

HERA Interim Final Regulations – 34CFR Parts 668, 674, et al.

Establishment of Regulations for the Academic Competitiveness Grant and the National Science and Mathematics Access to Retain Talent Grant Programs, and Grant and Loan Program Amendments

The Department of Education has released interim final regulations for the two new grant programs established in the Higher Education Reconciliation Act of 2005 (HERA). These grant programs are the Academic Competitiveness Grant (ACG) and the National Science and Mathematics Access to Retain Talent (SMART) Grant Programs.

The effective date of these interim final regulations is August 2, 2006. The regulations apply to awards made under these programs for the 2006-2007 academic year. The Secretary may amend the regulations for the 2007-2008 award year based on comments that were submitted. For regulations effective for the 2008-2009 award year and beyond, the Secretary intends to conduct negotiated rulemaking beginning this winter.

The ACG makes awards to eligible financially needy students in their first or second year of college who completed a rigorous secondary school program. The SMART Grant program makes awards to eligible financially needy students in their third or fourth year of study who are majoring in certain physical, life, or computer sciences; mathematics; engineering; or foreign languages critical to the national security of the United States. **It is very important for institutions to note that if they participate in the Pell Grant Program and offer an educational program that is an eligible program for purposes of the ACG or SMART Grant, then the institution is required to participate in the ACG or SMART Grant programs, as applicable.**

This summary provides a brief description of the new regulations. The regulations are accessible online on the IFAP website at <http://www.ifap.ed.gov/fregisters/FR07032006.html>.

Note that the AC and SMART Grant regulations follow those of the Pell Grant program as much as possible because the programs are very similar in nature. Additionally, to receive an ACG or SMART Grant, a student must also be receiving a Pell Grant in the same payment period. The ACG and SMART Grant programs will also use the same delivery system as the Pell Grant program to help ease the administrative burden institutions will take on with these additional grant programs.

The detailed summary of the regulatory provisions follows. As always, if you have questions about these regulations, please feel free to contact CCA General Counsel Nancy Broff at nancyb@career.org or 202-336-6577 or Senior Compliance Specialist Tammy Halligan at tammyh@career.org or 202-336-6839.

Part 691 - Academic Competitiveness Grant (ACG) and the National Science and Mathematics Access to Retain Talent (SMART) Grant Programs

Subpart A – Scope, Purpose, and General Definitions

Section 691.2 – Definitions

Eligible Major

An eligible major is a major in one of the physical, life or computer sciences, mathematics, technology, engineering, or a critical foreign language. The Secretary specifies the list of eligible majors by CIP code. This list will be published by the Secretary on the Department of Education's web site, as well as distributed by other means. It will be updated annually.

Eligible Program

For the ACG, an eligible program leads to an associate's or bachelor's degree, is a two-academic-year program acceptable for full credit toward a bachelor's degree, or is a graduate degree program that includes at least three academic years of undergraduate education. For the SMART Grant, the program must lead to a bachelor's degree in an eligible major or be a graduate degree program in an eligible major that includes at least three academic years of undergraduate education. In both cases, it must meet the criteria of §668.8.

Section 691.6 – Duration of Student Eligibility – Undergraduate Course of Study

Student eligibility under the ACG and SMART Grant programs is based on the specific academic year of enrollment in the student's eligible program. This may be different from the student's academic level for purposes of loan limits and academic standing. Section 691.15 provides specific details on how academic year is defined for determining students' eligibility for ACG and SMART Grant purposes.

A student is restricted to one grant for each academic year of enrollment in an eligible program. Students may not receive more than a total of two ACG and/or two SMART Grants during their educational career (i.e. a 3rd semester sophomore may not receive additional ACG).

Section 691.7 – Institutional Participation

If an institution participates in the Pell Grant Program and offers an educational program that is an eligible program for purposes of the ACG or SMART Grant, then the institution is required to participate in the ACG or SMART Grant programs, as applicable. Failure to adhere to this mandatory participation in the ACG and SMART Grant programs may result in future loss of Title IV eligibility.

Section 691.8 – Enrollment Status for Students Taking Regular and Correspondence Courses

Students must be enrolled full-time to be eligible for an ACG or SMART Grant.

If, in addition to regular coursework, a student takes correspondence courses from either his or her own institution or another institution that has an agreement for this purpose with the student's home institution, the correspondence coursework may be used in determining the student's enrollment status. A student taking correspondence courses is considered a full-time student if the student is taking coursework that is equal to the institution's standard for full-time students, and the student's non-correspondence coursework constitutes at least one-half of the institution's required minimum coursework for full-time students. The correspondence coursework must be applicable to the student's degree or be remedial work taken by the student to help in his or her eligible program, and it must be completed within the timeframe of the student's regular coursework.

Section 691.11 – Payments from More Than One Institution

Students may not receive an ACG and/or SMART Grant concurrently from more than one institution. Students may only receive one ACG and/or SMART Grant at the same institution from which he or she receives his or her Pell Grant.

Subpart B – Application Procedures

Section 691.12 – Application

For both the ACG and SMART Grant program, students must submit the Free Application for Federal Student Aid (FAFSA). The student's expected family contribution and Pell eligibility must be determined. To qualify for the ACG, a student is required to have completed a rigorous secondary school program. Students may be required to submit additional documentation in addition to the FAFSA to support this.

Section 691.15 – Eligibility to Receive a Grant

General Requirements

To receive an ACG or SMART Grant, a student must be a U.S. citizen, enrolled full-time, and receive a Pell Grant in the payment period that an ACG or SMART Grant is awarded.

For the first academic year of an ACG, the student must have successfully completed, after January 1, 2006, a rigorous secondary school program of study as recognized by the Secretary, and not have been previously enrolled as a regular student in an undergraduate program of study. For the second academic year of an ACG, the student must have successfully completed, after January 1, 2005, a rigorous secondary school program of study as recognized by the Secretary, and successfully completed the first year of his or

her eligible academic program with a minimum 3.0 GPA on a scale of 4.0 (or the equivalent).

Academic Year in College

A student may receive an ACG in his or her first and second year of study in an eligible undergraduate program. To receive the ACG in the second year, the student must have successfully completed the first academic year. Successful completion is defined as passing and earning all of the credits or clock hours in the Title IV, HEA academic year.

SMART Grants may be awarded in the third and fourth year to eligible students enrolled in eligible undergraduate programs. To receive a SMART Grant in the fourth year, the student must have successfully completed the third academic year.

Grade Point Average

To receive an ACG in the second year, a student must complete the first academic year as described above. Additionally, that student must have earned a minimum of a cumulative 3.0 GPA on a 4.0 scale, or the equivalent as determined by the institution for academic and Title IV purposes.

To receive a SMART Grant in the fourth year, a student must maintain at least a cumulative GPA of 3.0 on a 4.0 scale (or the equivalent) through the most recently completed payment period in the coursework required for the student's eligible program.

For transfer students, an institution must rely on the grades of the courses from the prior institution that the institution accepts toward the student's eligible program for the first payment period. Use of transfer grades in calculating the GPA in subsequent payment periods is optional.

Prior Enrollment in a Postsecondary Educational Program

An otherwise eligible student is not eligible for a first-year ACG if the student previously enrolled in a program of undergraduate education. A student is considered to have been enrolled in an undergraduate program if the student was admitted into the program as a regular student. High school students who took college courses while still in high school remain eligible for first-year ACG if they were not admitted as regular students (for the purpose of obtaining a degree, certificate or recognized educational credential) in the college program while still completing high school.

A student's enrollment in a payment period during his or her first academic year of enrollment in an eligible program does not make that student ineligible for an ACG in a subsequent payment period during the first academic year if the student is otherwise eligible. In other words, a student who enrolls part-time for his or her first semester but would otherwise have been eligible for an ACG will be able to receive the grant in the second semester if he or she enrolls full-time and is otherwise eligible.

Documenting Completion of a Rigorous Secondary School Program of Study

To receive an ACG, a student must have completed a rigorous secondary school program of study. Institutions are required to document the student's completion of the rigorous secondary school program by using documentation from the "appropriate cognizant authority" or the student. This documentation may be such things as transcripts or detailed course information, and may come from the student or the authority. If the documentation comes from the student and the institution has reason to believe it is incomplete or inaccurate, they must then use documentation provided directly from the cognizant authority to make the determination. In the case of home-schooled students, the student's parent or guardian is considered the cognizant authority.

For transfer students, institutions may rely on documentation from the prior institution to confirm the student completed a rigorous secondary school program. This documentation may be documentation of receipt of an ACG at the prior institution.

Declaring an Eligible Major

Students must major in one of the physical, life or computer sciences, mathematics, technology, engineering or a critical foreign language to be eligible for a SMART Grant. A student must formally declare his or her eligible major, in accordance with the institution's academic requirements, to receive the grant. If an institution's academic policy makes the student unable to declare the major in time to qualify for the grant, the student must demonstrate his or her intent to declare that major (i.e. by registering for the requisite course work) to receive the grant, and must declare the major as soon as possible in order to remain eligible.

In all cases, the student must enroll in the courses necessary to complete the degree program and fulfill the major's requirements to remain eligible for the grant.

Section 691.16 – Recognition of a Rigorous Secondary School Program of Study

For each award year, the Secretary is required to recognize at least one rigorous secondary school program of study in each State. These include programs identified by State Education Agencies (SEAs) or Local Education Agencies (LEAs) that can document they are legally authorized by the state to establish a separate secondary school program of study. Additionally, the Secretary is recognizing certain existing advanced and honors programs established by States, as well as a set of courses identified under the State Scholars Initiative sponsored by the Western Interstate Commission for Higher Education.

An individual student may be considered to have completed a rigorous secondary school program of study, regardless of where he or she attended, if the student successfully completes a set of courses similar to those required under the State Scholars Initiative, or if he or she completes courses in the International Baccalaureate Diploma Program and receives a score of 4 or higher on the exams for at least two of the courses, or completes at least two of the College Board's Advanced Placement Program Courses and receives a score of 3 or higher for the exams for those courses.

Additionally, an individual student will be considered to have completed a rigorous secondary school program of study if he or she documents completion of four years of English; three years of mathematics, including Algebra I and a higher level class such as Algebra II, geometry, data analysis, and statistics; three years of science including at least two of the following: biology, chemistry, and physics; three years of social studies; and one year of a language other than English.

A GED program will not be approved as a rigorous secondary school program.

The Secretary will make the approved list of programs available each year through the FAFSA on the Web, the Department's website, Dear Colleague letters, and other appropriate media.

Section 691.17 – Determination of Eligible Majors

Eligible majors

Each academic year, the Secretary will identify, by Classification of Instructional Program (CIP) Codes, eligible majors in the physical, life, or computer sciences, mathematics, technology, engineering, and critical foreign languages. Critical foreign languages will be determined through consultation with the Director of National Intelligence. The list of eligible programs will be made available each year through the FAFSA on the Web, the Department's website, Dear Colleague letters, and other appropriate media. For this year, the list of eligible majors is available on the Department's IFAP website at <http://www.ifap.ed.gov/dpclatters/Gen0615.html>.

Duration of eligible major

If a student receives a SMART Grant and then starts his or her third academic year or a portion of the fourth academic year and the student's major is removed from the list of eligible majors for SMART Grant purposes, the student can still receive the SMART Grant if all other eligibility criteria are met. In other words, once a student receives a SMART Grant for an eligible major, that major is "grandfathered in" for that student as long as he or she remains otherwise eligible for the grant.

Subpart F – Determination of Awards

Section 691.62 – Calculation of a Grant Maximum Award

Based on appropriations for that year, the Secretary will establish and announce the maximum ACG and SMART Grant for each academic year. The Secretary may revise the maximum award amount during an award year based on the availability of funds. The maximum ACG scheduled award may be up to \$750 for eligible first-year students and up to \$1,300 for eligible second year students. The maximum SMART Grant award for an eligible third- or fourth-year student may be up to \$4,000 each academic year.

Treatment in Relation to Other Aid Received

A student's ACG or National SMART Grant may not, when combined with the Expected Family Contribution and other student financial assistance available to the student, exceed the student's cost of attendance.

Section 691.63 – Calculation of a Grant for a Payment Period

General

The formula for calculating an ACG or SMART Grant payment for eligible students for the most part follows the Pell Grant rules.

Calculation of a Grant for a Payment Period that Applies to Two Academic Years

If a student is enrolled in an eligible program that uses standard terms with at least 30 weeks of instructional time, that measures progress in credit hours, and breaks the academic calendar into at least two semesters or trimesters in the fall through the following spring or three quarters in the fall, winter, and spring, the student must enroll in at least 12 credit hours in each term to be considered full-time. This same provision applies to those institutions using all the same terms except with less than 30 weeks of instructional time.

If a student is completing the coursework for an academic year while also beginning to take coursework for the next academic year in a payment period, the grant amount is calculated based on the academic year that the student is completing.

Section 691.64 – Calculation of a Grant for a Payment Period Which Occurs in Two Award Years

When a payment period overlaps two award years, the institution must assign the payment period for an ACG or SMART Grant to the same award year that it assigns the student's Pell Grant. The institution must place a payment period with more than six months scheduled to occur within one award year in that award year. If the payment period is placed in the first award year, the student should be paid with funds from the first award year; if the payment period is placed in the second award year, the student should be paid with funds from the second award year. Please note that in either case, the student cannot receive more than one ACG or SMART Grant for an academic year. Also note that ACG and SMART Grants are awarded based on completing an academic year of an eligible program rather than completing an academic year within an award year, as in the Pell Grant program.

Section 691.65 Transfer Student: Attendance at More Than One Institution During an Academic Year

The details for calculating an ACG or SMART Grant for a transfer student are located at §691.65. Students may receive the grant at the second institution only if a valid SAR is received at the second institution; the student receives a Pell Grant for that payment period; the second institution calculates the student's award according to §691.63; and the second institution pays the grant only for the portion of the year the student is

enrolled. The grant amount must be adjusted to make sure the student does not receive more than the maximum amount the student is entitled to for that academic year.

Subpart G – Administration of Grant Payments

Section 691.75 – Determination of Eligibility for Payment, GPA and Declaration of a Major

A student's GPA may change during the course of a payment period, or the student may declare an eligible major during a payment period. Institutions are given the flexibility to reconsider a student's eligibility for an ACG or SMART Grant during the course of a payment period. Institutions may only pay the grant after verifying that both the student is eligible and the program the student is enrolled in is eligible.

If an institution determines at the beginning of a term that a student is not maintaining Satisfactory Academic Progress (SAP) but reverses that decision before the end of the payment period, the institution may pay the grant to the student for the entire payment period. If, for a SMART Grant, an institution initially determines a student is not enrolled in an eligible major but reverses that decision before the end of the payment period, the institution may pay the grant to the student for the entire payment period. If the decision to reverse a determination about unsatisfactory SAP or enrollment in a major program is made after a payment period is complete, an institution is not permitted to make a grant payment to the student for that payment period nor make adjustments to future payments to compensate for the loss of aid.

Institutions may make one payment for a payment period to an otherwise eligible student if that student's GPA is not yet available from the first academic year (for an ACG) or a student's cumulative GPA for enrollment in an eligible program through the prior payment period is not yet available (for a SMART Grant). However, please note that institutions assume liability for an overpayment if the student then fails to meet the GPA requirements.

Payments for Nonterm Self-paced Programs

A student enrolled in a nonterm self-paced program may not receive a disbursement for a payment period until the student completes at least 50% of the credit or clock hours or the academic coursework in a payment period, at the rate of a full-time student.

Payment Prior to Receipt of GPA

An institution may make one disbursement for a payment period to a student whose GPA is not yet available as required. By doing so, the institution assumes liability for the disbursement if it later determines the student was not eligible due to GPA.

Section 691.76 – Frequency of Payment

In each payment period, the institution may pay the student at such times and in such installments as it determines best meets the student's needs. The student may be paid in one lump sum only if he or she was full-time in the prior payment period.

Section 691.78 – Method of Disbursement – By Check or Credit to a Student's Account

Institutions shall disburse ACG and Smart Grant funds in accordance with the provisions of 34 CFR 668.164 (this is the general regulation for the disbursement of funds to students). If a student withdraws or is expelled before the first day of classes, the institution must return to the ACG or SMART Grant account any funds paid to that student.

Section 691.79 – Liability for and Recovery of Grant Overpayments

Institutions are liable for grant overpayments made if proper procedures are not followed. A student is not liable for, and an institution may not attempt to collect or refer to the Secretary, any grant overpayment if the amount is less than \$25 and is not a remaining balance.

Section 691.80 – Redetermination of Eligibility for a Grant Award

If a student gains or loses Pell Grant eligibility, the institution must redetermine his or her eligibility for an ACG or SMART Grant. If a student's enrollment status changes from one payment period to another within an award year, the institution must determine whether the student qualifies for an ACG or SMART Grant for the new payment period. If a student's projected enrollment status (i.e. drops to half-time status) changes during a payment period after the student has begun attendance in all of his or her classes, the institution may establish a policy to redetermine student eligibility for the award in that payment period. If a policy is established, it must apply to all students and be the same as the Pell Grant policy. If the student changes to less-than-full-time before beginning attendance in all classes, the student will be ineligible for the ACG or SMART Grant in this payment period.

Section 691.82 – Maintenance and Retention of Records

Institutions must include and maintain in its maintenance and retention of records all documentation collected to determine and verify eligibility for an ACG or SMART Grant.

Changes to Other Sections of the Regulations

Section 668.21 – Treatment of Federal Perkins Loan, FSEOG, Federal Pell Grant, ACG, and National Smart Grant Program Funds if the Recipient Withdraws, Drops Out, or is Expelled Before His or Her First Day of Class

In this instance, all funds paid to the student for that payment period for institutional or non-institutional costs are an overpayment.

Section 668.33 – Citizenship and Residency Requirements

Only students who are citizens of the United States are eligible to receive ACG and SMART Grants.

Section 668.35 – Student Debts under the HEA and to the U.S.

A student is not liable for an ACG or SMART Grant overpayment in an award year if the institution can eliminate the overpayment by adjusting subsequent Title IV HEA awards, excluding Pell Grant, ACG, or SMART Grants, in the same award year.

If the overpayment cannot be eliminated by adjusting subsequent Title IV payments, a student is still not liable for an ACG or SMART Grant overpayment if the overpayment can be eliminated by adjusting subsequent ACG or SMART Grant payments in that same award year.