not been completed. Lenders may bill the Secretary for interest and special allowance on a loan until: (1) the loan check is returned to the lender uncashed; (2) the lender is notified by the institution that an EFT delivery has not been completed for a borrower; or (3) the check has not been cashed or the EFT transaction completed by the 120th day following disbursement pursuant to 34 CFR §§682.300(b)(2)(iii) and 682.302(d)(1)(v). The Secretary considers an EFT transaction to have been completed if the institution transfers loan proceeds from its EFT holding account to the borrower's account with the institution. (Lenders have been advised previously that they must establish a system with institutions to identify when an EFT fund transfer to the borrower is not completed.) Lenders must reimburse the Secretary for all interest and special allowance paid on an unconsummated loan through adjustment to the lender's Form 799.

C. Origination fee for Federal SLS and Federal PLUS Loans- §438(c)

The HEA now requires each eligible lender to charge a Federal SLS and Federal PLUS loan borrower an origination fee of 5 percent of the principal amount of the loan. The fee is to be deducted proportionately from each disbursement and paid to the Secretary. Lenders should report these origination fees on ED Form 799 in the same manner as they have reported origination fees in the Stafford Loan program or, if appropriate, pay these fees to the Department in accordance with the guidance provided in "Dear Colleague" letter 91-L-142 dated October 1991.

D. Special Allowance on Loans from Tax-Exempt Obligations - §438(b)(2)(B)

The Amendments have changed the HEA to provide that the quarterly rate of special allowance that holders of loans made or purchased with tax-exempt obligations may receive is one-half of the special allowance rate calculated by determining the average bond equivalent rate of 91-day Treasury bills auctioned for the quarter, subtracting the applicable interest, adding 3.5 percent and dividing the resulting percentage by four (4). However, the rate of special allowance may not be less than 9.5 percent minus the applicable interest on the loan divided by four (4). This rate is applicable for loans for which the first disbursement is made on or after October 1, 1992.

E. Administrative Cost Allowance - §428(f)(1)

The HEA provides that administrative cost allowance (ACA) payments shall not be made to a guaranty agency for a loan for which the disbursement check has not been cashed or for which an electronic funds transfer has not been completed. A guaranty agency may include any loan in the calculation of its ACA payment that it would have included prior to this amendment until the agency is notified by the lender of a loan that it has been canceled. The agency must reflect cancellations on its next quarterly submission of Form 1130 so that necessary adjustments can be made in the agency's ACA payment.

F. Federal PLUS Loan Disbursement - §428B(c)

The Act requires that all Federal PLUS loans for which the first disbursement is made on or after October 1, 1992 must be disbursed by either electronic transfer of funds (EFT) from the lender to the eligible institution or by a check that is co-payable to the institution and the parent borrower.

Co-payable Federal PLUS checks must be disbursed to the institution. The institution must verify the student's eligibility prior to forwarding the Federal PLUS check to the borrower. The institution is not required to provide its endorsement on the check before forwarding it to the borrower. Lenders must provide the institution the name and social security number of the student on whose behalf the parent is borrowing on the check or on an attached roster. As with student borrowers, in the case of loan proceeds disbursed by EFT, the institution is required to collect an authorization from the parent to release funds from the institution's EFT escrow account for delivery to the borrower. The institution must retain a copy of the authorization in the file of the student on whose behalf the parent is borrowing.

G. Special Allowance on Federal PLUS and Federal SLS Loans - §438(b)(2)(C)

The HEA provides that for Federal PLUS and SLS loans for which the first disbursement is made on or after October 1, 1992, no special allowance will be paid unless the interest rate exceeds 10 percent on PLUS loans or 11 percent on SLS loans.

H. Special Allowance on Unsubsidized Federal Stafford Loans - §438(b)(5)

The HEA now provides that a lender may receive special allowance payments for unsubsidized Federal Stafford loans made to cover the cost of instruction for periods of enrollment beginning on or after October 1, 1992. The special allowance paid on these loans is computed using the same formula as that used for subsidized Federal Stafford loans. Lenders should bill the Secretary using Form 799 as they do currently for subsidized Stafford loans.

I. Tax-exempt Authorities - §438(d)(2)(C)

The Amendments have eliminated the prior 1 percent limitation on the amount of discount at which a tax-exempt authority may purchase student loans from lenders. These authorities may now purchase loans for which the initial disbursement is made on or after October 1, 1992 at more than a 1 percent discount.

III. Federal Consolidation Loan Program - §428C -- Effective January 1, 1993

A. Borrower Eligibility

The Amendments have made some changes to Federal Consolidation loan eligibility to provide that a borrower, at the time of application, must:

(a) have a minimum debt under the eligible loan programs of at least $7,500; and

(b) be in a grace period or repayment status on all loans being consolidated; or

(c) if in a delinquent or default status, will reenter repayment through loan consolidation.

A borrower may consolidate loans made under the FISL, Federal Stafford, Perkins, Federal PLUS (student), Federal PLUS (parent loans made after October 17, 1986), Federal SLS, and Health Professions Student Loan (HPSL) programs. A loan on which a borrower defaulted is eligible for consolidation only if the borrower has, prior to the time of application, made satisfactory repayment arrangements with the holder of the loan and provides evidence of the arrangements to the consolidating lender.

The HEA now allows a Federal Consolidation loan borrower to add any eligible loans received before the date of consolidation to an existing Consolidation loan, provided they are added within 180 days of the date the Federal Consolidation loan is made.

These changes apply to Federal Consolidation loans for which the application is received by the lender on or after January 1, 1993.

B. Consolidation of Loans of Married Couples - §428C(a)(3)(C)

The HEA now allows a married couple to consolidate their individual loans if they agree to be held jointly and severally liable for repayment without regard to the amount of their individual indebtedness and any future change in their marital status.

For a married couple to be eligible for consolidation, only one spouse needs to meet the eligibility requirements for a Consolidation loan. However, each spouse must certify that he or she does not have another application for a Federal Consolidation loan pending and each must agree to notify the holder of the loan of any change of address.

C. Deferment Provisions for Federal Consolidation Loan Borrowers - §428C(b)(4)(C)

The HEA has been amended to provide that, during authorized deferment periods, interest will accrue on a Federal Consolidation loan and be paid by the Secretary.

D. Repayment Schedule for Federal Consolidation Loans - §428C(c)(2)

The HEA now requires lenders to offer repayment schedules on Consolidation Loans that provide for graduated or income-sensitive repayment. The length of the repayment period, as determined by the total amount of the borrower's Federal Consolidation Loans and other student loan debts, has also been amended. If the sum of the borrower's Federal Consolidation Loans and the amount outstanding on other student loans owed by a borrower is:

(1) $7,500 or more but less than $10,000, the term is not more than 12 years.

(2) $10,000 or more but less than $20,000, the term is not more than 15 years.

(3) $20,000 or more but less than $40,000, the term is not more than 20 years.

(4) $40,000 or more but less than $60,000, the term is not more than 25 years.

(5) $60,000 or more, the term is 30 years.

IV. Provisions Effective July 1, 1993

A. Federal PLUS Programs - §428B

1. Revised Eligibility

The eligibility requirements for the Federal PLUS Program in the HEA have been revised. A parent no longer will be eligible to borrow on behalf of a dependent student if the parent is determined, based on criteria established by federal regulations, to have an adverse credit history. This provision applies to loans for which the first disbursement is made on or after July 1, 1993.

2. Repeal of Loan Limits

The annual and aggregate limits in the HEA on the amount a parent may borrow on behalf of a dependent student have been repealed. This change applies to all Federal PLUS loans for which the first disbursement is made on or after July 1, 1993. However, a Federal PLUS loan may not exceed the student's estimated cost of attendance minus any estimated financial assistance the student has been or will be awarded during the period of enrollment.

B. Deferment Provisions for Federal Family Education Loans - §§427(a)(2)(C) and 428(b)(1)(M)

As previously noted, effective on enactment of the Amendments, for purposes of an in-school deferment, an eligible institution is defined as including any institution, whether it is participating in any Title IV program or has lost its eligibility to participate in the FFEL program because of a high default rate. If an institution has never participated in the Title IV programs previously, the institution must request a determination from the Secretary that it satisfies the definition of an eligible institution prior to certifying borrower deferment forms.

The following deferments will be applicable to any borrower under the Federal Stafford, Federal SLS, and Federal PLUS loan programs who is a new borrower on the date he or she applies for a loan and whose first disbursement of such loan is made on or after July 1, 1993:

1. Periods during which the borrower is pursuing at least a half-time course of study as determined by an eligible institution.

2. Periods during which the borrower is pursuing a course of study under a graduate fellowship program or a rehabilitation training program for disabled individuals approved by the Secretary.

3. Up to three years during periods in which the borrower is seeking and unable to find full-time employment.

4. Up to three years for any reason, which the lender determines, under regulations prescribed by the Secretary, has caused or will cause the borrower to have an economic hardship.

An economic hardship exists when the borrower is working full-time and is earning an amount that does not exceed the greater of the minimum wage or the poverty line for a family of two as determined in accordance with §673(2) of by the Community Service Block Grant Act or if the borrower meets other criteria established by the Secretary in regulations.

These deferment provisions also apply to any borrower with a Federal Consolidation loan made on or after July 1, 1993 if the borrower has no other outstanding FFELP loans. Prior to the effective date for these provisions, all borrowers, including new borrowers receiving unsubsidized Federal Stafford Loans on or after October 1, 1992 will qualify for the existing deferment provisions. The existing deferment provisions will continue to apply to old borrowers after July 1, 1993 for the life of the borrower's loan.

For a summary of existing and new deferment provisions applicable on or after July 1, 1993, see Appendix C.

C. <u>Deferment Eligibility for Borrowers Engaged in Graduate Fellowship Programs Outside the United States - §428(b)(4)</u>

The deferment provisions for new borrowers continue to contain a deferment for borrowers engaged in graduate fellowship programs outside the United States.

The HEA provides that on the date of application an individual who is a new borrower may defer repayment of a FFELP loan for the complete period of graduate or post-graduate fellowship-supported study (such as pursuant to a Fulbright grant) outside the United States. This provision applies to loans for which the first disbursement is made on or after July 1, 1993.

D. <u>Teacher Shortage Area Deferment - §428(b)(1)(M) and §428(b)(4)</u>

The Amendments have deleted the deferment provided previously to full-time teachers in targeted teacher shortage areas. This change applies to new borrowers whose first disbursement on a loan is made on or after July 1, 1993 and deletes the requirements in the FFEL program for establishing teacher shortage areas. "Old" borrowers will remain eligible for this deferment for the life of their loans based on targeted shortage areas identified under criteria established in the Paul Douglas Teacher Scholarship Program.

E. Federal PLUS Loan Deferment Based on Dependent's Status - §428B(d)(1)

The Amendments eliminate the deferment previously available to PLUS borrowers on the basis of the status of the borrower's dependent. This change applies to new borrowers whose first disbursement on a loan takes place on or after July 1, 1993. "Old" borrowers would continue to receive deferments under this provision.

F. Graduated or Income-Sensitive Repayment - §428(b)(1)(E)(i)

The HEA now requires that not more than six months prior to the due date of the first payment on a Federal Stafford or Federal SLS loan, a lender must offer a FFEL program borrower the option of repaying the loan according to a graduated or income-sensitive repayment schedule established by the lender in accordance with regulations promulgated by the Secretary. To comply with this requirement, the lender must provide both options to the borrower.

This requirement applies to loans for which the first disbursement is made on or after July 1, 1993 to new borrowers (as defined in §432(b) of the HEA) on the date the borrower applies for a loan.

G. Annual and Aggregate Loan Limits - Federal Supplemental Loans for Students - §428A

The HEA establishes the following annual limits a student may borrow under the Federal SLS program in any academic year or for a period of seven consecutive months, whichever is longer:

1. For a student who has not yet successfully completed the first and second year of a program of undergraduate education:

(a) $4,000 for a program of study that is at least an academic year in length;

(b) $2,500 for a program of study that is at least two-thirds of an academic year but less than an academic year in length;

(c) $1,500 for a program of study that is less than two-thirds but at least one-third of an academic year in length.

2. For a student who has successfully completed the first and second years of a program of study of undergraduate education, but who has not yet completed the remainder of the program, up to:

(a) $5,000 for a program of study that is at least an academic year in length;

(b) $3,325 for a program of study that is at least two-thirds of an academic year but less than an academic year in length; and

(c) $1,675 for a program of study that is at least one-third of an academic year but less than two-thirds of an academic year in length.

A graduate or professional student, as defined in the Department's regulations, may borrow up to $10,000 per academic year.

For purposes of this provision, an academic year is the institution's stated academic year, provided it meets the requirements of §481(d). A student enrolled in a program of study that normally takes a full-time student two full academic years to complete, based on scheduled time, is restricted to a $4,000 annual loan limit regardless of the time it takes the student to complete the program. If a student is enrolled in a program of study that is longer than one academic year, but less than two academic years in length, the institution must calculate a pro-rated loan amount for the student's second academic year according to the schedule of loan limits provided above after determining how the remaining balance of the student's program relates to a full academic year. This same approach should be used if the student is in a program greater than two academic years, but less than three academic years in length, greater than three academic years, but less than four academic years in length, and for any other period of enrollment that is less than an academic year in length. The lender may rely upon the information supplied by the institution on loan limit eligibility.

The aggregate insured principal amount of Federal SLS loans an undergraduate student may borrow, excluding any capitalized interest, may not exceed $23,000. A graduate or professional student may borrow up to an aggregate maximum insured principal amount of $73,000, excluding the amount of capitalized interest. The aggregate maximum amount for a graduate or professional student includes any amount received for study at the undergraduate level.

This change applies to loans for which the first disbursement is made on or after July 1, 1993.

V. Federal Insured Student Loan (FISL) and Federal Stafford Loan Programs - (§§425(a), 428(b) and 428H(d)) -- Various Effective Dates

A student who is enrolled at an eligible institution or in a program of study abroad that has been approved for credit by an eligible home institution at which the student is enrolled is eligible for the following loan amounts per academic year:

A. A student who has not yet successfully completed the first year of a program of study of undergraduate education as determined by the institution may borrow up to:

(a) $2,625 for a program of study that is at least an academic year in length;

(b) $1,750 for a program of study that is at least two-thirds of an academic year but less than an academic year in length; and

(c) $875 for a program of study that is at least one-third of an academic year but less than two-thirds of an academic year in length.

This change in annual loan limits is effective for loans certified on or after October 1, 1992.

B. A student who has successfully completed the first year of a program of study of undergraduate education but who has not yet successfully completed the remainder of the program may borrow up to:

(a) $3,500 for a program of study of at least an academic year in length;

(b) $2,325 for a program of study of at least two-thirds of an academic year but less than an academic year in length; and

(c) $1,175 for a program of study of at least one-third of an academic year but less than two-thirds of an academic year in length.

This change in annual loan limits is effective for loans for which the first disbursement is made on or after July 1, 1993.

C. A student who has successfully completed the first and second years of a program of study of undergraduate education but has not successfully completed the remainder of the program may borrow up to:

(a) $5,500 for a program of study of at least an academic year in length;

(b) $3,675 for enrollment in a program of study of at least two-thirds of an academic year but less than an academic year in length; and

(c) $1,825 for a program of study of at least one-third of an academic year in length but less than two-thirds of an academic year in length.

This change in annual loan limits is effective for loans for which the first disbursement is made on or after July 1, 1993.

For purposes of this provision, an academic year is the institution's academic year, provided it meets the requirements of §481(d). A student who is enrolled in a program of study that normally takes a full-time student two full academic years to complete, based on scheduled time, is not eligible to receive more than an annual loan limit of $3,500 regardless of the time it takes the student to complete the program. If a student is enrolled in a program of study that is longer than one academic year, but less than two academic years in length, the institution must calculate a pro-rated loan amount for the student's second academic year after determining how the remaining balance of the student's program relates to a full academic year. The same approach should be used if the student is in a program greater than two academic years, but less than three academic years in length, greater than three academic years, but less than four academic years in length, and for any other period of enrollment that is less than an academic year in length. The lender may rely upon the information supplied by the institution on loan limit eligibility.

D. A graduate or professional student is eligible to borrow up to $8,500 per academic year.

This provision is effective for loans made to cover the costs of instruction for periods of enrollment beginning on or after October 1, 1993.

A student may borrow up to an aggregate loan maximum amount of $23,000 if the student has not successfully completed a program of undergraduate education, excluding loans obtained under the

Federal SLS or Federal PLUS loan programs. A graduate or professional student (as defined in program regulations) may borrow up to an aggregate loan maximum amount of $65,500, including any loans made to the student under the Federal Stafford Loan program before the student became a graduate or professional student, but excluding any loans made under the Federal SLS or Federal PLUS loan programs.

The aggregate loan limit provisions for Federal Stafford loans are effective for loans for which the first disbursement is made on or after July 1, 1993.

VI. Provisions Retained from Emergency Unemployment Compensation Act of 1991 (Public Law 102-164)

A. Driver's License Number - §428(a)(2)(A)(iii)

The Amendments retained the provision enacted as part of the Emergency Unemployment Compensation Act of 1991 (Pub.L. 102-164) that required the lender to secure a loan applicant's driver's license number, if any, at the time of loan application. The Secretary intends to implement this provision through regulations.

B. Guaranty Agency Wage Garnishment of Defaulted Borrowers - §488A

The Amendments retained the provision of the Emergency Unemployment Compensation Act that authorized guaranty agencies and the Secretary to garnish up to 10 percent of a defaulter's disposable pay. Guaranty agencies must submit their policies and procedures to the Department for approval prior to implementing a wage-garnishment program. The Department may regulate further in this area as appropriate.

VII. Federal Direct Loan Demonstration Program

For the period from July 1, 1994 through June 30, 1998, the Department will conduct a Federal Direct Loan demonstration program. Under the demonstration program, the Secretary will assume the functions normally performed by lenders and guaranty agencies in the FFEL program. Approximately 250 institutions will be selected to participate in the demonstration program. An equivalent number of institutions participating in the FFEL program will be identified as a control group and monitored for comparative and evaluation purposes. The Secretary is required to select the institutions that will participate in the demonstration program and the control group, with preference given to those institutions that apply for participation. The Secretary must consider a number of factors to ensure that "a cross-section of all institutions of higher education" participate in the Federal Direct Loan demonstration program. Among the factors that must be considered are the highest degree offered by the institution, size of student enrollment, the percentage of students borrowing, geographic location, and the composition of the institution's student body. If an insufficient number of institutions apply for participation, the Secretary has authority to designate additional participating institutions in order to achieve a cross-section of institutions of higher education. The institutions selected to participate must not represent more than 15 percent of the loan guarantees of any guaranty agency.

The statute directs the Secretary to publish all proposed regulations necessary to carry out the program by April 1, 1993. These regulations must include: 1) procedures for institutions to apply for participation in the loan demonstration program; 2) the criteria the Secretary will use to select institutions to participate; 3) procedures under which an institution selected by the Secretary to participate may decline to do so; 4) agreements between the Secretary and institutions participating in the demonstration program; 5) procedures for the disbursement of Direct Loan funds to participating institutions; and 6) procedures for withdrawal or termination of an institution from participation.

The Department is currently designing a delivery system to provide loan funds efficiently to participating institutions on a timely basis.

VIII. Federal Supplemental Educational Opportunity Grant (FSEOG), and Federal Perkins Loan Programs -- Effective on the date of enactment; Federal Work-Study (FWS) Program -- Effective on October 1, 1992

A. Use of Funds for Nontraditional Students - §§413C(d), 443(b)(3), and 464(b)(2)

If the institution's allocation, capital contribution, or grant is directly or indirectly based in part on the financial need of less than full-time or independent students (as measured by the eligible aid applicant data in the annual application for funding) and if the need of all of these students exceeds five percent of the total need of all students at an institution, then at least five percent of that allotment shall be made available to these students. This provision first will be applicable to allocations, grants, or capital contributions allocated for the

1993-94 Award Year; determining of whether an institution must expend at least five percent of each allotment for nontraditional students is based on eligible aid applicant data filed for the 1991-92 Award Year. For subsequent award year allocations, determinations will be governed by data filed for the second preceding award year.

IX. Federal Supplemental Educational Opportunity Grant (FSEOG) Program -- Effective on the date of enactment

A. Program Name Change - Subpart 3 of Part A

The program name is changed from Supplemental Educational Opportunity Grant Program to "Federal Supplemental Educational Opportunity Grant Program."

B. Study Abroad - §413B(a)(3)

If reasonable study abroad costs exceed the cost of attendance at the home institution, the amount of the grant to be awarded may exceed the $4,000 maximum by as much as $400.

C. Excess Appropriations - §413D(a)(4)

If the program's appropriation for any fiscal year exceeds $700 million dollars, 10 percent of the excess amount may be distributed to institutions from which 50 percent or more of the Federal Pell Grant recipients graduate or transfer to a four-year institution of higher education.

D. Failure to Award - §413D(e)(2)

If an institution returns more than 10 percent of its allocated funds for a given award year, the allocation for the next fiscal year will be reduced by the amount returned. The Secretary may waive this provision, in accordance with regulations, for an institution if enforcement would be contrary to the interest of the program.

X. Federal Supplemental Educational Opportunity Grant (FSEOG) Program -- Effective for the award years beginning on or after July 1, 1993

A. Federal/Non-Federal Share - §413C(a)(2)

The federal share of FSEOG awards will not exceed 75 percent. The Secretary may waive the non-federal share requirements, based on objective criteria as established in regulations.

B. Transfer of Funds - §§413C(e) and 488

The transfer of funds to the Federal Work-Study Program will be eliminated.

XI. Federal Work-Study (FWS) Program -- Effective on the date of enactment

A. Undergraduate Student Eligibility - §484(n)

A student shall not be ineligible for assistance under this part because he or she previously received a baccalaureate or professional degree.

XII. Federal Work-Study (FWS) Program -- Effective October 1, 1992

A. Program Name Change - Part C

The program name is changed from College Work-Study Program to "Federal Work-Study Program."

B. Program Purpose - §441(a)

The purpose of the Federal Work-Study (FWS) Program is amended to add an encouragement to students receiving program assistance to participate in community-service activities.

C. "Community Services" Definition - §441(c)

The definition of "community services" is amended to include services in the areas of welfare, social services, transportation, public safety, crime prevention and control, recreation, work in service opportunities or youth corps, specified services for agencies identified in the National and Community Service Act of 1990, support services for students with disabilities, and mentoring activities.

D. Excess Appropriations - §442(a)(4)

If the appropriation for any fiscal year exceeds $700 million dollars, 10 percent of the excess amount may be distributed to institutions from which 50 percent or more of the Federal Pell Grant recipients graduate or transfer to a four-year institution of higher education.

E. Reallocation - §442(e)

Unexpended institutional funds returned to the Secretary shall be reallotted to eligible institutions that used at least 10 percent of the total funds granted to the institution to compensate students employed in community-service activities. Because reallocated funds will be distributed on the basis of fair share shortfall (as defined in §442(c)(2) of the HEA) criteria, institutions must have a fair share shortfall to receive these funds. Institutions shall use the reallotted funds to compensate students employed in community service.

F. Overaward Income Limit - §443(b)(4)

When a student employed under the FWS Program receives more than $300 in other income from need-based employment that exceeds the student's need, employment under the FWS must be discontinued.

G. Proprietary Institutional Employment- §443(b)(8)

Proprietary institutions will be able to award assistance to students working off campus for the institution itself if the work is in the community-services area. The work must be directly related to the student's education when the student is employed by the proprietary institution. The term "directly" was added to this provision by the Higher Education Amendments of 1992.

H. Program Participation Agreement - §443(b)

The agreement between the Secretary and the institution will be amended to add assurances that (1) employment under the program may be used for programs providing supportive services to students with disabilities; and (2) institutions will inform all eligible students of the opportunity to perform community services and will develop and make available information about community-services opportunities.

I. Maximum Expenditures - §446(a)

The authorized expenditures under the Job Location and Development activities is changed to allow an institution to use the lesser of $50,000 or 10 percent of the institution's allocation to establish or expand a program to locate and develop jobs, including community-service jobs.

J. Work Colleges - §448

Institutions that satisfy the definition of "work-college" may apply to the Secretary to participate in the Work College Program. The term "work-college" means an eligible institution that (1) has been a public or private nonprofit institution with a commitment to community service; (2) has operated a comprehensive work-learning program for at least two years; (3) requires all resident students who reside on campus to participate in a comprehensive work-learning program and the provision of services as an integral part of the institution's educational program and as part of the institution's educational philosophy; and (4) provides students participating in the comprehensive work-learning program with the opportunity to contribute to their education and to the welfare of the community as a whole.

$5,000,000 is authorized to be appropriated for the 1993-94 Award Year to recognize, encourage, and promote the use of comprehensive work-learning programs when they are an integral part of an institution's educational program and are a part of a financial plan that decreases reliance on grants and loans. In addition to the amount authorized to be appropriated, work colleges also may use allocated FWS Program funds and allocated Federal Perkins Loan Program funds to provide flexibility in strengthening the self-help-through-work element in financial aid packaging. Funds made available to work colleges must be matched on a dollar-for-dollar basis from non-Federal sources.

K. Payments to Students - §445(b)

An institution is authorized to make payments to students for services performed after the academic year but prior to the beginning of the succeeding award year (i.e., for summer employment) from the succeeding award year's allocation. This carry-back authority is in addition to the previous authority to carry-back ten percent of the succeeding year's allocation for use at any time during the preceding award year.

L. Administrative Expense Allowance - §§447 and 489(a)

The institutional administrative expense allowance for work-study for community-service learning is eliminated; institutions may, however, use up to ten percent of the institution's administrative cost allowance attributable to the FWS Programs expenditures for expenses incurred for its community services program.

XIII. Federal Work-Study (FWS) Program -- Effective beginning with the 1993-94 Award Year

A. Federal/Non-Federal Shares - §443(b)(5)

The federal share of compensation to students shall not exceed 75 percent except that: (1) the Secretary may waive the non-federal share requirements, based on objective criteria and (2) the non-federal share of a student's compensation when engaged in work in community service for employment in a private nonprofit organization (other than the eligible institution) shall not exceed 40 percent of the institution's share of the student's compensation.

B. Transfer of Funds - §488

An institution may transfer up to 25 percent of its allocation under the FWS Program to the FSEOG Program.

XIV. Federal Work-Study (FWS) Program -- Effective beginning with the 1994-95 Award Year

A. Use of Funds - §443(b)(2)(A)

Institutions will be required to use at least 5 percent of the total funds granted to the institution to compensate students employed in community-services activities. This requirement can be waived by the Secretary, in accordance with regulations, if enforcing it would create a hardship for students at the institution.

XV. Income Contingent Direct Loan (ICL) Demonstration Project -- Effective on the date of enactment

A. Conversion of Existing Loans - §452(b)

Institutions may convert all outstanding ICL loans to Federal Perkins Loans provided that the institution: (1) notifies the borrower of the conversion; (2) obtains a signed Federal Perkins Loan promissory note for the remaining ICL loan balance; and (3) provides the borrower with a written description of all terms and conditions of the new loan.

XVI. Income Contingent Direct Loan (ICL) Demonstration Project -- Effective October 1, 1992

A. Demonstration Project - Part D

The authority for the ICL demonstration project will be repealed. Specific information will be provided to the participating institutions on handling the phaseout of the program.

B. Distribution of Funds - §452(a) of the Higher Education Amendments of 1992

After September 30, 1992, and not later than March 31, 1993, ICL demonstration project participants shall distribute remaining ICL funds, including any future collections and all other ICL related funds, to the Federal Perkins Loan account, the FWS fund, or the FSEOG fund.

XVII. Federal Perkins Loan Program -- Effective on the date of enactment

A. Program Name Change - Part E and §461(a)

The program name is changed from Perkins Loan Program to "Federal Perkins Loan Program."

B. Eligibility for Study Abroad - §461(a)

Students will be eligible for Federal Perkins Loans while engaged in programs of study abroad.

C. Institutional Allocation - §462(a)(1)(A)

The initial allocation of a Federal Capital Contribution (FCC) to each institution is on the basis of the amount allocated to each institution for the 1985-86 Award Year rather than the FCC expended by the institution.

D. Appeals Process for Collections - §462(e)

The Secretary will establish an appeals process by which anticipated collections required by the funding formula contained in §462(e) of the Act may be waived for institutions with low default rates.

E. Definition of Default Rate and Cohort Default Rate - §462(h)

For any award year prior to the 1994-95 Award Year, an institution's default penalty is based on the institution's "default rate." The current default rate definition has been amended to provide that a loan will be considered to be in default 240 days (for a loan that is repayable monthly) and 270 days (for a loan that is repayable quarterly) after the borrower fails to make an installment payment when it is due or to comply with other terms of the promissory note. Beginning with the 1994-95 Award Year, an institution's default penalty will be based on a "cohort default rate." The term "cohort default rate" means, for an award year in which 30 or more current and former students at the institution enter repayment on loans received from that institution, the percentage of those students who enter repayment on those loans in that award year who default before the end of the following year. For an award year in which less than 30 students enter repayment, the term means the percentage of those students who entered repayment on those loans in any of the three most recent years and who default before the end of the award year following the year in which the students entered repayment.

F. Applicable Maximum Default Rate - §462(g)

In the allocation of federal capital contributions for award years 1992-93 and 1993-94, the applicable maximum default rate is 15 percent as it is currently calculated. For Award Year 1994-95 and subsequent years, the maximum cohort default rate is 30 percent. The Award Year 1994-95 cohort default rate will be calculated on the basis of borrowers who entered repayment during the Award Year 1991-92 for institutions with 30 or more current and former students entering repayment during that award year. For institutions with less than 30 students entering repayment during the Award Year 1991-92, the Award Year 1994-95 cohort default rates will be calculated on the basis of students who entered repayment during the award years 1989-90, 1990-91 and 1991-92.

G. Default Reduction Plan - §462(f)

For Award Year 1994-95 and subsequent years, if an institution has a cohort default rate equal to or greater than 15 percent, it must establish a default reduction plan according to regulations to be issued by the Secretary.

H. Prevention of Evasion of Default Rate Determination - §462(h)(3)(G)

The Secretary shall prescribe regulations designed to prevent an institution from using methods, such as branching, consolidating, changing ownership or control, or other means, to evade a default-rate determination being applied to the institution.

I. Default - §462(h)(3)(D)

A loan still is considered to be in default if a payment is made by the institution, its owner, agency, contractor, employee, or any other entity or individual affiliated with the institution, in order to avoid default by the borrower.

J. Rehabilitated Loans - §462(h)(3)(E)

A loan that is in default, but on which the borrower has made satisfactory arrangements to resume payment, or any loan that has been rehabilitated before the end of the following award year is not considered in default.

K. Attendance at More Than One Institution - §462(h)(3)(F)

In the case of a student who has attended and borrowed at more than one institution, the student's attendance (and his or her subsequent repayment or default) is attributed to the institution at which the student received the loan that entered repayment in the award year.

L. Reallocation of Excess Allocations - §462(j)(1)

If an institution returns any portion of the sums allocated to the institution for any fiscal year, the Secretary shall reallocate 80 percent of the returned portions to institutions that participated in the Perkins Loan Program in the 1985-86 Award Year, but did not receive an allocation in the fiscal year for which the reallocation determination is made. The reallocated amount may not exceed the participating institution's fair share shortfall amount. The remaining 20 percent will be reallocated in accordance with regulations.

M. Allocation Reductions - §462(j)(4)

If an institution returns more than 10 percent of its allocation, the institution's allocation for the next fiscal year will be reduced by the amount returned. The Secretary may waive this provision, in accordance with regulations, for an institution if enforcement would be contrary to the interest of the program.

N. Credit Bureau Reporting - §463(c)

Institutions, after consultation with the Secretary, are required to disclose to any credit-bureau organization with which the Secretary has an agreement: (1) the amount of loans made to a borrower at the time of the disbursement of the loan and (2) the information specified under 430A(a) of the HEA for the Part B Federal Family Education Loan Program. This includes reporting defaulted loan to a credit bureau organization. The Department plans to issue revised regulations on this requirement. In the interim, institutions will be considered to be in compliance with the statute if the required information is reported to a national credit bureau.

O. Disclosure Requirement - §463A(a)(11)

An institution is required to provide, at or prior to the time that it makes a loan, written disclosure to a borrower that the disbursement of a loan and the default on a loan will be reported to a credit-bureau organization.

P. Limitation on Use of Interest-Bearing Accounts - §463A(d)

The Secretary may not require that any collection agency, collection attorney, or loan servicer collecting loans, deposit amounts collected on loans in interest-bearing accounts, unless the funds will be held for more than 45 days.

Q. Internal Revenue Service (IRS) Skip-tracing - §463A(e)

In carrying out the provisions of due diligence, the Secretary is authorized to make every effort to ensure that institutions may use the Internal Revenue Service skip-tracing collection procedures on Perkins loans. The Secretary is considering how to implement this new authority.

R. Annual and Aggregate Loan Limits - §464(a)

The maximum annual loan amount limit for an eligible student attending an institution not participating in the Expanded Lending Option is (1) $5,000 for a graduate or professional student, or (2) $3,000 for a student who has not yet successfully completed a program of undergraduate education.

For an eligible student attending an institution participating in the Expanded Lending Option, the annual limit is (1) $6,000 for a graduate or professional student, or (2) $4,000 for a student who has not yet successfully completed a program of undergraduate education.

The maximum aggregate loan amount for an eligible student attending an institution not participating in the Expanded Lending Option is (1) $30,000 for a graduate or professional student, including loans borrowed as an undergraduate student, or (2) $15,000 for a student who has not yet successfully completed a program of undergraduate study.

For an eligible student attending an institution participating in the Expanded Lending Option, the aggregate limit is (1) $40,000 for a graduate or professional student, including loans borrowed as an undergraduate student, (2) $20,000 for a student who has successfully completed two years of a program leading to a bachelor's degree, but who has not received the degree, or (3) $8,000 for all other students. For a program of study abroad that has reasonable costs in excess of the institution's costs, the annual and aggregate loan limits may be exceeded by 20 percent.

The limits for students attending institutions participating in the Expanded Lending Option are not applicable until the award year beginning after July 1, 1993. See the item on the Expanded Lending Option on page 53 for further information.

Special Note: The Department of Education Appropriations Act, 1993 (Public Law 102-394) was signed into law on October 6, 1992. One of the provisions of this Act, effective as of July 23, 1992, amends §468 of the Higher Education Amendments of 1992 with regard to the annual and aggregate loan limits. For the 1992-93 award year only, an institution may make a loan to an eligible student without regard to the new maximum annual limits if the loan does not violate the aggregate limits in effect prior to the enactment of the Higher Education Amendments of 1992 (i.e., $18,000 for a graduate or professional student; $9,000 for a student who has completed two years of a program leading to a bachelor's degree but who has not completed the work necessary for such a degree; and $4,500 for any other student) If the loan would result in a violation of the previous aggregate limits, the institution must follow the new maximum annual and aggregate limits in making a loan.

S. <u>Student Eligibility - §464(b)(1)</u>

A student is required to provide his or her drivers license number, <u>if any</u>, at the time of applying for a loan.

T. <u>Undergraduate Student Eligibility - §484(n)</u>

A student is not ineligible for a loan because he or she has previously received a baccalaureate or professional degree.

U. Elimination of Defense of Infancy - §464(c)(1)(E)

The "defense of infancy" whereby under applicable law the signing of a contract by a minor would not create a binding obligation, is eliminated. All loans must be made without security or endorsement.

V. Forbearance - §464(e)

Forbearance may be allowed for all Part E loans (Perkins, Direct, or Defense), whenever made. On receipt of a written request, an institution must grant a borrower forbearance of principal and interest or principal only as requested, renewable at 12-month intervals for a period not to exceed three years (36 months), if the borrower's annual Title IV loan repayment obligation equals or exceeds 20 percent of the borrower's gross income. Forbearance also may be granted if the institution determines that the borrower should qualify for other reasons.

W. Repayment Compromise - §464(f)

To encourage repayment of defaulted loans, the Secretary may authorize an institution to compromise on the repayment of a loan if the borrower has paid (1) at least 90 percent of the loan, (2) all interest due, and (3) any collection fees due.

X. Cancellation of Loans for Public Service - §465(a)(2)

A borrower will continue to receive loan cancellation for service as a full-time teacher in a low-income institution eligible to receive assistance under Chapter 1 of the Education Consolidation and Improvement Act of 1981, as amended. However, the Secretary no longer is required to set a 50 percent restriction on low-income institutions in a state receiving assistance under Chapter 1 for cancellation purposes. The Secretary will publish a completely new 1992-93 Low-Income School Directory by the spring of 1993 that will also include the additional qualifying schools and any necessary corrections to the initial 1992-93 Directory. Additionally, if a borrower is teaching in an eligible low-income institution that does not qualify in a subsequent year as a low-income institution, the borrower may continue to teach in that institution and remain eligible to receive a cancellation for service in that institution.

Cancellation provisions are expanded for loans made on or after July 23, 1992 to include the following services as: (1) a full-time special-education teacher, including teachers of infants, toddlers, children, or youth with disabilities in a public or other nonprofit elementary or secondary school system, or as a full-time qualified professional provider of early intervention services in a public or other nonprofit program under public supervision; (2) a full-time teacher of mathematics, science, foreign languages, bilingual education, or any other field of expertise that is determined by the state education agency to have a shortage of qualified teachers; (3) a full-time nurse or medical technician; or, (4) a full-time employee of a public or private nonprofit child or family service agency who is providing or supervising the provision of services to high-risk children and their families from low-income communities.

XVIII. Federal Perkins Loan Program -- Applicable with respect to loans for which the first disbursement is made on or after October 1, 1992 to an individual who, on the date the loan is made, has no outstanding balance of principal or interest owing on any loan made under Part E of title IV of the Higher Education Act of 1965, as amended:

A. Minimum Monthly Payments - §464(c)(1)(C)

An institution may provide in the loan agreement for a minimum monthly repayment of $40; this is an increase from $30.

XIX. Federal Perkins Loan Program -- Effective for the award years beginning on or after July 1, 1993

A. Expanded Lending Option - §463(a)(2)(B)

An Expanded Lending Option (ELO) is created for institutions with default rates of 7.5 percent or less that have executed an ELO participation agreement with the Secretary. Institutions participating in the ELO are required to match the Federal Capital Contribution on a dollar-for-dollar basis and may make loans to students at higher award year and aggregate limits than is the case with non-participating institutions. See the items on page 50 titled "Annual and Aggregate Loan Limits" and "Institutional Capital Contribution Match" below for further information.

B. Institutional Capital Contribution Match - §463(a)(2)(B)

An increase in the Institutional Capital Contribution (ICC) to a dollar-for-dollar match with the Federal Capital Contribution (FCC) is established for institutions participating in the Expanded Lending Option program. For any other institution, the ICC will be three-seventeenths of the FCC (or 15 percent of the combined FCC and ICC) in Award Year 1993-94 and one-third of the FCC (or 25 percent of the combined FCC and ICC) for succeeding award years.

C. Inter-program Transfers - §488

An institution will be authorized to transfer up to 25 percent of its FCC allotment for an award year to either or both the FSEOG and FWS programs.

D. Exit Counseling for Borrowers - §485(b)

In addition to the existing exit counseling requirements, each eligible institution must provide counseling to borrowers that includes the terms and conditions under which the student may obtain partial cancellation or defer repayment of principal and interest. If the borrower leaves the institution without the institution's knowledge, the institution must attempt to provide the required information to the borrower in writing. An institution is no longer required to provide information about average indebtedness to students.

Each institution will require that the borrower submit during the exit interview: (1) the borrower's expected permanent address after leaving the institution (regardless of the reason for leaving); (2) the name and address of the borrower's expected employer after leaving the institution; (3) the address of the borrower's next-of-kin; and, (4) any corrections in the institution's records relating to the borrower's name, address, social security number, personal references, and driver's license number.

XX. Federal Perkins Loan Program -- Effective for loans for which the first disbursement is made on or after July 1, 1993

A. Deferments - §464(c)(2)(A)

Loan repayments may be deferred for periods during which a borrower: (1) is at least a half-time student; (2) is pursuing a course of study in an approved graduate fellowship program or approved rehabilitation training program for disabled individuals excluding a medical internship or residency program; (3) is unable to find full-time employment, but not in excess of three years; (4) may be suffering an economic hardship, but not in excess of three years; and, (5) is engaged in service described under the cancellation provisions.

XXI. Federal Perkins Loan Program -- Effective on September 15, 1997

A. Perkins Loan Revolving Fund - §467(c)

A Perkins Loan Revolving Fund is established that will be available, without fiscal year limitation, to the Secretary to pay allocations of additional Federal Capital Contributions, in accordance with §462 of the HEA, to eligible institutions. The Perkins Loan Revolving Fund will consist of: (1) funds collected on loans referred, transferred, or assigned; (2) funds paid to the Secretary as excess capital; (3) funds received from a closed institution; (4) funds received as a result of an audit of a student loan fund; and, (5) funds appropriated, but not used, to reimburse institutions for cancellations.

XXII. State Student Incentive Grant (SSIG) Program -- Effective for the 1993-94 Award Year

A. Authorized Funding - §415A(b)(1)

The statute authorizes $105,000,000 for fiscal year 1993 and such sums as may be necessary for the next four succeeding fiscal years.

B. Maximum Award - §415C(b)(2)

The maximum award under the SSIG Program increases from $2,500 to $5,000.

C. Fees for Data Collection - §415C(b)(4)

To be eligible for SSIG funds, a state program must ensure that no student or parent will be charged a fee payable to an entity other than the state for the collection of data to make a determination of that student's financial need.

D. Allocation Rule - §415C(b)(7)

The statute provides that, if a state's allocation under the SSIG Program is based in part on the financial need of independent students or less than full-time students, a reasonable proportion of the state's allocation must be made available to those students.

E. Students Abroad Eligibility - §415A(a)(1)

A student who is participating in a program of study abroad that is approved for credit by the institution of higher education at which he or she is enrolled is an eligible student for the SSIG Program.

XXIII. National Science Scholars Program -- Effective for the 1993-94 Award Year

A. Authorization of Funds - §601(b)

The Higher Education Amendments of 1992 amend §601(b) of the Excellence in Mathematics, Science and Engineering Education Act of 1990, Public Law 101-589, to authorize $10,000,000 for fiscal year 1993 and such sums as may be necessary for each of the four succeeding fiscal years for awards to National Science Scholars.

XXIV. Paul Douglas Teacher Scholarship Program -- Effective for the 1993-94 Award Year

A. Authorization of Funds - §530B

The statute authorizes $26,000,000 for fiscal year 1993 and such sums as may be necessary for each of the four succeeding fiscal years to carry out the Paul Douglas Teacher Scholarship Program.

B. Number of Scholars - §521

The statute deletes the 10,000 limit on the number of individuals who may receive a Douglas scholarship.

C. Allocation Formula - §522

The statute amends the current allocation formula. It substitutes a formula that allocates funds to a state on the basis of that state's school-age population compared to the school-age population in all states, as determined by using the most recently available data from the Bureau of the Census.

D. Changes to a State's Application to Participate - §523

The statute changes the state application requirements in the following ways:

1. To administer the program, a state may now designate the state agency administering the SSIG Program, the state guaranty agency, or another appropriate state agency approved by the Secretary.

2. A state must now describe how it will inform recipients of the current and projected teacher shortages and surpluses within the state.

3. In addition to making specific efforts to attract students from low-income backgrounds or who express a willingness or desire to teach in institutions having less than average academic results or serving large numbers of economically disadvantaged students, a state now must assure the Secretary that it will make special efforts to attract into the program (a) ethnic and racial minority students; (b) individuals with disabilities; (c) women and minorities who show interest in pursuing teaching careers in mathematics and science; (d) other individuals from groups historically underrepresented in teaching; and (e) individuals who express a desire to teach in rural and urban schools.

4. The statute deletes the requirement that states must provide assurances that scholarships will be awarded without regard to sex, race, handicapping condition, creed, or economic background. (However, all pertinent civil rights laws remain applicable.)

5. The statute modifies the state assurance concerning the agreement between the scholar and the state agency by:

a. Deleting the option for a scholar to fulfill his or her teaching obligation by teaching in a public or private nonprofit education program within a state; and

b. Adding an option for a scholar to fulfill his or her teaching obligation by teaching, on a full-time basis, in a private, nonprofit institution, children with disabilities or with limited English proficiency.

E. Selection Criteria and Procedures - §523(c)

The statute now requires the state educational agency, working in cooperation with the state higher education agency, to establish the selection criteria to select scholars.

The statute also requires that the state educational and state higher education agencies provide special consideration in the selection of scholarship recipients to individuals who (a) intend to teach or provide related services to students with disabilities; (b) intend to teach limited English proficient students; (c) intend to teach preschool-age children; (d) intend to teach in schools servicing inner city or rural or geographically isolated areas as defined by the Secretary; (e) intend to teach in curricular areas or geographic areas where there are demonstrated shortages of qualified teachers; or (f) are from disadvantaged backgrounds, including racial and ethnic minorities and individuals with disabilities and, as such, are underrepresented in the teaching profession or in the curricular areas in which they are preparing to teach. The statute also provides that the Secretary may waive this special consideration for no more than 25 percent of all individuals receiving a Douglas scholarship in an award year, under §525(c).

F. Award Amount and Packaging - §524

The statute still requires that a Douglas scholarship may not exceed a student's cost of attendance at a postsecondary institution as defined in section 472, but the statute has deleted the requirement that a Douglas scholarship be reduced if it and any Title IV financial assistance awarded to a scholar exceed the scholar's cost of attendance as defined. Instead, the receipt of scholarship proceeds must be taken into account in determining the student's eligibility for other forms of federal assistance.

G. Statewide Panel - §525

The statute now requires the seven-member statewide panel responsible for the selection of scholars to be representative of special education teachers in addition to the current panel representation.

H. Evaluation - §530

The Secretary shall conduct an evaluation of the program, and the statute authorizes the use of up to $1,000,000 from the program's appropriations over five fiscal years for this purpose. The statute also requires the Secretary to prepare and submit interim reports and a final report that is due to the President and Congress on or before January 1, 1997.

I. Teacher Shortage Areas - §530A

For loans to new borrowers disbursed initially after July 1, 1993, the statute deletes the teacher shortage area deferment under section 428 of the Guaranteed Student Loan (GSL) programs (renamed the Federal Family Education Loans) and the requirements for establishing teacher shortage areas. The statute now provides that teacher shortage areas be established solely under the Douglas Program. When establishing shortage areas, the Secretary must give special consideration to areas in which emergency teacher certifications are being used to correct teacher shortages and to states that have retirement laws permitting early retirement.

XXV. National Early Intervention Scholarship and Partnership Program -- Effective for the 1993-94 Award Year

A. Authorization of Funds - §404G

The statute authorizes $200,000,000 for fiscal year 1993 and such amounts as might be necessary for the four succeeding fiscal years for this new program. However, no amount may be expended under this program in any fiscal year in which the amount appropriated for the State Student Incentive Grant Program does not exceed $60,000,000. The Secretary will initiate this new program only if funds are appropriated by the Congress.

B. State Eligibility and Plan - §404B(a)

To qualify for this program, a state must submit to the Secretary for approval a state plan for carrying out the activities of both a scholarship component and an early intervention component under the program. The state must also describe how it will provide funds for the program.

C. State Matching Funds - §404B(b) and (c)

In its plan, a state must demonstrate to the Secretary that it will provide from state, local, or private funds at least one-half of the program costs and describe how those funds will be paid. All funds expended under this program must supplement, and not supplant, funds expended for existing state and local programs. A state may match the federal funds by means of the following:

(1) Grants paid to students under the program from state, local, or private funds;

(2) Tuition, fees, and room and board waived or reduced for recipients under this program; and

(3) Funds expended on documented, targeted, long-term mentoring and counseling provided by volunteers or paid staff of nonschool organizations.

D. Early Intervention Component - §404C(a)

A state must demonstrate to the satisfaction of the Secretary that the state will provide comprehensive mentoring, counseling, outreach, and supportive services - including postsecondary financial aid counseling - to students in preschool through grade 12.

E. Allowable Providers §404C(b)(2)

Early intervention activities may be provided by service providers such as community-based organizations, schools, institutions of higher education, public and private agencies, nonprofit and philanthropic organizations, businesses, and other organizations the Secretary deems appropriate.

F. Permissible Activities - §404C(b)(3)

Examples of permissible early intervention activities under the program include the following:

1. Providing eligible students in preschool through grade 12 with a continuing system of mentoring and advising that is coordinated with the federal and state community service initiatives and may include such support services as after-school and summer-school tutoring, assistance in obtaining summer jobs, career mentoring, and academic counseling;

2. Requiring each participating student to enter into an agreement under which he or she agrees to achieve certain academic milestones, such as completing a prescribed set of courses and maintaining satisfactory academic progress, in exchange for receiving tuition assistance for a time period established by each state;

3. Providing activities designed to ensure high school completion and college enrollment of at-risk children; and

4. Providing prefreshman summer programs that (a) are at institutions of higher education with programs of academic-year supportive services for disadvantaged students; (b) assure the participation of disadvantaged students; (c) provide summer instruction in remedial, developmental or supportive courses, or summer services such as counseling, tutoring or orientation; (d) provide grant aid to cover prefreshman summer costs; and (e) assure that participating eligible students will receive financial aid during each academic year they are enrolled at the participating institution after the prefreshman summer.

G. Priority Students - §404C(c)

The state must treat as priority students for its early intervention component any student in preschool through 12 who is eligible (1) to be counted as attending a Chapter I school; (2) for the National School Lunch Program; or (3) for Aid to Families with Dependent Children assistance.

H. Scholarship Component - §404D(a)

Each participating state must establish or maintain a financial assistance program for the students in this program. The Secretary shall encourage the state to ensure that the tuition assistance under this program is available for use at any institution of higher education.

I. Grant Awards - §404D(b)

Each state must set the maximum amount a participating student may receive under this program. The minimum amount of the grant shall not be less than the lesser of (1) 75 percent of the average cost of attendance for an in-state student enrolled in a 4-year program of instruction at public institutions of higher education in the state, as determined by regulations established by the Secretary; or (2) the maximum Federal Pell Grant for that fiscal year.

J. Relation to Other Financial Assistance - §404D(c)

Tuition assistance under this program is not to be considered for the purpose of awarding Title IV aid, except that the total Title IV aid awarded to the student cannot exceed the student's cost of attendance.

K. Eligible Students - §404D(d)

A student eligible for scholarship assistance must:

(1) be less than 22 years old at the time of the first grant award;

(2) receive a high school diploma or a certificate of high school equivalence on or after January 1, 1993;

(3) be enrolled or accepted for enrollment at an institution of higher education that is located within the state, except that a state may offer grant portability for recipients who attend institutions outside the state; and

(4) have participated in the state early intervention component under this program.

The Secretary is required to ensure that each state place a priority on awarding scholarships to Federal Pell Grant recipients.

L. Distribution of Funds - §404E

If the program appropriation for a fiscal year is less than $50,000,000, then the Secretary is required to award grants to states on a competitive basis. If the appropriation for a fiscal year is equal to or exceeds $50,000,000, then the Secretary shall allot to each state an amount which bears the same ratio to the appropriation as the amount allocated under §1005 of the Elementary and Secondary Education Act of 1965, as amended, to the local education agencies in the state bears to the total amount allocated under such section to all such agencies in all states. A state may not use less than 25 percent or more than 50 percent of its federal allotment for the early intervention component of the program, except that the Secretary may waive the 50 percent limitation if the state can demonstrate that it has other means of providing students' tuition assistance. If a state does not use all of its federal funds in a fiscal year, the Secretary is authorized to re-allot such funds.

M. Evaluation - §404F

Each participating state must conduct an evaluation of its early intervention on a biannual basis according to standards and requirements established by the Secretary. Each state is required to submit a copy of the evaluation to the Secretary, who will use the state evaluations to prepare a required biannual report to the Congress.

XXVI. Presidential Access Scholarships (PAS) -- Effective for the 1993-94 Award Year

A. Authorization of Funds - §406G

The statute authorizes $200,000,000 for fiscal year 1993 and such amounts as might be necessary for the four succeeding fiscal years for this new program. However, no funds may be expended on this program for a fiscal year unless the funds appropriated for the Federal Pell Grant Program for that year exceed the funds appropriated for the previous fiscal year and funds are appropriated for the program. The Secretary will initiate this new program only if funds are appropriated by the Congress.

B. Award Amount - §406B(a) and (d)

Provided sufficient appropriations are available, each student receiving a Presidential Access Scholarship (PAS) is eligible to receive up to the greater of $400 or 25 percent of his or her Federal Pell Grant, except that a PAS added to the Federal Pell Grant and other available student financial assistance cannot exceed the student's cost of attendance defined under §472 of the HEA.

C. Period of Award - §406B(b)

A PAS recipient may receive the scholarship for not more than 4 academic years, or 5 academic years if the recipient is enrolled in an undergraduate course of study that requires attendance for the full-time equivalent of 5 academic years.

D. Student Eligibility Requirements - §406C

Initial award:

The Secretary may award an initial PAS to a student who:

(1) Applies to the Secretary for a scholarship;

(2) Is eligible to receive a Federal Pell Grant;

(3) Within 3 years of receiving his or her high school diploma or General Education Development certificate, is enrolled or accepted for enrollment in a degree or certificate program of at least 2 years in length at any institution of higher education.

(4) Has demonstrated the potential for success in postsecondary education by taking a specified college preparatory program;

(5) Has earned a combined 2.5 grade point average or higher on a 4.0 scale in the final 2 years of high school; and

(6) Has either (a) graduated in the top 10 percent of his or her high school graduating class; or (b) participated for at least 36 months in an early intervention program. The Secretary may waive the second part of this requirement if an early intervention program was not available in the area in which the student resides or the student was unable to participate in an early intervention program where the student resides.

E. Continuation award - §406C(b)(2)

To continue to receive a PAS, a scholar must continue to be eligible for a Federal Pell Grant in the same academic year in which he or she receives a PAS, including maintaining satisfactory academic progress under section 484(c) of the HEA.

F. Application Process - §406C(b)(1)

A student must apply to the Secretary to be considered for an initial award. As the statute requires that the student must also be eligible to receive a Federal Pell Grant, a student must apply for a Federal Pell Grant.

G. State Educational Agency Agreement - §406f

Before any eligible student may receive a PAS, the state education agency (SEA) in the student's state of legal residence must enter into a written agreement with the Secretary concerning certain PAS Program requirements, the availability of certain college-preparatory secondary coursework, and other procedures necessary to implement the PAS Program.

XXVII. Federal Pell Grant Program -- Effective for the 1993-94 Award Year

A. Name of Program - §401(a)(3)

The statute has renamed the program from the "Pell Grant Program" to the "Federal Pell Grant Program."

B. Determination of Need - §§401A-401F and 401(b)(4)

The amended statute deletes the Pell Grant Program family contribution schedule (sections 411A-411F). The law now requires that an applicant's expected family contribution (EFC) and cost of attendance for the Federal Pell Grant Program be determined under the requirements of Part F, Need Analysis.

C. Minimum Award - §401(b)(5)

The amended law increases the minimum Federal Pell Grant award from $200 to $400. However, a student who qualifies for an award equal to or greater than $200 but less than $400 automatically receives a $400 award.

D. Maximum Award; Award Rules - §§401(b)(2)(A) and 401(b)(3)

The statute sets the maximum authorized Federal Pell Grant award at $3,700 for the 1993-94 award year and provides for $200 increases per year for the next 4 years. (Under the fiscal year 1993 appropriations act the amount of the actual maximum award will be $2,300 for the 1993-94 award year.) A student's award is the lesser of the following three amounts:

(1) The maximum award minus the expected family contribution; or

(2) The cost of attendance minus the expected family contribution; or

(3) When an appropriations act provides a maximum award amount exceeding $2,400, the sum of:

(a) $2,400;

(b) one-half of the difference between $2,400 and the maximum award; and

(c) the lesser of (i) the remaining one-half of the difference in (b); or (ii) the sum of the student's tuition and, if the student has dependent-care expenses or disability-related expenses, a $750 allowance.

E. Insufficient Appropriations - §401(g)

The new statute deletes the "linear reduction" formula that was used to adjust awards downward when the funds available were insufficient to make full awards. The new provision requires the Secretary to notify Congress of any funding shortfall and the amount needed to be appropriated to fund the program fully at the maximum award level set in that fiscal year's appropriations language.

F. Less Than Half-time Eligibility - §401(b)(6) and (7)

Students who are enrolled at institutions of higher education on less than a half-time basis who otherwise meet eligibility criteria are now eligible to receive a Federal Pell Grant award.

G. Output Document - §401(f)

A financial aid administrator at an institution of higher education shall use a student's EFC and the data used to calculate the EFC provided by the application central processing system (CPS) contractor on its regular output documents to the institution as well as the student's federal Student Aid Report (SAR) to make a Federal Pell Grant award. If there is a change in the student's data, the institution recalculates the student's EFC and makes the student's Federal Pell Grant award in the correct amount. The corrected information must be reported on Part 2 of the student's SAR.

H. Duration of Eligibility - §401(c)(1)

The statute eliminates the limits on the number of years that a student may receive Federal Pell Grants. This change applies to all students including students who had received the maximum number of grants under the current limitations that are applicable through the 1992-93 Award Year. The statute now permits eligible students, starting in the 1993-94 Award Year, to receive Federal Pell Grants during the time necessary to complete the student's first baccalaureate degree.

I. Two Federal Pell Grants in a 12-month Period - §401(b)(6)

The statute provides that the Secretary may allow, on a case-by-case basis, a student to receive two Federal Pell Grants during a single 12-month period if (1) the student is enrolled full-time in a baccalaureate program of a least 2 years at an institution of higher education that computes enrollment in credit hours; and (2) the student completes course work toward completion of a bachelor's degree that exceeds the requirements for a full academic year as defined by the institution.

J. Incarcerated Students - §401(b)(8)

The statute provides that in general an incarcerated student may receive a Federal Pell Grant. The amount of the incarcerated student's Federal Pell Grant may not exceed the cost of the tuition and fees normally assessed by the institution of higher education for that course of study, plus an allowance for books and supplies. An incarcerated student may not receive a Federal Pell Grant if he or she is serving under sentence of death or under a life sentence without the possibility of parole. Federal Pell Grants shall only be awarded to individuals who are incarcerated in a state that uses the Federal Pell Grants to supplement, and not to supplant, the level of postsecondary educational assistance provided by the state to incarcerated students in fiscal year 1988.

K. Study Abroad - §401(b)(7)

The amended statute specifically provides for the payment of a Federal Pell Grant to a student who is participating in a program of study abroad that is approved for credit by the institution of higher education at which the student is enrolled. The new language also permits making use of the foreign institution's costs when those costs exceed the cost of attendance at the student's home institution and the home institution's financial aid administrator deems those costs to be reasonable.

XXVIII. Robert C. Byrd Honors Scholarship Program -- Effective for the 1993-94 Award Year

A. Authorization - §419K

The statute authorizes $10,000,000 for fiscal year 1993 and such amounts as are necessary for the next 4 fiscal years.

B. Administrative Cost Allowance and Awards Ceremony

The statute deletes the requirement for an awards ceremony and the administrative cost allowance.

C. Eligible Institution of Higher Education - §419C(b)

The statute extends Byrd Program institutional eligibility to include proprietary institutions of higher education and postsecondary vocational institutions as well as public and private nonprofit institutions of higher education.

D. Period of Award - §419C(b)

The statute now provides that a state shall award a Byrd Scholarship to a scholar for a period of not more than 4 years of study at any institution of higher education.

E. Allocation Formula - §419D

The statute modifies the allocation formula. The Secretary shall continue to allocate to each state an amount equal to $1,500 multiplied by the number of scholarships determined by the Secretary to be available to each state. The number of scholarships available to each state shall bear the same ratio to the number of scholarships made available to all states as the state's population ages 5 through 17 bears to the population ages 5 to 17 in all states. The Secretary shall determine the number of available scholarships by using the most recent available data, satisfactory to the Secretary, from the Bureau of the Census. The law also requires that a minimum of ten scholarships be made available to any state.

F. Scholarship Amount - §§419H(a) and (b)

The Byrd Scholarship award amount continues to be $1,500 for each selected scholar, except that the new statute requires that the total amount of financial aid awarded, including a Byrd Scholarship cannot exceed the scholar's total cost of attendance at his or her postsecondary institution.

G. Packaging - §419H(a)

Except as provided in section 471 of the HEA, which governs the amount of need, the receipt of a Byrd Scholarship shall not be counted for any needs test in connection with the awarding of any grant or the making of any loan under the HEA or any other provision of federal law relating to educational assistance.

H. Change in Definitions

The statute deletes §419B that defined "state" and "secondary school." The definitions are now governed by §1201 of the HEA. The term "secondary school" has the same meaning given that term under §1471(21) of the Elementary and Secondary Act of 1965, as amended. The applicable definition of "state" under section 1201(b) of the HEA includes the following island areas that were previously not included: American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Trust Territory of Palau, and the U.S. Virgin Islands.

XXIX. Student Assistance General Provisions -- Effective on Enactment:

A. Reporting Requirements - §432(p)

The HEA requires that all individuals who are engaged in making decisions about the administration of any Title IV program or funds or about the eligibility of any entity or individual to participate under the Title IV programs shall report to the Secretary in such manner and at such time as the Secretary shall require on any financial interest that such individual might hold in any other entity participating in any Title IV program. This requirement applies to employees and paid consultants of eligible institutions, eligible lenders, guaranty agencies, loan servicing agencies, accrediting agencies or associations, state licensing agencies or boards, state postsecondary review entities, and entities acting as secondary markets. In addition, all officers and directors of the above organizations and entities must report to the Secretary on these same matters.

B. Institutions of Higher Education - Section 481(a)(4)

An institution does not qualify as an institution of higher education if it has filed for bankruptcy on or after July 23, 1992 or if the institution or its owner or chief executive officer has been convicted of or pled nolo contendere or guilty to a crime or has been judicially determined to have committed fraud involving funds under Title IV of the HEA. If on or after July 23, 1992 bankruptcy is filed or the conviction, plea, or judicial determination occurs, then that institution loses its eligibility as of the date of the filing, conviction, plea, or determination.

C. Proprietary Institution of Higher Education - §481(b)

To be eligible, a proprietary institution of higher education must derive at least 15 percent of its revenues from sources other than the programs authorized by Title IV of the HEA. This provision does not become effective until final regulations are published.

D. Academic Year - §481(d)

The term "academic year" is defined as a period requiring a minimum of 30 weeks of instructional time in which a full-time student is expected to complete at least-

1. 24 semester or 24 trimester or 36 quarter hours at an institution that measures program length in credit hours, or

2. 900 clock hours at an institution that measures program length in clock hours.

While the definition of the term "academic year" is effective on enactment, the effective date for the application of that term to the various Title IV programs depends on the effective date of the part of the Act governing the particular program as follows-

Federal Pell Grant Program	July 1, 1993
State Student Incentive Grant Program	July 1, 1993
Federal Supplemental Educational Opportunity Grant Program	July 1, 1993
Federal Work-Study Program	July 1, 1993
Federal Perkins Loan Program	July 1, 1993
Federal Family Education Loan Program	Loans certified on or after October 1, 1992.

E. Third-party Servicers - §481(f)

A "third-party servicer" is defined as any state or private organization that enters into a contract to administer, through manual or automatic processing, any aspect of an eligible institution's Title IV programs or any aspect of a guaranty agency's or eligible lender's FFEL Program (including originating, guarantying, monitoring, processing, servicing, or collecting loans). Third-party servicers are subject to a number of new and revised provisions discussed elsewhere in this letter.

F. Federal Financial Aid Form - §483(a)

The HEA requires the Secretary to develop and process a single Title IV Federal aid application form-

1. That is free to all applicants,

2. That satisfies the requirements under Section 411(d)(now designated as 401(d)) of the HEA for an application form under the Federal Pell Grant Program,

3. That is a stand-alone document (In the past, on their application forms, multiple data entry (MDE) processors frequently collected data beyond the data collected on the federal application. This practice will no longer be permitted. If a MDE processor develops a separate form in which the MDE processor collects additional data, the MDE processor may make its form available to users at the same time the MDE makes the federal form available [for example the two forms can be mailed together]. In addition, the HEA provides that students may be charged a reasonable fee for this additional form provided that the fee is based on the marginal costs of collecting and processing the additional data.),

4. That may contain up to eight nonfinancial data items to assist states in awarding financial assistance under state programs,

5. The data will be provided free of charge to institutions and states, and

6. That provides that if someone other than the applicant completes the form on the applicant's behalf, then that individual must provide his or her name, signature, address, social security number, and organizational affiliation.

Only the data collected on the federal financial aid form may be used in determining a student's need for Title IV assistance and eligibility under the Title IV programs other than the FFEL Programs. The HEA provides that the Secretary assist states and institutions in collecting data for State and institutional aid. In addition, for the purpose of the FFEL Program, the Secretary is required to develop a separate identifiable loan application form that students or institutions must submit directly to eligible lenders.

G. Multiple Data Entry (MDE) Processor - §483(a)(4)

The HEA prohibits a multiple data entry (MDE) processor from entering into exclusive arrangements with guarantors, lenders, secondary markets, or institutions of higher education for the purpose of reselling or sharing data collected under a contract issued by the Secretary. All data collected under a contract issued by the Secretary for the MDE process is the exclusive property of the Secretary and may not be transmitted to a third party by an approved contractor without the Secretary's written approval.

H. Reapplication Form - §483(b)

The HEA requires the Secretary to develop a streamlined reapplication form and process for recipients who apply for Title IV funds for the next succeeding academic year subsequent to the initial year for which they applied. The Secretary may reduce the number of data elements required of applicants that reapply. The Secretary must, in cooperation with states, institutions, agencies, and organizations involved in student aid, determine the data elements that can be updated from the previous year's application.

I. Study Abroad Programs - §484(a) and (p)

The HEA continues to provide that in order to receive any Title IV assistance, a student must be enrolled or accepted for enrollment in a degree program, certificate program, or other program leading to a recognized educational credential at an institution of higher education that is an eligible institution. The HEA now specifies that a student enrolled or accepted for enrollment in a program of study abroad approved for credit by the eligible institution at which the student is enrolled meets the requirements of this provision.

Further, an otherwise eligible student who is engaged in a program of study abroad approved for academic credit by the home institution at which the student is enrolled is eligible to receive Title IV assistance without regard to whether the study abroad program is required as part of the student's degree program.

J. Student Eligibility - Ability-to-Benefit - §484(d)

A student who does not have a high school diploma or its recognized equivalent is eligible to receive Title IV student financial assistance only if-

1. The student takes an independently administered examination approved by the Secretary and achieves a score specified by the Secretary that demonstrates the student can benefit from the education or training being offered; or

2. The student is determined to have the ability-to-benefit from the education or training being offered in accordance with a process prescribed by the state in which the institution the student is attending is located. The HEA provides that any such process shall become effective 6 months after it is submitted to the Secretary unless it is disapproved by the Secretary. In approving that process, the Secretary will take into account the effectiveness of the process in enabling those students to benefit from the instruction offered and the cultural diversity, economic circumstances, and educational preparation of the populations served.

This provision does not apply to the Federal SLS Program, because a student must have a high school diploma or its recognized equivalent to be eligible to borrow under that program. The Secretary will publish a Notice in the Federal Register shortly providing additional guidance on the testing provisions.

K. Verification of Immigration Status - §484(h)

The HEA authorizes use of a data match with other agencies to verify that an applicant is an eligible noncitizen. A data match (otherwise known as primary confirmation) with the Immigration and Naturalization Service (INS) is currently in operation and meets the requirements of this provision.

For applicants whose eligible noncitizen status is not verified through the data match, an institution is required to transmit copies of the applicant's documentation of immigration status to INS for official verification. (This process, otherwise known as secondary confirmation, is also currently available to institutions.) The institution is prohibited from denying the applicant's eligibility for Title IV assistance on the basis of the applicant's immigration status while receipt of verification from INS is pending. At the same time, the new law prohibits the institution from disbursing Title IV assistance until the applicant's statements or documentation (or both) of immigration status are verified. Section 484(h) of the HEA precludes any liability on the part of the institution for the consequences of INS's action, delay, or failure to conduct a verification of an applicant's status.

L. Loss of Eligibility for Violation of Loan Limits - §484(g)

No student is eligible to receive Title IV assistance if an eligible institution determines that the student fraudulently borrowed in violation of annual loan limits in the same academic year or in excess of the aggregate maximum loan limits under the FFEL, Federal Direct Loan, or Federal Perkins Loan programs. If the institution determines that the student inadvertently borrowed in excess of the loan limits, the institution is required to allow the student to repay the amount borrowed in excess of the limits prior to certifying the student's eligibility for further Title IV assistance.

M. Correspondence Courses (Student Eligibility) - §484(l)

A student is not eligible to receive Title IV grants, loans, or work assistance for correspondence courses that are not part of an associate-, bachelor-, or graduate-degree program.

N. Telecommunications - §484(m)(2), (3) and (4)

If the financial aid administrator (FAA) determines, using his or her professional judgment under Section 479A of the HEA, that the telecommunications instruction results in a substantially reduced cost of attendance to the student, the FAA must reduce the student's eligibility for grants, loans, or work-study assistance.

The Secretary is not permitted to take an adverse action against a student or eligible institution for any award year before the enactment of the provisions governing telecommunications in Section 484(m) of the HEA if the institution satisfies the Secretary that the institution's course of instruction would have complied with the requirements of these provisions.

The statute defines "telecommunications" as the use of television, audio, or computer transmission, including open broadcast, closed circuit, cable, microwave, satellite, audio conferencing, computer conferencing, or video cassettes or discs. The term does not include a course that is delivered using video cassette or disc recordings that is not delivered in person to other students of the institution.

O. Students with a First Baccalaureate or Professional Degree - §484(n)

A student is not ineligible for assistance under the FFEL, FWS, Federal Direct Loan, or Federal Perkins Loan programs because the student has previously received a baccalaureate or professional degree.

P. Data Base Matching - §484(o)

The Secretary is authorized to conduct data-base matches with the Selective Service to confirm applicants' compliance with Section 1113 of Public Law 97-252, the Military Selective Service Act. Confirmation of registration through an application output document or other means will fulfill the requirement to file a separate statement of compliance. In the absence of a data-base match confirmation, an institution may use data or documents that support either the student's selective service registration or the absence of a registration requirement for the student to fulfill the requirement to file a separate statement. The Secretary will issue regulations regarding the mechanism for reporting the resolution of unconfirmed matches.

Q. Institutional Refunds - §484B

Each institution participating in any Title IV program is required to have a fair and equitable refund policy under which the institution refunds unearned tuition, fees, room and board, and other charges to a student who received Title IV assistance (including Federal PLUS loans received on the student's behalf), in the case of a student who does not register for the period of attendance for which assistance was intended or withdraws or otherwise fails to complete the period of enrollment for which assistance was provided. This statutory requirement is somewhat similar to the regulatory requirement of a fair and equitable refund policy that was previously applicable to the FFEL program only.

The HEA defines a "fair and equitable refund policy" as a policy that provides for a refund in an amount of at least the largest of the amounts provided under:

1. The requirements of applicable state law;

2. The specific refund requirements established by the institution's nationally recognized accrediting agency and approved by the Secretary; or

3. The pro rata refund calculation as defined by the HEA. The HEA specifies that the pro rata refund calculation does not apply to the institution's refund policy for any student whose date of withdrawal is after the 60 percent point in time in the period of enrollment for which the student has been charged.

The term "pro rata refund" is defined as a refund by the institution to a student who is attending the institution for the first time of not less than that portion of tuition, fees, room and board, and any other charges assessed the student by the institution equal to the portion of the period of enrollment for which the student has been charged that remains on the last recorded day of attendance by the student, rounded downward to the nearest 10 percent of that period, less any unpaid charges owed by the student for the period of enrollment for which the student has been charged, and less a reasonable administrative fee not to exceed the lesser of 5 percent of the tuition, fees, room and board, and other charges assessed the student, or $100.

The term "the portion of the period of enrollment for which the student has been charged that remains" is determined:

- For a program that is measured in credit hours, by dividing the total number of weeks that make up the period of enrollment for which the student has been charged into the number of weeks remaining in that period as of the last recorded day of attendance by the student;

- For a program that is measured in clock hours, by dividing the total number of clock hours that make up the period of enrollment for which the student has been charged into the number of clock hours remaining to be completed by the student in that period as of the last recorded day of attendance by the student; and

- For a correspondence program, by dividing the total number of lessons that make up the period of enrollment for which the student has been charged into the total number of such lessons not submitted by the student.

R. National Student Loan Data System - §485B

The HEA is amended to allow for the electronic exchange of data between program participants and the National Student Loan Data System. The Secretary is required to place priority on providing for enrollment monitoring, student status, information about current loan holders and servicers, and internship and residency information. Borrowers must be permitted to use the system. The data system must identify the current loan holders and servicers of a borrower's loan(s). The Secretary will publish regulations prescribing standards and procedures that require all lenders and guaranty agencies to report information in uniform formats on loans made under Part B of Title IV of the HEA in order to permit comparison of data submitted by lenders, servicers, and guaranty agencies. To establish these standards, the Secretary will consult with guaranty agencies, lenders, institutions of higher education, and organizations representing lenders, servicers, or guaranty agencies. The Secretary must develop standards to be implemented by all guaranty agencies and lenders that are designed to be in place with minimum modifications to existing data-processing hardware and software. The Secretary will publish the specifications selected to encourage the automation of information exchanges between all parties involved in Title IV loans.

The HEA requires that by July 1, 1993 that the codes used to identify institutions and students in the student loan data system must be revised to make the codes consistent with the codes used in each U.S. Department of Education data base that contains information on participation in Title IV programs. The system also must be modified by that date to ensure that data relating to any institution is readily accessible and can be used in a form compatible with the Integrated Postsecondary Education Data System (IPEDS).

The HEA requires that by January 1, 1994 that the National Student Loan Data System be integrated with the Federal Pell Grant Program applicant and recipient data bases and any other data bases containing information on participation in Title IV programs.

S. Quality Assurance Program - §487A

The Secretary is authorized to select institutions for voluntary participation in a Quality Assurance Program (QAP) that provides participating institutions with an alternative management approach to develop and implement their own comprehensive systems to verify student financial aid application data. Under this program, participating institutions may be exempt from Title IV reporting or verification requirements, as determined by the Secretary. The Secretary may substitute appropriate quality assurance reporting for participants to ensure accountability and compliance with the purposes of the Title IV programs.

Institutions that desire to cease participation in the QAP may be required to complete the current award-year requirements of the QAP. (For purposes of Section 487A of the HEA, "current award year" is defined as the award year during which the participating institution indicates its intention to cease participation.) The QAP is to be based on criteria that include demonstrated instructional performance, as determined by the Secretary, and must take into consideration current quality assurance goals, as determined by the Secretary. The Secretary will determine when an institution is unable to administer the QAP and remove it from the program.

The Secretary is authorized to select institutions for voluntary participation as experimental sites to provide recommendations to the Secretary on the impact and effectiveness of proposed regulations or new management initiatives. The Secretary may exempt an institution participating as an experimental site from any requirements in Title IV or Title IV regulations that would bias experimental results.

T. Assignment of Identification Numbers - §487B

Each participant in the Title IV programs, including institutions, lenders, and guaranty agencies, shall be assigned a single Department of Education identification number to be used to identify its participation in each of the Title IV programs.

U. Criminal Penalties - §490

The HEA continues to provide for specific criminal penalties (with increased dollar amounts for fines) for any person who knowingly and willfully:

1. Embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery, or fails to refund any funds provided or insured under Title IV;

2. Makes any false statements, furnishes false information, or conceals any material information in connection with the assignment of a Title IV loan;

3. Makes an unlawful payment to induce a lender to make or acquire a loan under the FFEL Program; or

4. Destroys or conceals any record relating to the provision of Title IV assistance with intent to defraud the United States or to prevent the United States from enforcing any right obtained by subrogation.

The HEA adds that any person who attempts to carry out any of the above activities will be subject to the specific criminal penalties. The HEA also clarifies that a person's knowing and willful failure to pay refunds is subject to criminal penalties.

V. Negotiated Rulemaking - §492

The Secretary held regional meetings to obtain public involvement in the development of proposed regulations for parts B, G, and H of Title IV of the HEA, as amended by the Higher Education Amendments of 1992 (respectively the FFEL Program, the Student Assistance General Provisions, and the Program Integrity Triad). The meetings included individuals and representatives of groups involved in Title IV student aid, such as students, legal assistance organizations representing students, institutions, guaranty agencies, lenders, secondary markets, loan services, guaranty agency servicers, and collection agencies. The meetings included a comprehensive discussion and exchange of information concerning implementing the reauthorized HEA. The Secretary shall take into account the information received at those meetings in developing proposed regulations and shall publish a summary of such information in the Federal Register along with such proposed regulations.

After holding regional meetings, and before publishing proposed regulations, the Secretary shall draft proposed regulations and submit such regulations to a negotiated rulemaking process. Participants in the negotiations process shall be chosen by the Secretary from individuals nominated by individuals and groups participating in the regional meetings and shall include representatives of such groups from Washington, D.C., and industry participants. To the extent possible, participants should reflect the diversity in the industry, large and small organizations, and individuals serving local and national markets. The negotiation process shall be conducted in a timely manner so that the final regulations can be issued within the prescribed 240-day period.

W. Program Participation Agreement - §487

Several provisions have been added to the program participation agreement. These provisions are as follows:

1. An institution must assure that it will provide, on request and in a timely fashion, information concerning its administrative capability and financial responsibility to the Secretary, the appropriate state review entity designated under Subpart I of Part H of Title IV of the HEA, the appropriate guaranty agency, and the appropriate accrediting agency or association.

2. An institution that advertises job placement rates to attract students for enrollment must make available to prospective students relevant state licensing requirements of the state where the institution is located for any jobs for which the course of instruction is designed to prepare the student.

3. An institution may not deny federal financial aid to an eligible student on the grounds that the student is studying abroad in a program approved for credit by the home institution.

4. To begin initial participation in the FFEL Program after a change of ownership or after a change in the status of the institution as a parent or subordinate institution, an institution must develop a Default Management Plan for approval by the Secretary and must implement that plan for two years after the institution is then certified as an eligible institution.

5. An institution must acknowledge the authority of the Secretary, guaranty agencies, lenders, accrediting agencies, Secretary of Veterans Affairs, and state review entities under Subpart l of Part H of Title IV of the HEA to share with each other any information pertaining to the institution's eligibility to participate in the Title IV programs or any information on fraud and abuse.

6. An institution may not knowingly employ an individual in a capacity that involves the administration of the Title IV programs or the receipt of Title IV program funds who has been convicted of, or has pled nolo contendere or guilty to, a crime involving the misuse of Title IV funds. In addition, an institution may not knowingly contract with an institution or third-party servicer that has been terminated from the FFEL Program under Section 432 of the HEA due to misuse of Title IV funds or that has been judicially determined to have committed fraud involving Title IV funds. Finally, an institution also may not knowingly contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been, convicted of, or pled nolo contendere or guilty to, a crime involving the misuse of Title IV funds or has been judicially determined to have committed fraud involving Title IV funds.

7. An institution must, in a timely way and to the satisfaction of the Secretary, complete surveys conducted as part of the Integrated Postsecondary Education Data System (IPEDS) or any other federal postsecondary institution data collection effort designated by the Secretary.

8. An institution that offers athletically related student aid must-

a. Annually compile the following information--

(i) The total revenues and operating expenses of the institution;

(ii) The total revenues*, and the revenues from football, men's basketball, women's basketball, all other men's sports combined, and all other women's sports combined, derived by the institution from its intercollegiate athletics activities; and

(iii) The total expenses**, and the expenses attributable to football, men's basketball, women's basketball, all other men's sports combined, and all other women's sports combined, made by the institution for its intercollegiate athletic activities.

*Revenues from intercollegiate athletics activities allowable to a sport include all: gate receipts, broadcast revenues, appearance guarantees and options, concessions, and advertising. Revenues such as student activities fees or alumni contributions not allocable to a sport must be included in total revenues from the institution's intercollegiate athletics activities.

**Expenses for intercollegiate athletics activities for a sport include all: grants-in-aid, salaries, travel, equipment, and supplies. Expenses such as administrative overhead not allowable to a sport must be included in the total expenses of the institution's athletics activities.

b. Prepare this information within six months following the end of its fiscal year;

c. Ensure this information is independently audited at least every three years; and

d. Make this information and, where allowable by state law, the audits available for inspection by the Secretary and the public.

9. If a student is unable to meet his or her financial obligation at an institution because there is a delay in the disbursement of proceeds of a Title IV loan, and the delay is caused by compliance with the provisions of Title IV of the HEA or is attributable to the institution, the institution may not penalize the student in any way, including not assessing a late fee, denying access to class, libraries or other facilities, or requiring that the student borrow additional funds.

10. With the exception of recruiting foreign students residing in foreign countries who are not eligible for Title IV, HEA Program assistance, an institution may not pay a commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to a person or entity engaged in recruiting, admission, or making decisions regarding student financial assistance.

11. An institution must comply with the requirements of the Secretary, state postsecondary review entities, and accrediting agencies according to Part H of the HEA.

12. An institution must have a fair and equitable refund policy according to the requirements of Section 484B of the HEA (see the earlier discussion).

X. Audits - §§487(c)(1)(5)(6) and (7)

The Secretary will promulgate necessary regulations to provide for--

1. An annual audit of an eligible institution's entire financial condition and of the institution's compliance with the requirements governing the Title IV programs. The results of these audits will be available to cognizant guaranty agencies, eligible lenders, state agencies, and the state review entities designated under Subpart l of Part H of the HEA.

2. An annual compliance audit of a third-party servicer (other than the servicer's functions as a lender if these functions are otherwise audited under Part G of the HEA and meet the requirements discussed in this paragraph) with regard to the servicer's contract with an eligible institution, guaranty agency, or lender for administering or servicing any aspect of the Title IV programs. The audit must cover the period since the most recent audit and must be conducted by a qualified, independent organization or person according to standards of the Comptroller General for the audit of governmental organizations, programs, and functions, and according to the regulations of the Secretary. The results of the audit must be submitted to the Secretary.

3. An annual compliance audit of a secondary market for transactions involving servicing and collection of Title IV loans. The audit must cover the period since the most recent audit and must be conducted by a qualified, independent organization or person and be according to standards of the Comptroller General for the audit of governmental organizations, programs, and functions and be according to the regulations of the Secretary. The results of the audit must be submitted to the Secretary.

An audit of an institution, third party servicer, or secondary market that is conducted under the Single Audit Act meets the requirements of the above provisions for the period covered by the audit.

The Secretary must make readily available the results of audits of institutions to appropriate guaranty agencies, eligible lenders, designated state review entities under Subpart 1 of Part H of the HEA, and accrediting agencies or associations.

The Secretary may provide any information collected as a result of any audits conducted under the above provisions, together with audit information collected by guaranty agencies, to any federal or state agency with student financial assistance responsibilities, including the Secretary of Veterans Affairs, guaranty agencies, and the designated state review entities under Subpart 1 of Part H of Title IV of the HEA, as well as lenders and accrediting agencies.

If an audit conducted after December 31, 1988 pursuant to the audit requirements of section 487(c) of the HEA and Department regulations implementing those requirements, demonstrates to the satisfaction of the Department that an institution has provided Title IV assistance to its students in accordance with program requirements but not previously received credit or reimbursement for these disbursements, as applicable, the institution may offset the amount of those disbursements against liabilities owed under the audit, or if no liabilities arise from the audit, the institution may receive reimbursement from the Department for those amounts.

Y. Financial Responsibility and Administrative Capability - §487(c)(1)

The Secretary will promulgate regulations to provide for any matter necessary for the sound administration of the financial assistance programs, for example, the pertinent actions of any owner, shareholder, or person exercising control over an eligible institution.

Z. Hearings on the Record - §§487(b), (c)(1) and (3) and §487(e)

The Amendments removed the requirement that a hearing provided in an audit or program review appeal, or in a limitation, suspension, termination, or fine proceeding against an institution or third-party servicer, be conducted as a hearing "on the record." As a result, hearings will no longer be conducted "on the record" before "Administrative Law Judges" and provisions in regulations governing these proceedings will remain in effect until changed except for those that refer to the hearing as "on the record" and the presiding official as an "Administrative Law Judge" which were changed in final regulations published on October 19, 1992. The hearings will be conducted before impartial hearing officials and the Department will continue to provide a transcript. A party may record, at its own cost, a hearing conducted under those proceedings, as long as there is not a delay in the completion of those proceedings due to the unavailability of the recording. An institution may use any reasonable means, including stenographers, to record the hearing.

AA. Third-Party Servicers - §487(c)(1)

For purposes of emergency action, limitation, suspension, termination, or fine proceedings against individuals and organizations that contract with an institution to administer any aspect of the institution's Title IV program, the HEA Amendments replace the term "individuals and organizations" with the broader term "third-party servicer." The definition of "third-party" servicer is discussed earlier under section 481(f).

BB. Single Enforcement Actions Against Groups of Institutions and Servicers - §487(c)(2)

If the Secretary determines that an individual or entity that exercises substantial control over one or more institutions participating in a Title IV program or over one or more organizations that contract with an institution to administer any aspect of the institution's Title IV programs has violated any Title IV program requirements or has been suspended or debarred (according to the regulations of the Secretary), the Secretary may use the determination, suspension, or debarment as the basis for a single emergency action, limitation, suspension, or termination of the participation of any or all the institutions under the substantial control of that individual or entity. The definition of "substantial control" is discussed later, under the eligibility and certification procedures of Subpart 3 of Part H of the HEA.

CC. State Approval Agency Alternative to Accreditation - §487(c)(3)

The HEA retains a single alternative to accreditation for public institutions offering postsecondary vocational education. Under that alternative, an unaccredited public postsecondary vocational educational institution may be eligible for all federal student assistance programs if the institution is approved by a state agency that the Secretary determines to be a reliable authority as to the quality of public postsecondary vocational education in its respective State.

DD. Incarcerated Students - §484(b)

Incarcerated students are ineligible to receive Title IV loans.

XXX. Student Assistance General Provisions -- Effective on and after October 1, 1992:

A. Institutions of Higher Education - §§435(b) and (c); §§481(a)(1), (3) and (5); and §§496(i) and (j)

1. General. The definition of *"institution of higher education"* that applied only to the FFEL Program is removed, and the definitions in Sections 481 and 1201(a) of the HEA now apply to that program. The definition of *"vocational school,"* which was used exclusively for the FFEL Program, is also removed. (See the earlier discussion in the section of this letter dealing with the FFEL Program.)

2. Correspondence institutions. An institution does not qualify as an institution of higher education if it offers more than 50 percent of its courses through correspondence or if more than 50 percent of its students are enrolled in correspondence courses, unless the institution meets the definition of an "area vocational school" in Section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act. Under that definition, the institution must be a technical institute or vocational school used exclusively or principally for the provision of vocational education to individuals who have completed or left high school and who are available for study in preparation for entering the labor market.

3. Incarcerated students. An institution does not qualify as an institution of higher education if more than 25 percent of the institution's students are incarcerated. The Secretary may waive this prohibition for a nonprofit institution that offers a 2-year associate-degree or 4-year bachelor's-degree program or both. An institution that loses its eligibility as a result of this provision should follow the procedures in §668.25 of the Student Assistance General Provisions regulations.

4. Ability-to-benefit students. An institution that does not offer at least a 2-year associate-degree or 4-year bachelor's-degree program does not qualify as an institution of higher education if more than 50 percent of the institution's students are admitted under the provisions in Section 484(d) of the HEA governing the treatment of students who do not have high school diplomas or the recognized equivalent. Because of this provision, the admission of ability-to-benefit students once again becomes a factor in determining institutional, as well as student, eligibility. An institution that loses its eligibility as a result of this provision should follow the procedures in §668.25 of the Student Assistance General Provision regulations.

5. Eligibility and certification procedures. An institution's eligibility must be approved by the Secretary in accordance with the eligibility and certification requirements in Subpart 3 of Part H of Title IV of the HEA. An institution no longer qualifies as an institution of higher education if the institution loses eligibility as a result of an action taken under Part H. (See discussion that follows under Program Integrity.)

B. Institutions of Higher Education for Purposes of all HEA Programs - §1201(a)

The term "institution of higher education" in section 1201 of the HEA was amended by Pub. L. 102-325 and Pub. L. 102-394 to remove the transfer-of-credit alternative to the requirement that an institution be accredited or preaccredited by a nationally recognized accrediting agency or association to meet the definition of an institution of higher education. That is, an institution that is neither accredited by a nationally recognized accrediting agency or association nor a candidate for such accreditation that has been determined by the Secretary to be able to meet the accreditation standards within a reasonable time no longer meets the definition of an institution of higher education by demonstrating that the institution's credits are accepted, on transfer, by not less than three institutions that are accredited, for credit on the same basis as if those credits were transferred from an accredited institution (i.e. "3-I-C" procedures). There remains another exception to this accreditation or candidacy requirement for purpose of Federal student financial assistance programs for public postsecondary vocational schools. This exception (State Approval Agency Alternative) is discussed later under the discussion of changes to Section 487(c)(4) of the HEA.

C. Foreign Schools - §481(a)(2)

The provisions governing the eligibility of foreign schools for participation in the FFEL Program are now found in Part G of Title IV of the HEA, rather than Section 435 of the HEA. An institution outside the United States that is comparable to an institution of higher education as defined in Section 1201(a) of the HEA, and that has been approved by the Secretary may qualify as an eligible institution under the FFEL Programs. The Secretary will establish criteria by regulation for such approval. For a graduate medical school outside the United States, those criteria must include a requirement that a student attending the school be ineligible for FFEL Program loans unless--

1. In the year before the year for which a student is requesting an FFEL Program loan at least 60 percent of those enrolled in the school and at least 60 percent of its graduates were not United States citizens or nationals, permanent residents of the Untied States, or other eligible noncitizens; and

2. At least 60 percent of those who were enrolled at the institution and who took examinations administered by the Educational Commission for Foreign Medical Graduates in the year preceding the year for which the student seeks the loan received a passing score on that test; or

3. If both of these two requirements are not met, a student could still be eligible for a loan if the foreign medical school's clinical training program was approved by a state as of January 1, 1992.

The Secretary must establish an advisory panel of medical experts that will-

(a) Evaluate the standards of accreditation applied to foreign medical schools that apply for participation in the FFEL Program; and

(b) Determine the comparability of those standards to standards for accreditation applied to United States medical schools.

If such accreditation standards are determined not to be comparable, the foreign medical school must meet requirements of Section 1201(a) of the HEA.

If a foreign institution fails to provide, release, or authorize the release of the necessary information to determine the institution's eligibility, the institution becomes ineligible for the FFEL Program.

If a foreign school loses eligibility, then a student enrolled at the school may, nevertheless, continue to be eligible to receive a loan under the FFEL Program while attending the school through the academic year succeeding the academic year in which the loss of eligibility occurred.

D. Telecommunications - §484(m)(1)

A student enrolled in a recognized associate-, bachelor-, or graduate-degree program offered at least partly through telecommunications by an eligible institution (other than an institution that meets the definition of an "area vocational school" in Section 521(4)(C) of the Carl D. Perkins Act - see the previous discussion of institutions of higher education) is not considered to be enrolled in correspondence courses unless the sum of the institution's correspondence courses and telecommunication courses equals at least 50 percent of the courses offered by the institution. (The definition of "telecommunications" is found in the earlier discussion of provisions that are effective on enactment.)

XXXI. Student Assistance General Provisions -- Effective on and after July 1, 1993

A. Eligible Program - §481(e)

To qualify as a proprietary institution of higher education or postsecondary vocational institution, an institution must provide an eligible program. An eligible program is either--

1. A program of at least 600 clock hours, 16 semester hours, or 24 quarter hours that--

    a. Is offered during a period of at least of 15 weeks,

    b. Provides training to prepare students for gainful employment in a recognized profession, and

    c. Admits students who have not completed the equivalent of an associate degree; or

2. A program of at least 300 clock hours, 8 semester hours, or 12 quarter hours that is offered during a minimum of 10 weeks and--

    a. Is an undergraduate program requiring the equivalent of an associate degree for admission, or

    b. Is a graduate or professional program.

The Secretary will develop regulations to determine the quality of programs that are longer than 300 clock hours but shorter than 600 clock hours. The regulations will specify that these programs must have verified completion and placement rates of 70 percent. After publication of those regulations, programs shorter than 600 clock hours but longer than 300 clock hours that satisfy those regulations and meet the requirements in the just-cited item 2 will be eligible for any Title IV program. Programs shorter than 600 clock hours but longer than 300 clock hours that satisfy those regulations will be eligible for the FFEL Program only, even though they do not meet the requirements in item 2.

XXXII. Student Assistance General Provisions -- Effective for periods of enrollment beginning on or after July 1, 1993.

A. Student Consumer Requirements - §485

The Higher Education Amendments of 1992 changed the student consumer requirements by adding some new provisions to Section 485 of the HEA and by removing some existing provisions. The HEA now requires that an institution disclose to current students -- and to prospective students on request -- the following information:

1. Refunds. As a part of its refund policy (as determined under Section 484B, which is discussed earlier), the institution will credit refunds in the following order:

a. To outstanding balances on FFEL Program loans;

b. To outstanding balances on Federal Direct Loans;

c. To outstanding balances on Federal Perkins Loans;

d. To Federal Pell Grant Awards;

e. To Federal SEOG awards;

f. To awards under the FWS Program;

g. To other Title IV student assistance; and

h. To the student.

2. Study Abroad. A statement that enrollment in a program of study abroad that is approved for credit by the home institution may be considered enrollment in the home institution for purposes of a student applying for federal student financial assistance.

3. Exit Counseling for Borrowers. The Amendments removed the requirement that an institution must counsel borrowers concerning the average indebtedness of FFEL Program and Federal Perkins Loan Program borrowers. The HEA now requires that during the exit counseling an institution require a borrower to provide, in addition to information already required under Section 485 (the borrower's expected permanent address, the name and address of the borrower's expected employer, and the address of the borrower's next of kin), any corrections to the institution's records concerning his or her name, address, social security number, references, and

driver's license number. Within 60 days after the student's exit counseling, the institution must provide this completed or corrected information to the guaranty agency indicated on the borrower's student aid records. Formerly, the institution submitted this information to the holder of the FFEL Program loan. The requirements governing exit counseling apply to the Federal Direct Loan Program, as well as to the FFEL and Federal Perkins Loan programs.

XXXIII. Student Assistance General Provisions- - Miscellaneous Effective Dates

A. Campus Security Disclosures - §485

The Amendments add to the list of crime statistics that an institution must collect and require an institution to disclose additional information concerning campus programs to prevent sexual assault and mandate adoption of procedures for a victim to follow when a sex offense has occurred. The definition of a "campus" is found in Section 668.48 of the proposed rules published in the *Federal Register* on July 10, 1992.

Effective August 1, 1992, each institution must collect statistics concerning the occurrence of forcible or nonforcible sex offenses on campus; previously, under the Student Right-to-Know and Campus Security Act, an institution was required to collect and disclose statistics concerning rape only. The institution must use the definitions of a forcible or nonforcible sex offense used in the Federal Bureau of Investigation's Uniform Crime Reporting System, as amended by the Hate Crime Statistics Act. These data must be collected from August 1, 1992 through December 31, 1992 and each calendar year thereafter. For the annual security report that the institution must disclose on September 1, 1993, the institution must disclose statistics concerning rape for the period August 1, 1991 through July 31, 1992, and statistics concerning forcible or nonforcible sex offenses for the period August 1, 1992 through December 31, 1992; the institution must also disclose in that report data reasonably available to the institution from campus and law enforcement authorities concerning forcible or nonforcible sex offenses for the period August 1, 1991 through August 1, 1992.

Effective July 1, 1993, the institution must have in place the following campus sexual-assault programs established to prevent sex offenses and the procedures to follow when a sex offense has occurred. These programs and procedures must be explained in the annual security report provided by institutions to current and prospective students and staff beginning September 1, 1993 and each year thereafter:

(A) Education programs to promote the awareness of rape, acquaintance rape, and other sex offenses;

(B) Possible sanctions for rape, acquaintance rape, or other sex offenses (forcible or nonforcible) following an on-campus disciplinary procedure;

(C) Procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported;

(D) Procedures for on-campus disciplinary action in cases of alleged sexual assault that shall include a clear statement that:

> (i) The accuser and the accused are entitled to the same opportunities to have others present during a campus disciplinary proceeding; and
>
> (ii) Both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault.

(E) Informing students of their options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying these authorities, if the student chooses to do so;

(F) Notifying students of existing counseling, mental health or student services for victims of sexual assault, both on campus and in the community; and

(G) Notifying students of options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident if requested by the victim and if these changes are reasonably available.

In the institution's report for September 1, 1994, the institution must disclose the statistics described for August 1, 1991 through December 31, 1992 and 1993.

In the institution's report for September 1, 1995 and each succeeding year, the institution must disclose statistics concerning criminal offenses for the three calendar years (January 1 through December 31) preceding the year in which the report is made.

Public Law 102-325 amends the Family Educational Rights and Privacy Act (FERPA), also known as the Buckley Amendment; Public Law 102-325 eliminates prior FERPA restrictions on the disclosure of records that are created and maintained by campus law enforcement units for law enforcement purposes. This change became effective on July 23, 1992; the Department will issue a Notice of Proposed Rulemaking to implement this statute. In the interim, if an institution has questions about this change or FERPA, the institution should contact the:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-4605
Telephone Number: 202/732-1807.

XXXIV. PART F -- NEED ANALYSIS -- Effective for Award Years Beginning on or After July 1, 1993.

The Amendments replace both the Congressional and Pell Grant Methodologies with a single statutory need analysis methodology to be used for determining the expected family contribution (EFC) for all students applying for Title IV assistance. This methodology will be referred to as the Federal Needs Analysis Methodology.

The Federal Needs Analysis Methodology is generally based on the current Congressional Methodology except that special treatment for dislocated workers and displaced homemakers has been eliminated. Some of the highlights of the Federal Needs Analysis Methodology are as follows:

A. Simplified Need Analysis Formula - §479

The HEA permits the use of a simplified needs analysis formula for the calculation of an EFC for a family with an adjusted family income of less than $50,000 which files an IRS form 1040A or 1040EZ or an income tax return required by the tax code of the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or Palau, or is not required to file any income tax return. The simplified need analysis formula will use the following data elements:

- adjusted gross income
- federal income taxes paid
- untaxed income and benefits
- number of family members in the household
- number of family members in postsecondary education
- an allowance for state and other taxes.

B. Automatic Zero EFC - §479(c)

The HEA provides that the parents of a dependent student or an independent student with dependents other than a spouse would be considered to have a zero EFC if the family--

1. Has an adjusted gross income equal to or less than the maximum income that may be earned to claim the maximum federal earned income tax credit, and

2. Does not and was not required to file an IRS Form 1040.

An example of the effect of this provision is as follows:

The income threshold for the maximum earned income tax credit was $11,850 for the 1991 tax year. The income threshold for the earned income tax credit is adjusted annually for inflation and will be approximately $12,000 for the 1992 tax year. Thus, for the 1993-94 academic year, any student (other than an independent student without dependents) whose family's adjusted gross income is approximately $12,000 or less would automatically have a zero EFC.

C. Cost of Attendance - §471

Except as provided below, a student's cost of attendance is the sum of the following--

1. The tuition and fees normally assessed a student carrying the same academic workload, including costs for rental or purchase of equipment, materials, or supplies required of all students in the same course of study;

2. An allowance for books, supplies, transportation, and miscellaneous personal expenses;

3. For a student without dependents living at home with parents, an allowance for room and board of not less than $1,500; or, for students without dependents living in institutionally owned or operated housing, a standard allowance for room and board normally assessed most residents; or, for all other students, an allowance of not less than $2,500 based on reasonably incurred room and board expenses;

4. For a student with dependents, an allowance based on the estimated actual expenses incurred for dependent care (during periods that include, but are not limited to, class-time, study-time, field work, internships, and commuting time for the student) based on the number and age of such dependents, not to exceed the reasonable cost in the community for the kind of care provided;

5. For study abroad programs approved for credit by the student's home institution, reasonable costs associated with such study;

6. For a disabled student, an allowance for expenses related to a student's disability including special services, personal assistance, transportation, equipment, and supplies that are reasonably incurred and not provided for by other agencies;

7. For students placed in a work experience under a cooperative education program, an allowance for reasonable costs associated with such employment.

Exceptions--

Less than half-time students - A student's cost of attendance can include only tuition and fees, allowance for books, supplies, and transportation, and an allowance for dependent care expenses.

Correspondence study students - Generally, a student's cost of attendance can include only tuition and fees. However, if the student is fulfilling a required period of residential training, the student's cost of attendance can also include required books, supplies, an allowance for travel, and room-and-board costs specifically incurred.

Incarcerated students - An allowance for tuition and fees and, if required, books and supplies. No other expenses can be included.

Students receiving instruction by telecommunications - No distinction shall be made regarding the mode of instruction in determining costs except that the cost of rental or purchase of equipment cannot be included as an element of the cost of attendance. However, as discussed with regard to section 484(m), if the financial aid administrator determines using his or her professional judgment under section 479A of the HEA that a course of instruction offered through telecommunications results in a substantially reduced cost of attendance to the student, the FAA must reduce the student's eligibility for grants, loans, or work-study assistance.

D. Independent Student Definition - §480(d)

The definition of "independent student" has been revised to regard as independent any student who--

1. Is at least 24 years old by December 31 of the award year;

2. Is an orphan or ward of the court;

3. Is a veteran of the Armed Forces of the United States;

4. Is a graduate or professional student;

5. Is a married student;

6. Is a student who has legal dependents other than a spouse; or

7. Is a student for whom a financial aid administrator determines and documents the student's independent status on the basis of unusual circumstances. (For additional information see section on financial aid administrator discretion.)

(1) The Amendments do not grandfather in those students previously classified as independent;

(2) in the case of a graduate/professional student or a married student, independent student status no longer depends on whether the student previously had been claimed as an exemption by his or her parents; and

(3) in the case of a single undergraduate student, a student no longer is considered independent on the basis of resources in prior years.

E. <u>Financial Aid Administrator Discretion - §479A</u>

The HEA gives authority to a financial aid administrator (FAA) to make adjustments to a student's cost of attendance and EFC on the basis of an individual student's special circumstances rather than circumstances that exist across a class of students. Adjustments can either increase or decrease a student's EFC or cost of attendance. In the case of an adjustment to a student's EFC, the adjustment must be made to a specific data element. The reason for the adjustment must relate to that student's special circumstance and must be documented in the student's file.

In addition, the HEA permits an FAA to request and use any supplementary information about the financial status or personal circumstances of a student or his or her family to determine whether special circumstances exist. The student or parent can not be charged a fee for the collection, processing, or delivery of such supplementary information.

XXXV. Program Integrity Provisions, Part H - Subpart 1 -- State Postsecondary Review Program -- Effective on and after October 1, 1992:

A. Purpose and Program Authority - §494

The Secretary is authorized to enter into agreements that-

(1) Designate one state postsecondary review entity in each state to be responsible for the conduct or coordination of reviews of those institutions of higher education under section 494C(d) that meet one or more statutory review criteria and have been reported to the state by the Secretary under 494C(a) for the purpose of determining those institutions' eligibility to participate in the Title IV programs; and,

(2) Provide federal funds to each state postsecondary review entity for performing the functions required by these agreements.

The statute provides that the Secretary is to enter into an agreement with each state to carry out the purposes of Subpart 1 of Part H of the HEA. If a state declines to enter into an agreement with the Secretary, then the Secretary may make appropriate arrangements to review the institutions of higher education in that state.

If a state fails to enter into an agreement or fails to meet the requirements of its agreement-

(1) The Secretary may not designate as eligible to participate in any Title IV program any new institution (including new branch campuses) or any institution that has changed ownership;

(2) The Secretary may grant only provisional certification for all institutions in the state (provisional certification is explained later in the discussion of Eligibility and Certification procedures); and

(3) The state will not be eligible to receive funds under the National Early Intervention Scholarship and Partnership (NEISP) Program, the SSIG Program, and any funds appropriated under Part H of the HEA.

No state will be required to enter into an agreement with the Secretary to perform the review functions of Subpart 1 of Part H if Congress does not appropriate funds for this subpart. The Secretary is working with Congress to obtain an appropriation for FY 1993.

B. State Review Entity Agreements - §494A

Each state agreement must describe a state organizational structure responsible for the review of institutions that are subject to review under Subpart 1 of Part H of the HEA. A state is free to create an organizational structure that meets its needs and is consistent with the state's laws and constitution.

The agreements between each state and the Secretary must contain the following elements--

(1) The designation of a single state postsecondary review entity, which shall represent all entities of that state responsible for--

(a) Granting state authorization to each institution of higher education in that state for purposes of Title IV; and

(b) Ensuring that each institution of higher education in that state remains in compliance with state-developed educational performance standards.

(2) Assurances that the state will review institutions of higher education for the purpose of determining those institutions' eligibility under the Title IV programs on a schedule that coincides with the dates set by the Secretary to certify or recertify these institutions.

(3) Assurances that the state review entity will perform the functions authorized by Subpart 1 of Part H of the HEA and will keep records and provide information to the Secretary, as requested.

(4) A description of the relationship between the state review entity, the state approving agency for veterans affairs, the state guarantee agency, and the state agency that administers the National Early Intervention Scholarship and Partnership Program.

(5) The state entity's plan for performing its review functions.

C. Federal Reimbursement of state Postsecondary Review Costs - §494B

The Secretary will reimburse states from available appropriations for the costs of performing the functions required by the agreements with the Secretary. These costs include providing initial and continuing training to state personnel and other personnel in the state for purposes of this subpart. Reimbursement will be provided for activities that supplement, but do not supplant, existing licensing and review functions conducted by the state. The Secretary will also reimburse state review entities for work performed by their subcontractors and consultants if this work has a direct relationship to the requirements of the agreements with the Secretary. For fiscal year 1993, $75,000,000 is authorized to be appropriated to meet these costs, and such sums as may be necessary for each of the four succeeding fiscal years are authorized.

D. Initial Review by the Secretary - §494C(a),(b), and (c)

The Secretary is responsible for conducting an initial review of all the eligible institutions and institutions that seek eligibility in each state to identify those institutions that meet any of the following statutory review criteria (measured on the basis of the most recent data available to the Secretary - data for which institutions may request verification):

(1) A cohort default rate (defined in section 435(m) of the HEA) equal to or greater than 25 percent.

(2) A cohort default rate equal to or greater than 20 percent and-

(a) More than two-thirds of the institution's undergraduate students who are enrolled at least half-time receive Title IV aid; or

(b) Two-thirds or more of the institution's education and general expenditures are derived from Title IV funds provided to students enrolled at the institution.

(3) Two-thirds or more of the institution's education and general expenditures are derived from Federal Pell Grant funds provided to students enrolled at the institution.

(4) A limitation, suspension, or termination action by the Secretary against the institution within the last 5 years.

(5) An audit finding during the 2 most recent audits of an institution that resulted in the repayment by the institution of amounts greater that 5 percent of the funds the institution received from the Title IV programs for any one year.

(6) A citation of the institution by the Secretary for failure to submit audits in a timely fashion.

(7) A year-to-year fluctuation (which is not accounted for by changes in the programs) of more than 25 percent in the amounts received by students enrolled at that institution from either the Federal Pell Grant, Federal Stafford Loan, or Federal SLS program.

(8) Failure to meet the financial responsibility standards in Subpart 3 of Part H of Title IV of the HEA.

(9) A change of ownership that results in a change of control.

(10) Except with regard to any public institution that is affiliated with a state system of higher education, participation in any Title IV program (other than the SSIG or Federal Direct Loan Demonstration program) for less than 5 years.

(11) A pattern of student complaints related to the management or conduct of the Title IV programs or relating to misleading or inappropriate advertising and promotion of the institution's program.

E. State Developed Review Standards - §494C(a) and (d)

The Secretary will notify each state of the institutions in the state that meet one or more of the statutory review criteria and will provide the state with a copy of the audits of the affected institutions. The designated state entity will then be required to review these institutions in accordance with standards, in the following areas, developed in consultation with the institutions in the state:

(1) The availability and accuracy of student consumer information materials given to students and prospective students.

(2) Assurance that the institution has a method to assess a student's ability to complete successfully the course of study for which he or she has applied.

(3) Assurance that the institution maintains and enforces academic progress standards and maintains adequate student and other records.

(4) Compliance by the institution with health and safety standards.

(5) The financial and administrative capacity of the institution as appropriate to a specified scale of operations and the maintenance of adequate financial and other information necessary to determine the financial and administrative capacity of the institution.

(6) For institutions financially at risk, the adequacy of provisions to provide for the instruction of students and the availability of academic and financial aid records of students in the event the institution closes.

(7) If the stated objectives of the courses or programs of the institution are to prepare students for employment, the relationship between the program length and the reasonable salary a graduate of the program can expect to receive and the relationship of the courses or programs to providing the student with quality training and useful employment in recognized occupations in the state.

(8) Availability to students of relevant information on job opportunities and state licensure requirements.

(9) The appropriateness of the number of credit or clock hours required for the completion of programs or of the length of 600-hour courses.

(10) Assessing the actions of any owner, shareholder, or person exercising control over the institution that may adversely affect eligibility for the Title IV programs.

(11) The adequacy of procedures for investigation and resolution of student complaints.

(12) The appropriateness of advertising, promotion, and recruiting practices.

(13) That the institution has a fair and equitable refund policy.

(14) The success of the program at the institution including completion, graduation, placement, and withdrawal rates, pass rates on state licensing exams, and student completion goals (including transfer to another institution, employment or military service).

(15) With respect to an institution that meets one or more of the statutory review criteria, the state shall contract with the appropriate accrediting agency or association (described in Subpart 2 of Part H of the HEA) or another peer review system with demonstrated competence in assessing programs to carry out a review or provide information regarding such agency's or association's assessment of the following: The quality and content of the institution's courses or programs of instruction, training, or study in relation to achieving the stated objectives for which the space, equipment, instructional materials, staff, and student support services (including student orientation, counseling, and advisement) for providing education and training that meets such stated objectives.

These review standards must be developed in a manner consistent with the laws and constitution of the state and are subject to disapproval by the Secretary.

In addition to the institutions identified by the Secretary as having met one or more of the statutory criteria that require state review, a state entity may, subject to the approval of the Secretary, review institutions for which the state has determined to meet these criteria based on more recent data than that used by the Department, and institutions that the state has reason to believe are engaged in fraudulent practices. If the Secretary does not approve or disapprove within 21 days a state request for review of additional institutions, the state entity may proceed to review the institutions as if the state request had been approved.

F. Substitutions of reviews by other organizations prohibited - §494C(e)

The designated state review entity may not substitute a compliance audit performed by a state guarantee agency or accreditation by a private accrediting body for its review of an institution's compliance with the state-developed review standards. However, the state review entity may contract with a private agency or peer review system for assistance in performing state review functions, if these contracts are provided for in the agreement with the Secretary.

G. Loss of Institutional Eligibility - §494C(h)

A state review entity may determine, based on its own findings or the findings of a Federal entity, that an institution of higher education is not eligible to participate in the Title IV programs. If the state entity finds that an institution does not meet one or more of the state-developed review standards, the state entity must notify the Secretary of its findings and the actions that the state has taken or plans to take in response to the findings within a time period prescribed by the Secretary in regulations. If the state entity determines that an institution of higher education is not eligible to participate in the Title IV programs, the state entity must notify the Secretary, who will immediately terminate the institution's participation.

If the Secretary takes or plans to take any action against an institution of higher education, including any action taken with respect to institutional audits, the Secretary will notify the designated state review entity within a time period to be prescribed in regulations. The Department also will promulgate regulations regarding procedural standards for the disapproval of institutions of higher education by state review entities.

H. Consumer Complaints - §494C(j)

A state, in consultation with institutions of higher education in the state, will be required to establish procedures for receiving and responding to student complaints about institutions and maintain records of such complaints to determine their frequency and nature for specific institutions.

XXXVI. Program Integrity Provisions, Part H -- Subpart 2 -- Accrediting Agency Approval - Effective on or after October 1, 1992

The new law creates a new Part H, subpart 2, addressing the subject of Secretarial recognition of accrediting agencies. Section 496(a) provides that the Secretary "shall, after notice and opportunity for a hearing, establish standards" for these determinations, and much of the remainder of new Subpart 2 provides guidance as to the content of those standards. As such, the law authorizes the Secretary to establish those standards either through rulemaking or through case-by-case determinations, or both.

The Secretary has decided to use both rulemaking and case-by-case determinations to establish these standards. Rulemaking will be conducted through the process of negotiated rulemaking specified in new §492 of the HEA. During the period before final rules are published, however, the Secretary will, where appropriate to carry out the purposes of the Act, proceed to decide accrediting agency petitions for recognition (initial or renewed) through application of the standards specified in the law. This will permit new agencies to seek recognition and will permit the Department to review agencies whose accreditation activities raise significant and pressing questions of compliance with the basic statutory standards, without awaiting completion of the rulemaking process. The procedures (in terms of submission of written materials, site visits by Department personnel, and so forth) that will apply to reviews under the new statutory standards will be the procedures specified in the Department's existing regulations, which already provide for both notice and an opportunity for a hearing. See 34 C.F.R. §602.3. The Secretary will notify the agencies scheduled for review that will thus be reviewed under the statutory standards. The Secretary will also inform chosen agencies as to any additional materials they will be required to submit and the deadline for submission of those materials.

A general description of the substance of the relevant provisions of the new law is as follows:

A. Standards Required for Accrediting Agency Approval - §496(a)

No accrediting agency may be determined by the Secretary to be a reliable authority as to the quality of education or training offered unless it meets standards established by the Secretary. Such standards include appropriate measures of student achievement and require that-

(1) the accrediting agency is State, regional, or national in scope and demonstrates the ability and experience to operate as an accrediting agency within its geographic scope;

(2) the agency--

(A) (i) for the purpose of participation in programs under the Higher Education Act (HEA) has a voluntary membership and has as a principal purpose the accrediting of institutions of higher education; or

(ii) for the purpose of participation in other programs administered by the Department of Education or other Federal agencies has a voluntary membership and has as its principal purpose the accrediting of institutions of higher education or programs;

(B) is a State agency approved by the Secretary for the purpose described in (A); or

(C) is an agency that, for the purpose of determining eligibility for student assistance under Title IV, conducts accreditation either through a voluntary membership organization of individuals participating in a profession or through an agency or association which has as its principal purpose the accreditation of programs within institutions that are accredited by another agency recognized by the Secretary;

(3) if the agency fits the description contained above in-

(A) paragraph (2)(A), then it must be separate and independent, both administratively and financially, of any related, associated, or affiliated trade association or membership or organization;

(B) paragraph (2)(B), then it must have been recognized by the Secretary on or before October 1, 1991;

(C) paragraph (2)(C) and the agency has been recognized by the Secretary on or before October 1, 1991, then the Secretary may waive the requirement that it be separate and independent, both administratively and financially, of any related, associated, or affiliated trade association or membership organization upon a demonstration that the existing relationship has not served to compromise the independence of its accreditation process;

(4) the agency consistently applies and enforces standards that ensure that the courses or programs of instruction, training, or study at the institution of higher education are of sufficient quality to achieve, for the duration of the accreditation period, the stated objective for which the courses or the programs are offered;

(5) the agency's standards of accreditation assess the institution's-

(A) curricula;

(B) faculty;

(C) facilities, equipment, and supplies;

(D) fiscal and administrative capacity as appropriate to the specified scale of operations;

(E) student support services;

(F) recruiting and admissions practices, academic calendars, catalogs, publications, grading and advertising;

(G) program length and tuition and fees in relation to the subject matters taught and the objectives of the degrees or credentials offered;

(H) measures of program length in clock hours or credit hours;

(I) success with respect to student achievement in relation to its mission, including, as appropriate, consideration of course completion, State licensing examination, and job placement rates;

(J) default rates in the student loan programs under Title IV of the HEA, based on the most recent data provided by the Secretary;

(K) records of student complaints received by, or available to, the agency; and

(L) compliance with its program responsibilities under Title IV of the HEA, including any results of financial or compliance audits, program reviews, and such other information as the Secretary may provide to the agency.

(6) the agency applies procedures throughout the accrediting process, including evaluation and withdrawal proceedings, that comply with due process, including-

(A) adequate specification of requirements and deficiencies at the institution of higher education or program being examined;

(B) notice of an opportunity for a hearing by any such institution;

(C) the right to appeal from an adverse action against any such institution; and

(D) the right to representation by counsel for any such institution;

(7) the agency notifies the Secretary and the appropriate State postsecondary review entity within 30 days of the accreditation of an institution or any final denial, withdrawal, suspension, or termination of accreditation or placement on probation of an institution, together with any other adverse action taken with respect to an institution; and

(8) the agency makes available to the public, upon request, and to the Secretary and the State postsecondary review entity of the State in which the institution of higher education is located a summary of any review resulting in a final accrediting decision involving denial, termination, or suspension of accreditation, together with the comments of the affected institution.

B. Definition of Separate and Independent - §496(b)

An accrediting agency or association is "separate and independent" within the meaning of section 496(a) if--

(1) the members of the postsecondary education governing body of the accrediting agency are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association or membership organization;

(2) among the membership of the board of the accrediting agency there shall be one public member (who is not a member of any related trade or membership organization) for each six members of the board, with a minimum of one such public member, and guidelines are established for such members to avoid conflicts of interest;

(3) dues to the accrediting agency are paid separately from any dues paid to any related, associated, or affiliated trade association or membership organization; and

(4) the budget of the accrediting agency is developed and determined by the agency without review or resort to consultation with any other entity or organization.

C. Operating Procedures Required - §496(c)

No accrediting agency may be approved by the Secretary for the purpose of Title IV, unless the agency--

(1) performs on-site reviews at regularly established intervals of institutions of higher education, including at least one unannounced review of each institution that provides vocational education and training, that focus particularly on educational quality and program effectiveness, and ensures that accreditation review team members are well-trained and knowledgeable with respect to their responsibilities;

(2) requires that any institution of higher education subject to its jurisdiction that plans to establish a branch campus submit a business plan, including projected revenues and expenditures, prior to opening the branch campus;

(3) agrees to conduct an on-site visit of a branch campus or institution, as applicable, as soon as practicable, but not more than 6 months after an institution establishes a new branch campus or undergoes a change of ownership;

(4) requires that teach-out agreements among institutions are subject to approval by the accrediting agency consistent with standards promulgated by the agency;

(5) maintains and makes publicly available written materials regarding standards and procedures for accreditation, appeal procedures, and the accreditation status of each institution subject to its jurisdiction; and

(6) discloses publicly whenever an institution of higher education subject to its jurisdiction is being considered for accreditation or reaccreditation.

D. Length of Approval of Accrediting Agencies - §496(d)

No accrediting agency may be approved by the Secretary for the purpose of the HEA for a period of more than 5 years.

E. Initial Arbitration Rule - §496(e)

The Secretary may not recognize the accreditation of any institution of higher education unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration prior to any other legal action.

F. Jurisdiction - §496(f)

Federal district courts shall have exclusive jurisdiction to hear those suits brought by an institution of higher education seeking accreditation from, or accredited by, an accrediting agency approved by the Secretary for the purpose of Title IV and that involve challenges to the denial, withdrawal, or termination of accreditation of the institution.

G. Limitation on the Scope of Standards - §496(g)

The Secretary may establish only those standards for accrediting agencies that are required by this subpart; an accrediting agency may adopt additional standards not provided for in section 496.

H. Change of Accrediting Agency - §496(h)

The Secretary shall not recognize the accreditation of any otherwise eligible institution of higher education if the institution of higher education is in the process of changing its accrediting agency, unless the eligible institution demonstrates to the Secretary that it has reasonable cause for changing its accrediting agency and submits to the Secretary all materials relating to the prior accreditation.

I. Dual Accreditation Rule - §496(i)

The Secretary shall not recognize the accreditation of any otherwise eligible institution of higher education if that institution is accredited by more than one accrediting agency, unless the institution submits to each such agency and to the Secretary the reasons for accreditation by more than one agency and demonstrates to the Secretary reasonable cause for its accreditation by more than one agency. If the institution is accredited, as an institution, by more than one accrediting agency, the institution shall designate which agency's accreditation shall be utilized in determining the institution's eligibility for programs under the HEA.

J. Impact of Loss of Accreditation - §496(j)

An institution may not be certified or recertified as an institution of higher education under section 481 and subpart 3 of Part H or participate in any of the other programs authorized by this Act, if such institution--

(1) is not currently accredited by an agency recognized by the Secretary; or

(2) has had its accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months, unless such withdrawal, revocation, or termination has been rescinded by the same accrediting agency that took the action; or

(3) has withdrawn from accreditation voluntarily under a show cause or suspension order during the preceding 24 months, unless such order has been rescinded by the same accrediting agency that took the action.

K. Religious Institution Rule - §496(k)

An institution that has had its accreditation withdrawn, revoked, or otherwise terminated, or has voluntarily withdrawn from an accreditation agency, may remain certified as an institution of higher education under section 481 and subpart 3 of Part H for a period sufficient to allow such institution to obtain alternative accreditation, if the Secretary determines that the reason for the withdrawal, revocation, or termination is related to the religious mission or affiliation of the institution and is not related to the accreditation standards provided for in subpart 3 of Part H.

L. Limitation, Suspension, or Termination of Approval - §496(l)

The Secretary shall limit, suspend, or terminate the approval of an accrediting agency if the Secretary determines, after notice and opportunity for a hearing, that the accrediting agency has failed to apply effectively the standards or operate according to the procedures provided in subpart 3 of Part H. The Secretary may determine that an accrediting agency has failed to apply effectively these standards if the Secretary finds that an institution of higher education receives accreditation from the agency during any period in which the institution is the subject of any interim action by another accrediting agency leading to the suspension, revocation, or termination of accreditation or if the institution has been notified of the threatened loss of accreditation and the due process procedures required by such suspension, revocation, termination, or threatened loss have not been completed.

M. Limitation on the Secretary's Authority - §496(m)

The Secretary may only recognize accrediting agencies that accredit institutions of higher education for the purpose of enabling such institutions to establish eligibility to participate in the programs under this Act or that accredit institutions of higher education or higher education programs for the purpose of enabling them to establish eligibility to participate in other programs administered by the Department of Education or other Federal agencies.

N. Independent Evaluation - §496(n)

The Secretary is required to conduct a comprehensive review and evaluation of the performance of all accrediting agencies seeking recognition by the Secretary in order to determine whether they meet the standards established by this subpart. This independent evaluation shall include the solicitation of third-party information concerning the performance of the accrediting agency, site visits at both the accrediting agency and member institutions (including unannounced visits where appropriate), and other available relevant information concerning the compliance of the accrediting agency with the standards required for recognition, including any complaints or legal actions against the agency. In cases where deficiencies in the performance of an agency with respect to the standards are noted, the Secretary shall take these deficiencies into account in the approval process. The Secretary may not, however, base decisions regarding the approval or disapproval of accreditation agencies on standards other than those contained in this subpart.

The Secretary shall place a priority for review on those agencies that accredit institutions of higher education that participate most extensively in the programs authorized by Title IV and on those agencies that have been the subject of the most complaints or legal actions.

The Secretary shall maintain sufficient documentation to support the conclusions reached in the approval process, and, upon disapproval of any accreditation agency or association, shall make publicly available the reason for disapproval, including reference to the specific standards that have not been met.

O. Regulations - §496(o)

The Secretary shall publish regulations on the procedures for the recognition of accrediting agencies and the appeal of the Secretary's decisions regarding accrediting agency recognition.

XXXVII. Program Integrity Provisions, Part H -- Subpart 3 -- Eligibility and Certification Procedures -- Effective on and after October 1, 1992

A. General Eligibility and Certification Procedures - §498(a)

Subpart 3 of Part H of the HEA establishes procedures to be used by the Secretary for qualifying institutions for participation in the Title IV programs. To qualify an institution for participation, the Secretary must determine the legal authority of an institution of higher education to operate within a state, its accreditation status, and its financial responsibility and administrative capability under the requirements of this subpart.

B. Application Form - §498

The Secretary is required to prescribe a single application form for purposes of the Title IV programs on which an institution must provide--

(1) Sufficient information and documentation to determine that the institution's eligibility, accreditation, and capability requirements are met;

(2) A specific description of the relationship between the main campus of the institution and all of its branches, including a description of student aid processing performed by the main campus and processing performed by the branches;

(3) A description of the institution's third-party servicers, including a copy of any contract between the institution and a financial aid service provider or loan servicer; and

(4) Other information needed by the Secretary to ensure compliance with the Title IV requirements governing eligibility, accreditation, administrative capability, and financial responsibility.

The Secretary shall ensure that prompt action is taken on applications submitted under these provisions.

B. Financial Responsibility Standards - §498(c)

The Secretary must determine whether an institution has the necessary financial responsibility to participate in the Title IV programs and to establish standards for this determination.

(1) The determination of an institution's financial responsibility must be on the basis of whether the institution is able to--

(a) Provide the services described in the institution's official publications and statements;

(b) Provide the administrative resources to comply with the requirements of Title IV of the HEA; and

(c) Meet all of the institution's financial obligations, including (but not limited to) refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary.

(2) If an institution does not meet the Secretary's criteria (now found in regulations) governing operating losses, net worth, asset-to-liabilities ratios, or operating fund deficits, the institution may

qualify to participate if it provides the Secretary with satisfactory evidence of financial responsibility in accordance with the requirements described in item 3 that follows.

(3) Despite an institution's failure to meet the criteria discussed in items (1) and (2), the Secretary may determine the institution to be financially responsible if the institution--

(a) Submits to the Secretary third-party financial guarantees (such as performance bonds or letters of credit payable to the Secretary) that equal at least one-half of its annual potential liabilities to the Secretary for funds made available for its students under Title IV (including loan obligations discharged pursuant to section 437 of the HEA) and to students for refunds, including funds provided under Title IV;

(b) Has its liabilities backed by the full faith and credit of a state, or its equivalent;

(c) Establishes to the Secretary's satisfaction that it is a going concern capable of meeting all its financial obligations, including (but not limited to) refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary. This fact must be established with the support of the report of an independent certified public accountant prepared under generally accepted accounting principles; or

(d) Has met standards that may be adopted in regulations of financial responsibility that indicate a level of financial strength at least as strong as that discussed in item (2).

(4) An institution must submit a certified financial statement of the institution, audited in accordance with standards established by the American Institute of Certified Public Accountants to the Secretary each time the institution is considered for certification or recertification. The Secretary's determination of financial responsibility is based on this statement. If the institution has already been certified or provisionally certified and a subsequent statement does not establish compliance with the provisions discussed in item (2), the Secretary may require the submission of additional audited financial statements.

(5) The Secretary must establish requirements for an institution to maintain sufficient cash reserves to ensure payment of any required refunds. However, the Secretary must provide a process for exemptions from this requirement for an institution that-

(a) Is in a state that has a tuition-recovery fund that ensures that any required refunds will be paid,

(b) Contributes to the tuition recovery fund, and

(c) is otherwise legally authorized to operate in the state.

C. Administrative Capability Standards - §498(d)

The Secretary is authorized to establish procedures and requirements concerning an institution's administrative capability that consider --

(1) The past performance (with respect to student aid programs) of the institution and persons in control of the institution, and

(2) The maintenance of records.

The Secretary may establish other reasonable procedures to determine compliance with administrative capability requirements.

D. Financial Guarantees from Owners - §498(e)

The Secretary may require financial guarantees from an institution, from one or more individuals exercising substantial control over the institution, or both, in amounts that the Secretary determines to be sufficient to satisfy the institution's potential liability to the federal government, student assistance recipients, and other program participants for funds under Title IV. The Secretary may require one or more individuals exercising substantial control over an institution to assume personal liability for financial losses to the federal government, student assistance recipients, and other program recipients for funds under Title IV, and for civil and criminal monetary penalties authorized under Title IV.

An individual may be considered "to exercise substantial control" over one or more institutions if the individual--

(1) Directly or indirectly controls a substantial ownership interest in the institution;

(2) Alone or together with other individuals, represents, under a voting trust, power of attorney, proxy, or similar agreement, one or more persons who have, individually or in combination with the other persons represented or the individual representing them, a substantial ownership interest in the institution; or

(3) Is a member of the board of directors, the chief executive officer, or other executive officer of the institution or an entity holding a substantial ownership interest in the institution.

An entity may be considered to exercise substantial control over one or more institutions if the entity directly or indirectly holds a substantial ownership interest in the institution.

An "ownership interest" is defined as a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution or institution's parent corporation. An ownership interest includes (but is not limited to) --

(1) A sole proprietorship;

(2) An interest as tenant-in-common, joint tenant, or tenant by the entireties;

(3) A partnership; or

(4) An interest in a trust.

The requirements for financial guarantees and assumptions of personal liability under these provisions are not imposed on an institution that--

(1) Has not been subjected to a limitation, suspension, or termination action by the Secretary or a guarantee agency within the preceding 5 years;

(2) Has not had, during its 2 most recent audits of its conduct of the Title IV programs, audit findings that resulted in the institution's being required to repay more than 5 percent of the funds that the institution received from the Title IV programs for any year;

(3) Meets and has met, for the preceding 5 years, the financial responsibility standards described above; and

(4) Has not been cited during the preceding 5 years for a failure to submit audits required under Title IV in a timely fashion.

E. Administrative Actions Against Institutions Under Substantial Control of Third Parties - §498(e)(5)

For purposes of administrative action against multiple institutions under the control of a single individual or entity, the standards to be used to determine whether an individual or entity exercised such substantial control over an institution are provided in §498(e)(2) and (3), which incorporates standards now found in 34 CFR 668.13(i).

F. Site Visits - §498(f)

Personnel of the U.S. Department of Education must conduct a site visit at an institution before certifying or recertifying the institution's eligibility for any Title IV program. The Secretary may charge reasonable fees for the cost of certification and for site visits. The Secretary is beginning preliminary work necessary to determine an appropriate schedule of fees. The Secretary may retain those fees to the extent allowed by the appropriations act.

G. Time Limitations on and Renewal of Eligibility - §498(g)

The eligibility of any institution participating in any Title IV program on July 23, 1992 expires no later than five years from that date. The Secretary shall establish a schedule providing for the expiration of eligibility of all institutions within this 5 year period. The schedule must provide for earlier expiration for--

(1) Institutions subject to review by a state postsecondary review entity (see discussion above on Subpart 1 of Part H of the Title IV HEA); or

(2) Other categories of institutions that the Secretary deems necessary.

The Secretary may certify new applicants, and recertify an institution after the expiration of a certification for periods no more than 4 years in length.

H. Provisional Certification - §498(h)

The Secretary may provisionally certify the institution's eligibility to participate in a Title IV program--

(1) For not more than one complete award year, in the case of an applicant for initial certification; and

(2) For not more than three complete award years in the case of --

(a) An eligible institution that applies for certification because it has undergone a change of ownership (see the discussion that follows); or

(b) An institution that the Secretary judges to be in an administrative or financial condition that might jeopardize its ability to perform its responsibilities under its Program Participation Agreement.

If the Secretary withdraws recognition from an accrediting agency, the Secretary may continue, for not more than 18 months from the date of withdrawal, the eligibility of an institution accredited by that agency that met the accreditation, eligibility, and certification requirements on the day before the withdrawal.

I. Treatment of Ownership Changes - §498(i)

Under section 498(i)(1), an eligible institution that undergoes a change of ownership that results in a change in control, as those terms are defined in section 498(i)(2) and Department regulations, is regarded as a new institution for purposes of establishing its eligibility to participate after the change in ownership. Before the institution can participate in the Title IV programs after that change, the institution must therefore demonstrate to the Department that, after the change, the institution has the financial and administrative capability needed to be certified to participate, and that it meets the elements of the applicable definition of an eligible institution. Although an institution must reestablish that it meets the requirements for institutional eligibility and certification, a school that seeks to qualify as a proprietary institution of higher education or a postsecondary vocational school need not then satisfy the two year in existence requirement if it met that requirement prior to the change of ownership. The institution, if a branch of an eligible institution immediately prior to the change, may count those periods towards satisfying the two-year existence requirement. The institution likewise retains the default rate, withdrawal rates, and other attributes that relate to its administrative capability that accrued through the date of the change in ownership.

As under current Department regulations, a change in control includes (but is not limited to)--

(1) The sale of the institution or the majority of its assets,

(2) The transfer of the controlling interest of stock of the institution or its parent corporation,

(3) The merger of two or more eligible institutions,

(4) The division of one or more institutions into two or more institutions,

(5) The transfer of controlling interest of stock of the institution to its parent corporation, or

(6) The transfer of the liabilities of the institution to its parent corporation.

The sale or transfer of ownership interest after the death of an owner of an institution to either a family member or a current stockholder of the corporation is not considered a change in ownership for purposes of section 498(i), and the Secretary may determine that other transfers should also be excluded from these requirements.

J. Branch Campuses - §498(j)

A branch (to be defined in regulations) of an eligible institution is considered to be a separate institution of higher education and is required to meet separately all of the Title IV requirements, except that a branch of a proprietary institution of higher education or a postsecondary vocational institution does not have to be in existence for at least two years before seeking certification unless the institution was in existence as a branch for less than two years. For a branch of a public or nonprofit institution of higher education (as defined in section 1201(a) of the HEA), the Secretary may waive the requirement that an institution be located in a state if the branch is affiliated with an eligible institution and was participating in one or more Title IV programs on or before January 1, 1992.

K. Program review - §§498A(a), (b), and (d)

The Secretary is required to conduct on a systematic basis program reviews of all institutions participating in the Title IV programs. The Secretary may give priority for program review to institutions that--

(1) Have a cohort default rate for FFEL Program loans greater than 25 percent, or have a cohort default rate that is among the highest 25 percent of participating institutions in the FFEL Program;

(2) Are in the top 25 percent of institutions with the highest dollar volume of FFEL loans in default;

(3) Have a significant fluctuation from one year to the next in Federal Stafford Loan volume or Federal Pell Grant awards, or both;

(4) Are reported by the appropriate state postsecondary review entity (pursuant to Subpart 1 of Part H of Title IV of the HEA) or by the appropriate accrediting agency to have deficiencies or financial aid problems;

(5) Have high annual drop-out rates;

(6) Are required to be reviewed by a state postsecondary review entity under section 494C(b) of the HEA; and

(7) Are other institutions as deemed necessary by the Secretary.

L. <u>Central Data Base - §498A(a)(3), (b), and (c)</u>

The Secretary is to establish and operate a central data base of information related to institutional accreditation, eligibility, and certification. The data base is to include all such information held by the U.S. Department of Education and all relevant information received from the Secretary of Veterans Affairs, accrediting agencies, guarantee agencies, and State Postsecondary Review Entities (under Subpart 1 of Part H of Title IV of the HEA). The Secretary is to develop a plan to collect this information and is to make the information collected available to institutions, guarantee agencies, and states.

M. <u>Measurement of Educational Program Length - §498A(e)</u>

The prohibition in section 103(b) of the Department of Education Organization Act against the Secretary's exercise of any direction, supervision, or control over curriculum, program of instruction, administration, or personnel of any educational institution, school or school system, or accrediting agency does not apply to determinations made by the Secretary concerning the appropriate length of instruction of programs measured in clock hours, including the determination of the quality of programs of instruction of less than 600 clock hours in length conducted under section 481(e)(2).

Appendix A- Charts of Interest Rules, Special Allowances and "Windfall Profits" Rules

[Refer to paper copy of the October 1992 Dear Colleague Letter for text of "Appendix A -Chart of Interest Rates, Special Allowance Rules, and "Windfall Profits" Rules".]

Appendix B

Agreement to Participate in the Loan Rehabilitation Program

I. Pursuant to Section 428F of the Higher Education Act of 1965, as amended (the HEA), this agreement is entered into between the United States Department of Education (ED) and the _____ ________________ (the agency), a guaranty agency participating in the Federal Family Education Loan program through agreements with ED pursuant to Title IV-B of the Act.

II. A. On securing 12 consecutive full payments owed on a loan for which ED has made a payment under section 428(c)(1) of the HEA, the guaranty agency may sell the rehabilitated loan to an eligible lender. A full payment shall not exceed a reasonable and affordable amount. If the guaranty agency determines that the reasonable and affordable payment is less than $50, the guaranty agency must document the basis for the determination in the borrower's file. A loan also may be eligible for sale to a lender notwithstanding that payments have not been secured if it is determined that the loan was in default due to a clerical or data-processing error and would not, in the absence of such error, be in delinquent status. A loan shall not be sold to an eligible lender who has been found by the guaranty agency or the Secretary to have failed substantially to exercise the due diligence required of lenders in the Federal Family Education Loan (FFEL) program.

B. The agency will require a lender purchasing a rehabilitated loan to establish a repayment schedule that provides for the borrower to make monthly payments at least as great as the average of the 12 consecutive monthly payments received by the agency. A loan that is rehabilitated is subject to the same terms and conditions and qualifies for the same benefits as any other FFEL program loan but does not qualify for rehabilitation in the event of a subsequent default. The agency will require a lender purchasing a rehabilitated loan to notify promptly at least one credit bureau of the loan's new status in accordance with 34 CFR 682.208(b).

III. A. The guaranty agency shall pay to the Secretary 81.5 percent of the amount of the principal balance outstanding at the time of the sale, multiplied by a percentage equal to the reinsurance percentage in effect when payment on the rehabilitated loan was made under the guaranty agreement. For purposes of this agreement, the principal balance is defined as that amount received by the lender from the guaranty agency for the default claim. After a loan is rehabilitated, the agency must report the rehabilitation to all national credit bureaus. An agency must track each rehabilitated loan so that it can be identified if it should later be submitted for claim payment by the lender.

B. On receipt of the agency's payment, ED shall reinstate: 1) the obligation to reimburse the agency for the amount expended by it in discharge of its insurance obligation under its loan insurance program subject to Section 428(c)(1) of the Act; and 2) the obligation to pay the holder of the loan a special allowance pursuant to section 438 of the Act.

C. An otherwise eligible borrower whose loan has been rehabilitated pursuant to this agreement will not be precluded from additional Title IV assistance by reason of defaulting on the loan prior to its rehabilitation.

D. For purposes of calculating the agency's reinsurance percentage under §428(c)(1)(B) of the HEA, the amounts received by the Secretary from a guaranty agency for the sale of rehabilitated loans will be deducted from claims for reimbursement paid to the agency. If an agency has already hit a default reinsurance "trigger" for the current year, a credit will be applied to the next year's default claims paid.

IV. This agreement is subject to future statutory or regulatory changes and does not supersede any provisions of law or regulation.

V. This agreement is effective upon receipt by ED of a signed copy of the agreement and its subsequent execution by ED.

____
(Name of Agency)

Date ____________________
By: _____________________

Title: _________________________
United States Department of Education

Date ____________________ By: ____________________________

Title: __________________________________

Appendix C

Federal Family Education Loan Program (formerly the Guaranteed Student Loan Programs)
Federal Stafford (Subsidized and Unsubsidized) and Federal SLS Loans
DEFERMENT CATEGORIES

Deferment Condition 1/	**Statutory Limit**	**Refinanced & Prior Borrowers (Pre-7/1/87) 2/**	**Prior Borrowers (7/1/87 - 6/30/93) 3/**	**New Borrowers (After 7/1/93) 4/**
Full-time student	None	Y	Y	Y
Half-time student 5/	None	N	Y	N/A
Half-time student 6/	None	N	N	Y
Graduate fellowship	None	Y	Y	Y 7/
Rehabilitation training	None	Y	Y	Y 8/
Armed Forces or PHS	3 years	Y	Y	N
NOAA	3 years 9/	N	Y	N
Peace Corps	3 years	Y	Y	N
ACTION Programs	3 years	Y	Y	N
Temporary disability	3 years	Y	Y	N
Tax-exempt organization	3 years	Y	Y	N
Teacher shortage	3 years	N	Y	N
Economic Hardship 10/	3 years	N	N	Y
Unemployment 11/	3 years	N	N	Y
Unemployment	2 years	Y	Y	N
Internship/ residency	2 years	Y	Y	N
Working mother	1 year	N	Y	N
Parental leave	6 months	Y	Y	N
Parent PLUS borrower based on dependent's status	-----------	N/A	N/A	N/A

1/ This chart is to be used for general reference only. Refer to the regulations (34 CFR 682.210) regarding detailed eligibility requirements.

2/ Includes Student PLUS borrowers and Consolidation loans made prior to 11/1/83 according to §439(o) of Pub. L. 89-329. Loans made prior to 7/1/87 refinanced at anytime to secure a variable rate retain original deferment conditions.

3/ A borrower who, on the date he or she signs the promissory note, has no outstanding balance on (1) a Stafford, SLS or PLUS loan made prior to 7/1/87 and for a period of enrollment beginning prior to 7/1/87, or (2) a Consolidation loan that repaid a loan made prior to 7/1/87 and for a period of enrollment beginning prior to 7/1/87.

4/ Deferments specified in §427(a)(2)(C) of the Higher Education Act of 1965 (HEA), as amended by §414(b) of Pub. L. 102-325, and §428(b)(1)(M) of the HEA, as amended by §416(e)(1) of Pub. L. 102-325; these sections of the HEA are referenced in §428A(c)(1) of the HEA regarding SLS deferment eligibility. A "new borrower" is one who on the date he or she applies for a loan, the first disbursement of which is made on or after 7/1/93, has no outstanding balance on a Stafford, SLS, PLUS, or Consolidation loan; see §§432(a)(3) & 432(b) of Pub. L. 102-325. For deferments specified in §427(a)(2)(C), for Federal Insured Student Loan (FISL) borrowers, interest is not paid by the Secretary.

5/ A borrower is eligible for deferment while engaged in at least half-time study if the borrower obtains a Stafford or SLS loan for that period of enrollment. Requirement for simultaneous borrowing is not applicable (N/A) for new borrowers on/after 7/1/93.

6/ Periods during which the borrower is enrolled at least half-time; see §§427(a)(2)(C)(i)(l) & 428(b)(1)(M)(i)(l) of the HEA, as amended by Pub. L. 102-325.

7/ §§427(a)(2)(C)(i)(ll) & 428(b)(1)(M)(i)(ll) of the HEA, as amended by Pub. L. 102-325.

8/ §§427(a)(2)(C)(i)(ll) & 428(b)(1)(M)(i)(ll) of the HEA, as amended by Pub. L. 102-325.

9/ Includes military service & service as commissioned officer in Public Health Service for which deferment was granted.

10/ §§427(a)(2)(C)(iii) and 428(b)(1)(m)(iii) of the HEA, as amended by Pub. L. 102-325.

11/ §§427(a)(2)(C)(ii) & 428(b)(1)(M)(ii) of the HEA, as amended by Pub. L. 102-325.

APPENDIX C

Federal Family Education Loan Program (formerly the Guaranteed Student Loan Programs)
Federal PLUS Loans
DEFERMENT CATEGORIES

Deferment Condition 1/	Statutory Limit	Loans Made Prior to 8/15/83	Refinanced & Prior Borrowers (Pre-7/1/87)	Prior Borrowers (7/1/87 - 6/30/93) 2/	New Borrowers (After 7/1/93) 3/
Full-time student	None	Y	Y	Y	Y
Half-time student 4/	None	N	N	Y	N/A
Half-time student 5/	None	N	N	N	Y
Graduate fellowship	None	Y	Y	Y	Y 6/
Rehabilitation training	None	Y	Y	Y	Y 7/
Armed Forces or PHS	3 years	Y	N	N	N
NOAA	3 years 8/	N	N	N	N
Peace Corps	3 years	Y	N	N	N
ACTION Programs	3 years	Y	N	N	N
Temporary disability	3 years	Y	Y	Y	N
Tax-exempt organization	3 years	Y	N	N	N
Teacher shortage	3 years	N	N	N	N
Economic Hardship 9/	3 years	N	N	N	Y
Unemployment 10/	3 years	N	N	N	Y
Unemployment	2 years	Y	Y	Y	N
Internship/ residency	2 years	Y	N	N	N
Working mother	1 year	N	N	N	N
Parental leave	6 months	N	N	N	N
Parent PLUS borrower based on dependent's status 11/	-----------	Y	Y	Y	N

1/ This chart is to be used for general reference only. Refer to the regulations (34 CFR 682.210) regarding detailed eligibility requirements.

2/ A borrower who, on the date he or she signs the promissory note, has no outstanding balance on (1) a Stafford, SLS, or PLUS loan made prior to 7/1/87 and for a period of enrollment beginning prior to 7/1/87, or (2) a Consolidation loan that repaid a loan made prior to 7/1/87 and for a period of enrollment beginning prior to 7/1/87.

3/ Deferments specified in §427(a)(2)(C) of the Higher Education Act of 1965 (HEA), as amended by §414(b) of Pub. L. 102-325, and §428(b)(1)(M) of the HEA, as amended by §416(e)(1) of Pub. L. 102-325; these sections of the HEA are referenced in §428B(d)(1) of the HEA [formerly §428B(c)(1)], as amended by §418(c) of Pub. L. 102-325, regarding PLUS deferment eligibility. A "new borrower" is one who on the date he or she applies for a loan, the first disbursement of which is made on or after 7/1/93, has no outstanding balance on a Stafford, SLS, PLUS, or Consolidation loan; see §§432(a)(3) & 432(b) of Pub. L. 102-325. For deferments specified in §427(a)(2)(C) for FISL borrowers, interest is not paid by the Secretary.

4/ Borrower is eligible for deferment while engaged in at least half-time study if the borrower obtains a Stafford or SLS loan for that period of enrollment. Requirement of simultaneous borrowing is not applicable (N/A) for new borrowers on/after 7/1/93.

5/ Periods during which the borrower is enrolled at least half-time; see §§427(a)(2)(C)(i)(I) & 428(b)(1)(M)(i)(I) of the HEA, as amended by Pub. L. 102-325.

6/ §§427(a)(2)(C)(i)(II) & 428(b)(1)(M)(i)(II) of the HEA, as amended by Pub. L. 102-325.

7/ §§427(a)(2)(C)(i)(II) & 428(b)(1)(M)(i)(II) of the HEA, as amended by Pub. L. 102-325.

8/ Includes military service & service as commissioned officer in Public Health Service for which deferment was granted.

9/ §§427(a)(2)(C)(iii) & 428(b)(1)(M)(iii) of the HEA, as amended by Pub. L. 102-325.

10/ §§427(a)(2)(C)(ii) & 428(b)(1)(M)(ii) of the HEA, as amended by Pub. L. 102-325.

11/ A parent PLUS borrower is eligible for deferment during periods when a student for whom the parent borrowed a PLUS loan is dependent and meets one of the following conditions [applicable to "Prior Borrowers (7/1/87 - 6/30/93)"] for deferral: (a) in-school status (full- and half-time), (b) graduate fellowship, or (c) rehabilitation training.