authorization as a religious institution by State law in addition to the provision of the proposed regulations that the exemption by law, or exempt under the State's constitution. We have also included a definition of a *religious institution*, which provides that an institution is considered a religious institution if it is owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation and awards only religious degrees or religious certificates including, but not limited to, a certificate of Talmudic studies, an associate of biblical studies, a bachelor of religious studies, a master of divinity, or a doctor of divinity. We note, however, that a religious institution is still subject to the requirement in § 600.9(a)(1) of these final regulations that, for the institution to be considered to be legally authorized in the State, the State must have a process to review and appropriately act on complaints concerning the institution.

Tribal Institutions

Comment: One commenter suggested the Department should exempt from State authorization any institution established and operated by tribal governments. Three commenters stated that the Department should recognize that tribal institutions would not be subject to State oversight but instead the tribe would exercise oversight. One of those commenters suggested amending the regulations to add "tribal authority" wherever State authority is mentioned in the proposed regulations.

Discussion: We agree that tribal institutions are not subject to State oversight for institutions operating within tribal lands. Proposed § 600.9(a)(2) provided that a tribal college would be considered to meet the basic provisions of proposed § 600.9(a)(1) if it was authorized to offer educational programs beyond secondary education by an Indian tribe as defined in 25 U.S.C. 1802(2). However, proposed § 600.9(b), could be read as inappropriately making a tribal institution subject to adverse actions by the State and a State process for handling student complaints. We did not intend to make a tribal institution subject to any State process for handling complaints and have clarified the language in § 600.9. If a tribal college is located outside tribal lands within a State, or has a physical presence or offers programs to students that are located outside tribal lands in a State, the tribal college must demonstrate that it has the applicable State approvals needed in those circumstances.

Changes: Section 600.9 has been revised to clarify the status of tribal institutions. As noted elsewhere in this preamble, we have removed proposed § 600.9(b)(2) regarding adverse actions. Further, we are providing that, in § 600.9(a)(2)(ii) of the final regulations, the tribal government must have a process to review and appropriately act on complaints concerning a tribal institution and enforce applicable tribal requirements or laws.

Part 668 Student Assistance General Provisions Retaking Coursework (§ 668.2)

Comment: Many commenters agreed with the Secretary's proposal to amend the definition of *full-time student* in § 668.2(b) to allow repeated coursework to count towards a student's enrollment status in term-based programs. The commenters believed the change would alleviate the administrative burden related to tracking student coursework to prevent payment based on repeated coursework, as is currently required.

Discussion: The Department agrees with the commenters that amending the definition of *full-time student* in § 668.2(b) will be beneficial for students who retake coursework.

Changes: None.

Comment: Several commenters asked the Department to clarify whether amending the definition of *full-time student* will apply to all students, regardless of their enrollment status, including less-than-half-time, half-time, and three-quarter-time enrollment statuses.

Discussion: Less-than-half-time, half-time, and three-quarter-time statuses are generally defined in relation to the definition of a *full-time student*. In § 668.2 half-time and three-quarter-time statuses generally are defined as at least one-half and three quarters of the academic workload of a full-time student, respectively. Less-than-half-time status is not defined, as the term is self-explanatory in its relationship to half-time and full-time statuses. Thus, including this provision in the definition of *full-time student* will apply to less-than-full-time students who are enrolled in term-based programs.

Changes: None.

Comment: Some commenters asked the Department to allow early implementation of this retaking coursework provision, because the Department's current guidance in the Federal Student Aid Handbook does not provide for this benefit.

Discussion: We have determined, as a general policy, that no provisions of these final regulations should be designated for early implementation. We will update the Handbook for the 2011–2012 award year to reflect the amended definition of *full-time student* in these final regulations.

Changes: None.

Comment: Some commenters questioned whether institutions may continue to set their own policy in regards to retaking coursework and awarding credits for repeated coursework. One commenter asked the Department to clarify if the proposed regulation on retaking coursework would allow a student to repeat courses already passed to achieve a higher grade. Another commenter asked the Department to clarify whether a student who has already earned the maximum number of remedial courses allowed could be paid to retake coursework if the student repeats more remedial courses.

Discussion: In general, the regulations do not affect an institution's policies governing whether a student may retake coursework in term-based programs, including repeating courses to achieve a higher grade, as these regulations apply only to determining enrollment status for title IV, HEA program purposes. Moreover, the regulations do not limit an institution's ability to establish policies for title IV, HEA program purposes to the extent those policies are not in conflict with title IV, HEA program requirements. However, with respect to repeating coursework previously passed by a student in a term-based program, the student's enrollment status for title IV, HEA purposes may include any coursework previously taken in the program, but we are limiting the provision so that it may not include more than one repetition of a previously passed course or any repetition of previously passed coursework that would be taken due to a student's failure of other coursework. In other words, an institution may pay a student one time for retaking previously passed coursework if, for example, the student needed to meet an academic standard for that particular course, such as a minimum grade. Conversely, an institution may not pay a student for retaking previously passed courses if the student is required to retake those courses because the student failed a different course in a prior term. For example, if a student enrolls in four classes in the fall semester and passes three of them, the institution could require the student to retake the failed class and also require the student to retake the other three classes because of failing the one class. If the student retakes the four classes in the spring semester, the failed class would be included in the student's enrollment

status, but the three classes passed in the fall would not be included in determining the student's enrollment status for the spring semester for purposes of the title IV, HEA programs. We believe these revisions are necessary to limit potential abuse from courses being retaken multiple times, while providing institutions sufficient flexibility to meet the needs of most students.

We would also note that an institution's satisfactory academic progress policy could further limit a student from retaking coursework, because the credits associated with any course the student retakes count toward the maximum time-frame requirement.

The regulations do not affect the one-year academic limitation on noncredit and reduced-credit remedial coursework under § 668.20(d) and (f). For example, if a student repeats a remedial course that exceeds the one-year limitation, the course could not be considered in the student's enrollment status.

Changes: We have revised the definition of *full-time student* in § 668.2(b) to provide that a student's enrollment status for a term-based program may include repeating any coursework previously taken in the program but may not include more than one repetition of a previously passed course, or any repetition of a previously passed course due to the student's failing other coursework.

Comment: One commenter recommended that the change in the definition of *full-time student* should be expanded to include nonstandard-term and nonterm programs.

Discussion: Since the change in the definition applies to all term-based programs, the change would apply to standard terms, including semesters, trimesters, and quarters, as well as nonstandard terms. Under the definition of a *nonterm payment period* in § 668.4(c), a student's coursework is divided into payment periods based on the hours and weeks of instructional time in the program. In general, under these nonterm provisions a student must successfully complete the credit or clock hours in a payment period to advance to the next payment period, and may not be paid for repeating coursework regardless of whether the student successfully completed it unless the provisions of § 668.4(g) apply.

Changes: None.

Written Arrangements (§§ 668.5 and 668.43)

General

Comment: Several commenters agreed with the proposed regulations relating to written arrangements. One commenter commended the Department's proposals on this topic, noting that they strike a fair balance in the presence of many minutia-driven concerns. Some commenters stated that the proposed changes eliminate inconsistencies that exist in the current regulations and provide better information to students while allowing institutions to determine the best way to disseminate the required information. Other commenters stated that they agreed with the proposed changes in §§ 668.5 and 668.43 because if an eligible institution enters into a written arrangement with another eligible institution, under which the other eligible institution provides part of the educational program to students enrolled in the first institution, it is important for all parties to have a clear understanding of which institution is providing the credential and the majority of the education and training.

Discussion: We appreciate the commenters' support of the proposed changes reflected in §§ 668.5 and 668.43.

Changes: None.

Written Arrangements Between Two or More Eligible Institutions (§ 668.5(a))

Comment: Some commenters objected to the Department's assertion—in the preamble of the NPRM (75 FR 34806, 34815)—that students who want to take more than 50 percent of an educational program at another institution could transfer to the institution that provides the preponderance of the program's coursework. One commenter stated that students should be allowed to take courses at more than one campus of eligible institutions that have a written arrangement without needing to go through unnecessary activities related to transfer of credit.

Several commenters disagreed with the proposed changes reflected in § 668.5(a)(2)(ii). First, they argued that imposing a limitation on the portion of an educational program one institution can provide under a written arrangement is not consistent with the purpose of consortium agreements, which is to allow students to obtain a degree or certificate from their institution of choice while allowing them to satisfy course requirements by taking courses delivered by another institution. Second, the commenters disagreed with the limitation because we do not place similar restrictions on institutions when they accept transfer students who have earned more than half of the credits that will go toward their educational program at another institution. Finally, the commenters argued that more students are attending multiple institutions before completing their degree or certificate programs and a requirement that the credential-granting institution must provide 50 percent of the individual student's educational program would be a barrier to the students' postsecondary success.

In addition, a few commenters noted that current articulation agreements allow students to further their education at another institution that may accept enough credits on transfer that the student has less than 50 percent of the program remaining to be completed. Some commenters expressed the view that the proposed regulations governing written arrangements should not apply to articulation agreements while others sought clarification of whether the Department's position is that they do apply to such agreements. Commenters expressed concern that the proposal would result in undue hardship and fewer opportunities for students in small communities who take a portion of their coursework locally. One commenter asked whether the proposed changes reflected in § 668.5 affect students who obtained college credit while still in high school.

Discussion: There appears to be some confusion about the scope of the proposed changes to § 668.5. Under proposed § 668.5(a)(1), eligible institutions that are not under common ownership may enter into a written arrangement (which may include the type of consortium agreements mentioned by the commenters) under which the non-degree-granting institution offers part of the degree-granting institution's educational program; this provision does not impose a specific limitation on the portion of the educational program that may be offered by the non-degree-granting institution. In contrast, under proposed § 668.5(a)(2)(ii), if a written arrangement is between two or more eligible institutions that are under common ownership (*i.e.*, are owned or controlled by the same individual, partnership or corporation), the degree- or certificate-granting institution must provide more than 50 percent of the educational program. In this situation, a student is considered a regular student at the degree- or certificate-granting institution while taking a portion of the educational program at another institution under common ownership. Under this regulatory framework, a consortium agreement between two eligible institutions that are not under common ownership is not subject to the 50 percent limitation in § 668.5(a)(2)(ii).

Moreover, § 668.5(a) does not apply to articulation agreements under which