



April 2, 2014

Ms. Pamela Moran
U.S. Department of Education
Office of Postsecondary Education
1990 K Street, N.W.
Washington, DC 20006

Dear Ms. Moran:

I would like to thank the Department for its efforts and diligence in preparing the first draft of proposed revisions to existing regulations for Cash Management (Issue Paper 4). The Department has proposed many positive changes that will make a significant difference in how debit cards are used for the delivery of Title IV funds. TouchNet has included suggested changes to the Department's proposal as comments where applicable in the attached copy of Issue Paper 4. For easy reference, here are some of the key changes we are proposing:

Conditions for Making A Direct Payment – Section 668.164(d)(4):

- The preference for the student's own financial account needs to be reinforced. This is a key provision, and it should have some teeth. At minimum students should be notified by the school of this preference in writing and on the campus website before the start of each term.
- Where possible, the new regulatory language should include user interface templates and screen shots to demonstrate how the options should be presented to students. This will help institutions and service providers understand the intent of the Department's rules on making Direct Deposit/EFT the first choice.

Sponsored Account – Section 668.164(e):

- There is potentially conflicting language in section (e). If the servicer can be a surrogate for the institution and under 668.164(e)(7) the institution cannot provide student information (presumably including a student's name and address) to the servicer until the student or parent consents to the opening of the account, does that mean that, under (e)(2), the school itself, and not the servicer, must inform the student about the account and obtain the student's consent? If so, why does (e)(3) say that the school must "review any information that is provided to the student," when the school itself provided the information in the first place?
- If the servicer is a surrogate for the school, this provision does little to prevent past marketing abuses. The servicer, for example, can (i) obtain student information from the school, (ii) send a letter to the student, explaining the terms and conditions of the account and seeking the student's consent to open an account; (iii) then, once the consent is received, send out the debit card – a slight reordering perhaps, but not a meaningful change, in the process.

Marketing:

- When a school "sponsors" and lends its credibility to a bank, the school and the bank, acting together, should have a higher duty to the students than the bank acting on its own. That duty should include not only the requirement to explain the terms and conditions of the account, but also the requirement to show how the account compares, generally, to other accounts in the marketplace. It does little good to fully understand terms of a bad deal, if a student doesn't know it's a bad deal in the first place.
- Prohibit the use of rewards and incentives to entice students to choose to open a new account. The Credit CARD Act of 2009 offers specific language to colleges and universities as it pertains to marketing credit cards to students and those provisions which should be extended to bank accounts, debit cards and prepaid cards. The risk to students is once they open a financial account with a servicer they are now a customer of the financial institution and subject to a wide variety of product marketing efforts.

User Fees/Cash Access:

- The rules should prohibit "pay to pay" fees such as the PIN debit fee used by two servicers. This would enable students to get cash back at the point-of-sale which creates more access to their money. If the Department allows PIN debit fees, it should impose specific explanatory requirements, if not in the regs, in subsequent guidance (like having to push "credit" when using a debit card).
- Require disclosure of a descriptive and easy-to-understand, standardized fee schedule that lists all fees that could potentially be incurred. Service providers should also provide the average annual cost of a debit account for students to clearly understand the cost of having an account with normal usage patterns.

On the following pages please find additional recommendations in a "marked up" version of the first draft of proposed rules for Cash Management. Again, I am encouraged by the work of the committee and the Department and look forward to receiving the next draft.

Sincerely,



Daniel J. Toughey
President | TouchNet

Attachment

Dan Toughey Proposed Regulatory Changes Apr 2 2014

Issue Paper 4

Program Integrity and Improvement Issues

Issue: Cash Management

Statutory Cites: §§484, 487, and 498 of the HEA

Regulatory Cites: 34 CFR Part 668, Subpart K

Summary of Change: The current regulations in 34 CFR Part 668, Subpart K, govern the ways that an institution requests, maintains, disburses, and otherwise manages title IV, HEA program funds. The proposed changes would revise existing regulations to address the allowable methods and procedures for institutions to pay students their title IV student aid credit balances; would prohibit fund sweeps or other practices that expose title IV funds to financial risk; would provide additional consumer protections governing the use of prepaid cards and similar financial instruments; would include provisions designed to provide students free access to their full title IV credit balances; would require neutrality in marketing materials provided to students; would acknowledge the Secretary's authority to make direct disbursements of title IV aid; and would clarify permissible disbursement practices and agreements between institutions and other entities that assist the institution in making title IV payments to students. The proposed changes also include a number of technical changes, the most significant of which eliminates language that governed the disbursement of FFEL program funds.

Changes: See attached regulatory text.

- 668.161 Scope

(a) General. (1) This subpart establishes the rules under which a participating institution requests, maintains, disburses, and otherwise manages title IV, HEA program funds.

(2) As used in this subpart—

(i) The title IV, HEA programs include the Federal Pell Grant, Iraq-Afghanistan Service Grant, TEACH Grant, FSEOG, Federal Perkins Loan, FWS, and Direct Loan programs, and any other program designated by the Secretary;

(ii) A day is a calendar day, unless otherwise specified;

(iii) The term “parent” refers to the parent borrower of a Direct PLUS Loan;

(iv) An “institution” includes a foreign institution as defined in 34 CFR 600.52, unless otherwise specified;

(v) The term “student ledger account” refers to a bookkeeping account maintained and used by an institution to record the financial transactions pertaining to a student’s enrollment at the institution;

(vi) The term “financial account” refers to a student’s or parent’s checking or savings account, or other consumer asset account, including a debit card account or prepaid card account, held by a financial institution;

(vii) The term “financial institution” means a bank, savings association, or credit union that is insured by the Federal Deposit Insurance Corporation (FDIC) or National Credit Union Share Insurance Fund (NCUSIF); and

(viii) The term “pass-through deposit or share insurance” means that FDIC or NCUSIF deposit insurance coverage applies to the beneficiaries (students and parents) of a custodial account held at a financial institution.

Comment [A1]: New provisions.

(b) Federal interest in title IV, HEA program funds. Except for funds provided by the Secretary for administrative expenses, and for funds used for the Job Location and Development Program under subpart B of the FWS regulations, funds received by an institution under the title IV, HEA programs are held in trust for the intended beneficiaries or the Secretary. The institution, as a trustee of those funds, may not—

(1) Use or hypothecate (i.e., use as collateral) the funds for any other purpose; or

(2) Transfer or maintain the funds in a sweep account, or otherwise engage in any practice that risks the loss of those funds.

Comment [A2]: New provision.

(c) Standard of conduct. An institution must exercise the level of care and diligence required of a fiduciary with regard to managing title IV, HEA program funds under this subpart.

Comment [A3]: Relocated here, previously in §668.164(e).

§668.162 Requesting funds.

(a) General. The Secretary has sole discretion to determine the method under which the Secretary provides title IV, HEA program funds to an institution. In accordance with procedures established by the Secretary, the Secretary may provide funds to an institution under the advance, reimbursement, or cash monitoring payment method.

(b) Advance payment method. (1) Under the advance payment method, an institution submits a request for funds to the Secretary. The institution's request may not exceed the amount of funds the institution needs immediately for disbursements the institution has made or will make to eligible students and parents;

(2) If the Secretary accepts that request, the Secretary initiates an electronic funds transfer (EFT) of that amount to the Federal bank account designated by the institution; and

(3) The institution must disburse the funds requested as soon as administratively feasible but no later than three business days following the date the institution received those funds.

(c) Reimbursement payment method. (1) Under the reimbursement payment method, an institution must credit a student's ledger account, or pay the student or parent directly, for the amount of title IV, HEA program funds that the student or parent is eligible to receive, including the amount of any credit balance due under §668.164(f), before the institution seeks reimbursement from the Secretary for those disbursements;

Comment [A4]: New provision, clarification

(2) An institution seeks reimbursement by submitting to the Secretary a request for funds that does not exceed the amount of the disbursements the institution made to students included in that request;

(3) As part of its reimbursement request, the institution must—

(i) Identify the students or parents for whom reimbursement is sought; and

(ii) Submit to the Secretary, or entity approved by the Secretary, documentation that shows that each student or parent included in the request was—

(A) Eligible to receive and has received the title IV, HEA program funds for which reimbursement is sought; and

(B) Paid directly any credit balance due under §668.164(f).

Comment [A5]: Conforming change

(4) The Secretary approves the amount of the institution's reimbursement request for a student or parent and initiates an EFT of that amount to the Federal bank account designated by the institution, if the Secretary determines with regard to that student or parent that the institution—

(i) Accurately determined the student's or parent's eligibility for title IV, HEA program funds;

(ii) Accurately determined the amount of title IV, HEA program funds disbursed, including the amount paid directly to the student or parent; and

(iii) Submitted the documentation required under paragraph (c)(3).

(d) **Heightened cash monitoring (HCM) payment method.** Under the heightened cash monitoring payment method, an institution must credit a student's ledger account, or pay the student or parent directly, for the amount of title IV, HEA program funds that the student or parent is eligible to receive, including the amount of any credit balance due under §668.164(f), before the institution—

Comment [A6]: Change in name only.

Comment [A7]: Conforming change.

(1) Submits a request for funds under the provisions of the advance payment method described in paragraphs (b)(1) and (b)(2), except that the institution's request may not exceed the amount of the disbursements the institution made to the students included in that request; or

(2) Seeks reimbursement for those disbursements under the provisions of the reimbursement payment method described in paragraph (c), except that the Secretary may modify the documentation requirements and review procedures used to approve the reimbursement request.

§668.163 Maintaining and accounting for funds.

(a)(1) **Federal bank account.** An institution must maintain title IV, HEA program funds in a bank account that is in its name, under its control, and federally insured. For an institution located in a State, the bank account must be insured by the FDIC or NCUSIF. For a foreign institution, the bank account may be insured by the FDIC or NCUSIF, or by an equivalent agency of the federal or central government of the country in which the institution is located. If there is no equivalent agency, the Secretary may approve a bank account designated by the foreign institution.

Comment [A8]: New provision for foreign institutions, clarifications for Federal bank accounts.

(2) For each bank account that includes title IV, HEA program funds, an institution must clearly identify that title IV, HEA program funds are maintained in that account by—

(i) Including in the name of each bank account the phrase "Federal Funds"; or

(ii)(A) Notifying the financial institution that the bank account contains title IV, HEA program funds that are held in trust and retaining a record of that notice; and

(B) Except for a public institution located in a State or a foreign institution, filing with the appropriate State or municipal government entity a UCC-1 statement disclosing that the bank account contains Federal funds and maintaining a copy of that statement.

Comment [A9]: Conforming change.

(b) **Separate bank account.** An institution must maintain title IV, HEA program funds in a separate Federal bank account that contains no other funds.

Comment [A10]: New provision.

(c) **Interest-bearing bank account.** Except for Federal Perkins Loan Program funds, an institution is not required to maintain title IV, HEA program funds in an interest-bearing bank account.

Comment [A11]: Modification of existing requirement.

(1) Any interest earned on Federal Perkins Loan Program funds is retained by the institution as provided under 34 CFR 674.8(a).

(2) If an institution maintains other title IV, HEA program funds in an interest-bearing account, the institution may keep the initial \$250 it earns on those funds during an award year. By June 30 of that award year, the institution must remit to the Secretary any earnings over \$250.

§668.164 Disbursing funds.

(a) Disbursement. (1) Except as provided under paragraph (a)(2), a disbursement of title IV, HEA program funds occurs on the date that—

(i) The institution credits the student's ledger account or pays the student or parent directly with—

(A) Funds received from the Secretary; or

(B) Institutional funds used in advance of receiving title IV, HEA program funds; or

(ii) ~~As provided under paragraph (d)(3), the Secretary pays a student or parent directly.~~

Comment [A12]: New provision

(2)(i) For a Direct Loan where the student is subject to the delayed disbursement requirements under 34 CFR 685.303(b)(4), if an institution credits a student's ledger account with institutional funds earlier than 30 days after the beginning of a payment period, the Secretary considers that the institution makes that disbursement on the 30th day after the beginning of the payment period; or

(ii) If an institution credits a student's ledger account with institutional funds earlier than 10 days before the first day of classes of a payment period, the Secretary considers that the institution makes that disbursement on the 10th day before the first day of classes of a payment period.

(b) Disbursements by payment period. Except for paying a student FWS wages at least once a month, as provided under 34 CFR 675.16(a)(2), or for making early, late, or retroactive disbursements, as provided under paragraphs (g), (h), and (i) respectively, an institution must disburse during each payment period the amount of title IV, HEA program funds that an enrolled student or parent is eligible to receive for that payment period.

(c) Crediting a student's ledger account. (1) ~~An institution may credit a student's ledger account with Direct PLUS Loan funds the parent authorizes a student to receive, and other title IV, HEA program funds, to pay for allowable charges associated with the current payment period.~~
~~Allowable charges include—~~

(i) ~~The amount of tuition, fees, and institutionally provided room and board assessed the student for the payment period, or as provided under paragraph (e)(5), the prorated amount of those charges if the institution debits the student's ledger account for more than the charges associated with the payment period; and~~

(ii) ~~The costs incurred by the student for the payment period for purchasing books, supplies, and other educationally related goods and services provided by the institution for which the institution obtains the student's or parent's authorization under §668.165(b).~~

(2) An institution may not include the cost of books and supplies as part of tuition and fees under paragraph (c)(1)(i).

Comment [A13]: New provisions

(3) For allowable charges stemming from a previous payment period in the current award year, an institution may associate those charges with the current payment period.

Comment [A14]: New provision, reflects current policy

(4) For charges stemming from a prior award year, an institution may associate those charges with the current payment period if those charges are not more than \$200 for—

(i) Tuition, fees, and institutionally-provided room and board; and

(ii) As provided in paragraph (c)(1)(ii), educationally related goods and services provided by the institution for which the institution obtains the student's or parent's authorization.

Comment [A15]: Simplifies current provisions for prior-year charges

(5) For purposes of this section, an institution determines the prorated amount of charges associated with the current payment period by—

(i) For a program with equal payment periods, dividing the total institutional charges for the program by the number of payment periods in the program; or

(ii) For other programs, dividing the number of credit or clock hours the student enrolls in, or is expected to complete, in the current payment period, by the total number of credit or clock hours in the program and multiplying that result by the total institutional charges for the program.

Comment [A16]: Conforming change

(d) Direct payments. (1) Except as provided under paragraph (d)(3), an institution makes a direct payment—

(i) To a student, for the amount of the title IV, HEA program funds that a student is eligible to receive, including Direct PLUS Loan funds that the student's parent authorized the student to receive, by—

Comment [A17]: Clarification

(A) Initiating an EFT of that amount to the student's financial account;

(B) Issuing a check for that amount payable to the student; or

(C) Dispensing cash for which the institution obtains a receipt signed by the student.

(ii) To a parent, for the amount of the Direct PLUS Loan funds that a parent does not authorize the student to receive, by—

(A) Initiating an EFT of that amount to the parent's financial account;

(B) Issuing a check for that amount payable to the parent; or

(C) Dispensing cash for which the institution obtains a receipt signed by the parent.

(2) Issuing a check. An institution issues a check on the date that it —

(i) Mails the check to the student or parent; or

(ii) Notifies the student or parent that the check is available for immediate pick-up at a specified location at the institution. The institution may hold the check for no longer than 21 days after the date it notifies the student or parent. If the student or parent does not pick up the check, the institution must immediately mail the check to the student or parent, pay the student or parent directly by other means, or return the funds to the appropriate title IV, HEA program.

(3) **Payments by the Secretary.** The Secretary may pay, or require an institution to pay, title IV, HEA program funds directly to a student or parent using a method established or authorized by the Secretary.

(4) **Conditions for making a direct payment.** In making a direct payment, the institution—

(i) May not require any student or parent to open or use a financial account at a specific financial institution; and

(ii)(A) Must request each student or parent to provide the information needed to make an EFT to the financial account the student or parent opened without assistance from the institution and use that financial account if the student or parent provides that information; or

(B) If the student or parent does not have, or provide information about, a financial account, the institution may assist the student or parent in opening a financial account under paragraph (c).

(5) **Student choice.** If an institution establishes a process under which a student or parent is offered options for receiving a direct payment, the institution must ensure that—

(i) The options are described clearly and presented in a neutral manner, e.g., the student or parent is not steered to, or compelled to select, a particular option; and

(ii) The process for making direct payments electronically to a financial account designated by the student or parent under paragraph (4)(ii)(A), or otherwise selected by the student or parent, is as timely and no more onerous than making direct payments to a sponsored account under paragraph (c).

(c) **Sponsored account.** If an institution located in any State, as defined in 600.2, establishes a process that a student or parent follows to open a financial account, either through a contract with a third-party servicer or through any arrangement with an entity under which any party to the arrangement exercises any control over the financial account into which the student's title IV, HEA program funds are transferred or deposited, the institution—

(1) Must disclose conspicuously on its website, and otherwise make public, that contract or arrangement in its entirety;

(2) Before the student's or parent's financial account is opened and before the student or parent may activate a debit card, prepaid card, or access device associated with the account, must—

(i) Inform the student or parent of the terms and conditions of the account; and

Comment [A18]: New provision.

Comment [DT19]: Include a requirement that institutions should identify direct deposit as the recommended disbursement option. Institutions and their service providers should be required to use a good faith effort to inform students and parents of the benefits of using direct deposit to a financial account of their choosing. Direct deposit EFT is the first choice and the best choice for students.

Comment [A20]: New provisions.

Comment [DT21]: It would be beneficial if the Department would publish screen shots or user interface templates either in the regulations or as an accompanying guidance to provide schools and servicers with examples of acceptable presentation practices.

Comment [A22]: New provisions.

Comment [DT23]: Consider including a provision preventing the marketing and promotion of other financial products to students selecting the debit card option, as long as they are students in good standing. Once a student is a bank customer, this opens the doors to selling students a wide variety of financial products unless restricted.

Comment [DT24]: There should be a specific prohibition on using rewards programs and other incentives to entice students to choose to open a new debit card account. This provision should be applicable to all campus banking relationships whether or not they qualify as a sponsored account. The basis of this provision should be the Credit Card Act of 2009 and the specific sections referencing college students and campuses.

Comment [DT25]: It's important to define a sponsored account in detail to prevent new abuses. What is a branch office? What prevents bank partners and service providers from marketing financial products directly to students outside the scope of the definition.

Comment [DT26]: This section should apply to third party services also and include a provision that specifically prevents third party services from marketing financial products directly to students.

Comment [DT27]: Consider a "code of conduct" that all bank partners and vendors of financial products aimed at students must agree to on each campus.

Comment [A28]: New provision.

Comment [DT29]: Should require disclosure by third party servicers of annual quantification of the value of the services provided and revenue generated from offering bank products.

Comment [A30]: New provision.

(ii) Obtain in writing affirmative consent from the student or parent to open the account.

(3) Must review any information that is provided to the student or parent about the account and the debit card, prepaid card, or access device associated with the account, to ensure that the information is presented to the student in an objective and neutral manner.

Comment [A31]: Modification of current provisions

(4) May not send a debit card, prepaid card, or access device associated with the account to a student or parent unless the student or parent specifically requests it after providing consent as required in paragraph (e)(2).

Comment [DT32]: Need to also prevent sending virtual representations of a card prior to receiving authorization from the student. Must expand the definition of "send" to include new media.

(5) May not offer a debit card, prepaid card, or access device associated with the account that bears the institution's logo or mascot, or that otherwise implies an affiliation with the institution.

(6) May not provide to the servicer or entity any information about the student or parent until after the student or parent consents affirmatively to open the account under paragraph (e)(2).

Comment [DT33]: This clause potentially conflicts with (e)(2) unless schools are required to get from the students their disbursement preference first and then turn over student or parent to the servicer after the selection process. This would be the right approach as evidenced by the Western Washington recommendations.

(7) May not make any claims against the funds in the account without the written permission of the student or parent, except for correcting an error in transferring the funds in accordance with banking protocols;

Comment [A34]: New provisions

(8) Must ensure that the student does not incur any cost in:

(i) Opening the financial account or initially receiving the debit card, prepaid card, or access device associated with the account;

Comment [DT35]: Should require an easy-to-understand standardized fee schedule that must be agreed to by student before completing the enrollment process. The most egregious fees, such as PIN "pay to pay" charges and the fee to transfer funds to a another bank account should be prohibited.

(ii) Maintaining the account, or

(iii) Using the debit card, prepaid card, or access device to conduct any transaction at any automated teller machine (ATM) located in any State as defined in 600.2.

Comment [DT36]: Service provider should provide average annual cost to a student for using a financial product under a typical usage pattern for students at that institution. If not available, then use an average number for similar schools until available.

(9) Must ensure that the debit card, prepaid card, or access device associated with the account can be used nationally.

Comment [DT37]: To promote free access to funds, students should be able to receive cash back at the point-of-sale for no charge and make free cash withdrawals at any bank.

(10) May not market or portray the financial account, debit card, prepaid card, or access device as a credit card or credit instrument, or subsequently convert the account, card, or device to a credit card or credit instrument;

Comment [A38]: New provisions

(11) May not assess the student or parent any overdraft fees if the financial account is overdrawn;

Comment [A39]: Clarification of current provision

(12) Regardless of the debit card, prepaid card, or access device associated with the financial account, must ensure that:

(i) The provider of the card or device provides the student or parent with pass-through deposit or share insurance;

(ii) The card or device does not have an attached line of credit or loan feature under which repayment from the account is triggered upon the delivery of a Federal payment, including a deposit or transfer of title IV, HEA program funds into the account; and

(iii) The account provides the student or parent with all the consumer protections that apply to a payroll card account under the Electronic Fund Transfers Act, as amended; and

(13) Ensure that the financial account is in the student's or parent's name, or for a financial account that is a pooled custodial account, the subaccount (or card or device) is in the student's or parent's name. The custodial bank account must be established in the name of the institution or the institution's third party servicer, and must be set up to ensure that any title IV, HEA program funds that become the pooled funds of the custodial account are credited immediately to the student's or parent's subaccount (or card or device).

Comment [A40]: New provisions

(f) **Title IV, HEA credit balances.** (1) A title IV, HEA credit balance occurs whenever the amount of title IV, HEA program funds credited to a student's account for a payment period exceeds the amount assessed the student for allowable charges associated with that payment period as provided under paragraph (c).

(2) Except as provided in paragraph (f)(3), an institution must pay a title IV, HEA credit balance directly to the student as soon as possible, but no later than—

(i) 14 days after the balance occurred if the credit balance occurred after the first day of class of a payment period; or

(ii) 14 days after the first day of class of a payment period if the credit balance occurred on or before the first day of class of that payment period.

(3) An institution must delay making a direct payment if the institution has information that—

(i) The student or parent is engaged in an activity that is known or intended to defraud the Federal government;

(ii) The person attending, or seeming to attend, classes at the institution is not the student for whom the payment is intended; or

(iii) The student is enrolled at the institution for the sole purpose of obtaining title IV, HEA program funds.

Comment [A41]: New provisions

(g) **Early disbursements.** (1) Except as provided in paragraph (g)(2) for a first-year, first-time borrower or a student employed under the FWS program, the earliest an institution may disburse title IV, HEA funds to an eligible student is—

(i) If the student is enrolled in a credit-hour program offered in terms that are substantially equal in length, 10 days before the first day of classes of a payment period;

(ii) If the student is enrolled in a credit-hour program offered in terms that are not substantially equal in length, a non-term credit-hour program, or a clock hour program, the later of—

(A) Ten days before the first day of classes of a payment period; or

(B) The date the student completed the previous payment period for which he or she received title IV, HEA program funds.

(2) An institution may not—

(i) Make an early disbursement of a Direct Loan to a first-year, first-time borrower who is subject to the 30-day delayed disbursement requirements in 34 CFR 685.303(b)(4). This restriction does not apply if the institution is exempt from the 30-day delayed disbursement requirements under 34 CFR 685.303(b)(4)(i)(A) or (B); or

(ii) Compensate a student employed under the FWS program until the student earns that compensation by performing work, as provided in 34 CFR 675.16(a)(5).

Comment [A42]: Conforming change

(h) Late disbursements. (1) Ineligible student. For purposes of this paragraph, an otherwise eligible student becomes ineligible to receive title IV, HEA program funds on the date that—

(i) For a Direct Loan, the student is no longer enrolled at the institution as at least a half-time student for the period of enrollment for which the loan was intended; or

(ii) For an award under the Federal Pell Grant, FSEOG, Federal Perkins Loan, Iraq-Afghanistan Service Grant, and TEACH Grant programs, the student is no longer enrolled at the institution for the award year.

(2) Conditions for a late disbursement. Except as limited under paragraph (h)(4), a student who becomes ineligible, as described in paragraph (h)(1), qualifies for a late disbursement (and the parent qualifies for a parent Direct PLUS Loan disbursement) if, before the date the student became ineligible—

(i) The Secretary processed a SAR or ISIR with an official expected family contribution for the student for the relevant award year; and

(ii)(A) For a loan made under the Direct Loan Program or for an award made under the TEACH Grant Program, the institution originated the loan or award;

(B) For an award under the Federal Perkins Loan or FSEOG programs, the institution made that award to the student.

(3) Making a late disbursement. Provided that the conditions described in paragraph (h)(2) are satisfied—

(i) If the student withdrew from the institution during a payment period or period of enrollment, the institution must make any post-withdrawal disbursement required under §668.22(a)(4) in accordance with the provisions of §668.22(a)(5);

(ii) If the student completed the payment period or period of enrollment, the institution must provide the student or parent the choice to receive the amount of title IV, HEA program funds that the student or parent was eligible to receive while the student was enrolled at the institution. For a late disbursement in this circumstance, the institution may credit the student's ledger account as provided in paragraph (c); or

(iii) If the student did not withdraw but ceased to be enrolled as at least a half-time student, the institution may make the late disbursement of a loan under the Direct Loan program to pay for educational costs that the institution determines the student incurred for the period in which the student or parent was eligible.

(4) Limitations. (i) An institution may not make a late disbursement later than 180 days after the date the institution determines that the student withdrew, as provided in §668.22, or for a student who did not withdraw, 180 days after the date the student otherwise became ineligible, pursuant to paragraph (h)(1).

(ii) An institution may not make a late second or subsequent disbursement of a loan under the Direct Loan program unless the student successfully completed the period of enrollment for which the loan was intended.

(iii) An institution may not make a late disbursement of a Direct Loan if the student was a first-year, first-time borrower as described in 34 CFR 685.303(b)(4) unless the student completed the first 30 days of his or her program of study. This limitation does not apply if the institution is exempt from the 30-day delayed disbursement requirements under 34 CFR 685.303(b)(4)(i)(A), (B), or (C).

(iv) An institution may not make a late disbursement of any title IV, HEA program assistance unless it received a valid SAR or a valid ISIR for the student by the deadline date established by the Secretary in a notice published in the Federal Register.

(i) Retroactive payments. If an institution did not make a disbursement to an enrolled student for a payment period the student completed (for example, because of an administrative delay or because for some reason the student did not appear to qualify to receive the funds), the institution may pay the student for all prior payment periods in the current award year for which the student was eligible or subsequently established eligibility in accordance with program regulations.

Comment [A43]: Codifies existing policy.

(j) Returning funds. (1) Notwithstanding any State law (such as a law that allows funds to escheat to the State), an institution must return to the Secretary any title IV, HEA program funds, except FWS program funds, that it attempts to disburse directly to a student or parent that are not received by the student or parent. For FWS program funds, the institution is required to return only the Federal portion of the payroll disbursement.

(2) If an EFT to a student's or parent's financial account is rejected, or a check to a student or parent is returned, the institution may make additional attempts to disburse the funds, provided that those attempts are made not later than 45 days after the EFT was rejected or the check returned. In cases where the institution does not make another attempt, the funds must be returned to the Secretary before the end of this 45 day period.

(3) If a check sent to a student or parent is not returned but is not cashed, the institution must return the funds to the Secretary no later than 240 days after the date it issued the check.

(k) Provisions for books and supplies. (1) An institution must provide a way for a student who is eligible for title IV, HEA program funds to obtain or purchase, by the seventh day of a payment period, the books and supplies applicable to the payment period if, 10 days before the beginning of the payment period—

Comment [A44]: New provision, prior rule applied only to Pell Grant recipients.

- (i) The institution could disburse the title IV, HEA program funds for which the student is eligible; and
 - (ii) Presuming the funds were disbursed, the student would have a credit balance under paragraph (f) of this section.
- (2) The amount the institution provides to the student to obtain or purchase books and supplies is the lesser of the presumed credit balance under this paragraph or the amount needed by the student, as determined by the institution.
- (3) The institution must have a policy under which the student may opt out of the way the institution provides for the student to obtain or purchase books and supplies under this paragraph.
- (4) If a student uses the way provided by the institution to obtain or purchase books and supplies under this paragraph, the student is considered to have authorized the use of title IV, HEA funds and the institution does not need to obtain a written authorization under paragraph (c) and §668.165(b) for this purpose.

§668.165 Notices and authorizations.

(a) Notices. (1) Before an institution disburses title IV, HEA program funds for any award year, the institution must notify a student of the amount of funds that the student or his or her parent can expect to receive under each title IV, HEA program, and how and when those funds will be disbursed. If those funds include Direct Loan Program funds, the notice must indicate which funds are from subsidized loans and which are from unsubsidized loans.

(2) Except in the case of a post-withdrawal disbursement made in accordance with §668.22(a)(5), if an institution credits a student's account at the institution with Direct Loan, Federal Perkins Loan, or TEACH Grant Program funds, the institution must notify the student or parent of—

- (i) The anticipated date and amount of the disbursement;
 - (ii) The student's right or parent's right to cancel all or a portion of that loan, loan disbursement TEACH Grant, or TEACH Grant disbursement and have the loan proceeds and TEACH Grant proceeds returned to the Secretary; and
 - (iii) The procedures and time by which the student or parent must notify the institution that he or she wishes to cancel the loan, loan disbursement, TEACH Grant, or TEACH Grant disbursement.
- (3) The institution must provide the notice described in paragraph (a)(2) in writing—
- (i) No earlier than 30 days before, and no later than 30 days after, crediting the student's ledger account at the institution, if the institution obtains affirmative confirmation from the student under paragraph (a)(6)(i); or

(ii) No earlier than 30 days before, and no later than seven days after, crediting the student's ledger account at the institution, if the institution does not obtain affirmative confirmation from the student under paragraph (a)(6)(i).

(4)(i) A student or parent must inform the institution if he or she wishes to cancel all or a portion of a loan, loan disbursement, TEACH Grant, or TEACH Grant disbursement.

(ii) The institution must return the loan or TEACH Grant proceeds, cancel the loan or TEACH Grant, or do both, in accordance with program regulations provided that the institution receives a loan or TEACH Grant cancellation request—

(A) By the later of the first day of a payment period or 14 days after the date it notifies the student or parent of his or her right to cancel all or a portion of a loan or TEACH Grant, if the institution obtains affirmative confirmation from the student under paragraph (a)(6)(i); or

(B) Within 30 days of the date the institution notifies the student or parent of his or her right to cancel all or a portion of a loan, if the institution does not obtain affirmative confirmation from the student under paragraph (a)(6)(i).

(iii) If a student or parent requests a loan cancellation after the period set forth in paragraph (a)(4)(ii)(A) or (B), the institution may return the loan or TEACH Grant proceeds, cancel the loan or TEACH Grant, or do both, in accordance with program regulations.

(5) An institution must inform the student or parent in writing regarding the outcome of any cancellation request.

(6) For purposes of this section—

(i) Affirmative confirmation is a process under which an institution obtains written confirmation of the types and amounts of title IV, HEA program loans that a student wants for the period of enrollment before the institution credits the student's account with those loan funds. The process under which the TEACH Grant program is administered is considered to be an affirmative confirmation process; and

(ii) An institution is not required to return any loan or TEACH Grant proceeds that it disbursed directly to a student or parent.

(b) Student or parent authorizations. (1) If an institution obtains written authorization from a student or parent, as applicable, the institution may—

(i) Use the student's or parent's title IV, HEA program funds to pay for charges described in §668.164(c)(4) that are included in that authorization; and

(ii) Except if prohibited by the Secretary under the reimbursement or cash monitoring payment method, hold on behalf of the student or parent any title IV, HEA program, funds that would otherwise be paid directly to the student or parent under §668.164(f).

(2) In obtaining the student's or parent's authorization to perform an activity described in paragraph (b)(1), an institution—

(i) May not require or coerce the student or parent to provide that authorization;

(ii) Must allow the student or parent to cancel or modify that authorization at any time; and

(iii) Must clearly explain how it will carry out that activity.

(3) A student or parent may authorize an institution to carry out the activities described in paragraph (b)(1) for the period during which the student is enrolled at the institution.

(4)(i) If a student or parent modifies an authorization, the modification takes effect on the date the institution receives the modification notice.

(ii) If a student or parent cancels an authorization to use title IV, HEA program funds to pay for authorized charges under §668.164(c)(4), the institution may use title IV, HEA program funds to pay only those authorized charges incurred by the student before the institution received the notice.

(iii) If a student or parent cancels an authorization to hold title IV, HEA program funds under paragraph (b)(1)(ii), the institution must pay those funds directly to the student or parent as soon as possible but no later than 14 days after the institution receives that notice.

(5) If an institution holds excess student funds under paragraph (b)(1)(ii), the institution must—

(i) Identify the amount of funds the institution holds for each student or parent in a subsidiary ledger account designed for that purpose;

(ii) Maintain, at all times, cash in its bank account in an amount at least equal to the amount of funds the institution holds for the student; and

(iii) Notwithstanding any authorization obtained by the institution under this paragraph, pay any remaining balance on loan funds by the end of the loan period and any remaining other title IV, HEA program funds by the end of the last payment period in the award year for which they were awarded.

§668.166 Excess cash.

(a) General. The Secretary considers excess cash to be any amount of title IV, HEA program funds, other than Federal Perkins Loan Program funds, that an institution does not disburse to students by the end of the third business day following the date the institution—

(1) Received those funds from the Secretary; or

(2) Deposited or transferred to its Federal account previously disbursed title IV, HEA program funds, such as those resulting from award adjustments, recoveries, or cancellations.

(b) Excess cash tolerance. An institution may maintain for up to seven days an amount of excess cash that does not exceed one percent of the total amount of funds the institution drew down in the prior award year. The institution must return immediately to the Secretary any amount of excess cash over the one-percent tolerance and any amount of excess cash remaining in its account after the seven-day tolerance period.

Comment [A45]: Simplifies current provision.

(c) Consequences for maintaining excess cash. Upon a finding that an institution maintained excess cash for any amount or time over that allowed in the tolerance provisions in paragraph (b), the actions the Secretary may take include, but are not limited to—

(1) Requiring the institution to reimburse the Secretary for the costs the Federal government incurred in providing that excess cash to the institution; and

(2) Providing funds to the institution under the reimbursement payment method or heightened cash monitoring payment method described in §668.162(c) and (d), respectively.

