UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

April 1995

THE ASSISTANT SECRETARY

GEN-95-22

SUBJECT: Clarification concerning institutional refunds to students.

PUBLICATION REFERENCE: This information supplements the guidance given in Chapter 3, Section 4 of the *Federal Student Financial Aid Handbook*

Dear Colleague:

The purpose of this letter is to provide some clarification and additional guidance on four issues related to the calculation of institutional refunds to students. In addition this letter provides institutions limited relief from certain specific provisions of the regulations.

The statutory requirements for institutional refunds are found in Section 484B of the Higher Education Act of 1965, as amended (HEA). Regulatory refund requirements are contained in 34 CFR 668.22 of the General Provisions. These regulations were amended on April 29, 1994 (changes effective beginning July 1, 1994) and on November 29, 1994 (changes effective beginning July 1, 1995).

Issue # 1: Reasonable Administrative Fee

The regulations allow an institution to deduct a reasonable administrative fee, not to exceed the lesser of five percent of the institutional charges or $100, from the institutional charges (tuition, fees, etc.) used to calculate a refund. This provision is an acknowledgment that an institution incurs expenses whenever it provides administrative or educational services to a student even if that student withdraws from the institution.

The preamble language to the November regulations stated that it was unreasonable for a school to retain a fee that was not actually identified as a separate fee. After additional consideration, we have concluded that a school may deduct such a fee from its calculation of total institutional charges even when it was not specifically identified as a separate charge. However, if a school chooses to retain an administrative fee and reduce the total institutional charges it must disclose that fact in its written refund policy.

This change of definition for the "reasonable administrative fee" can be used for refund calculations beginning with the 1995-96 award year on July 1, 1995. Until then the definition of the fee as discussed in the preamble to the April regulations must be used.

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Issue # 2: Accrediting Agency Refund Policies

Both the law and regulations require a school to compare the amount of a refund a student would receive under the refund policy developed by the school's accrediting agency if that policy has been approved by the Department with the result of certain refund policies. In earlier guidance we stated that if the accrediting agency was recognized by the Department, its refund policy could be considered to have been approved.

Upon further consideration, we have concluded that the Department must specifically approve the accrediting agency's refund policy before it can be used in the refund comparisons. As of the date of this letter the Department has not approved any accrediting agency refund policies. We are working with accrediting agencies to establish a set of standards for such policies and to expedite their review if they are submitted to the Department.

Schools that used our prior guidance for refund calculations that were made before the earlier of the receipt of this letter or May 1, 1995, will be exempted from any repayment liabilities associated with using the refund policy of their accrediting agency. Institutions, of course, must have been in compliance with all other provisions of the refund regulations.

Issue # 3: Definition of State Refund Policy

The law and regulations require schools to compare the results of certain refund policies with those calculated under the "requirements of applicable State law" to determine which calculation will produce the largest refund. We would like to clarify that this provision addresses not only laws that have been enacted by the state's legislature, but also certain refund regulations that have been promulgated by a state agency. Such refund regulations are considered "applicable State law" only if they were established through a legally enforceable regulatory process and carry the force and effect of law. In order to use such a policy, an institution should be able to refer to a state law or state regulation that establishes those refund requirements.

Some schools may have assumed that the only state refund policies that could be used were those that were actually included in state statute and, therefore, may not have used a state refund regulation. Such a school will be exempted from any repayment liabilities resulting from this assumption if the refund was calculated prior to the receipt of this letter or May 1, 1995, whichever is earlier. Of course, those schools must have been in compliance with all other provisions of the refund regulations.

Issue # 4: Legal Status of Certain Refund Regulations

Several elements of the Department's refund regulations have been challenged in court. In two of these cases, the courts have imposed preliminary injunctions against the Department prohibiting it from enforcing certain provisions of the regulations until the lawsuits are resolved.

The central issue in the two court cases is whether the Department can require schools to deduct unpaid charges when calculating refunds under the statute. The Department continues to believe that the treatment of unpaid charges as provided in the regulations for refund calculations other than pro rata is both appropriate and necessary. Such treatment enforces a basic principle of student financial aid: that the student (and family) has primary responsibility to pay for postsecondary education. Additionally, the requirement ensures equitable treatment between those students who have paid their portion of institutional charges and those who have not, while at the same time protecting the taxpayer's interest.

For these reasons, it is important for the Department to establish its legal rights in these cases. The Department is seeking final rulings to uphold the regulations as written. However, because the Department believes that it is in the best interest of the Title IV programs to consistently apply these portions of the refund regulations to all institutions, we will provide limited relief across the board as noted below.

The Department will limit the scope of program reviews and audits, provided the school was and is in compliance with all other aspects of the refund regulations, as follows:

- For the period prior to November 28, 1994 (the date of the first preliminary injunction), the Department will determine and report, through its normal program review and audit processes, whether state refund calculations incorporated the treatment of unpaid charges. However, no repayment liabilities will be assessed while the refund injunctions are in effect.

- For any refund calculations made on or after November 28, 1994, and until we provide further notice, the Department will not assess any liabilities for this period against institutions that calculate refunds under applicable state law without applying the specific federal provisions relating to unpaid charges.

We hope you join us in agreeing that our shared objective is to provide our students and taxpayers with reasonable relief in the event a Title IV aid recipient withdraws from school. We are not unmindful of the burden some requirements place upon institutions and hope to work together to address many of these issues. For further information you may contact, Carney McCullough in our Policy Development Division. She may be reached by letter at 600 Independence Ave, SW, Washington, DC 20202-5345, or by FAX at (202) 205-0786, or by e-mail at <Carney_McCullough@ed.gov>. A written inquiry will enable us to respond thoroughly and promptly.

Sincerely,

David A. Longanecker

Requirements for Determining Withdrawal Date or Last Day of Attendance (LDA)

Student's Action	Withdrawal Date/LDA[1]
Withdraws (official withdrawal)	The later of: • Date student notifies school of his/her withdrawal; or • Date specified by student
Drops out (unofficial withdrawal)	Last date of student's recorded attendance
Granted leave of absence	Last date of student's recorded attendance
Expelled	Date of expulsion
Enrolled in a correspondence program	Date of the last lesson submitted by student if the student failed to submit the subsequent lesson according to the school's schedule[2]

[1]Withdrawal date/LDA must be determined within 30 days after the expiration of the earlier of:
- the period of enrollment for which the student has been charged,
- the academic year in which the student withdrew; or
- the end of the student's academic program.

[2]The student may be restored to an “in school status” if the student attests to the school in writing, within 60 days of the last lesson submitted:
- a desire to continue in the program, and
- an understanding that required lessons must be submitted on time.

Only one restoration of “in-school status” may be submitted on this basis.