

# Archived Information

## Proposed Regulatory Language Committee II - Program Issues

**Quick Fix:** No

**Origin:** Fed UP # 81

**Issue:** Change of Ownership

**Regulatory Cite:** §600.21 Updating application information;  
§600.31 Change in ownership resulting in a change in control for private nonprofit, private for-profit and public institutions;  
§668.174 Past performance

**Summary of Change:** This change will expand the current definition of a family to include grandchildren, to a spouse's children and grandchildren, and family members as a result of remarriage.

### Change:

§ 600.21 Updating application information.

\* \* \* \* \*

(f) *Definition.* ~~The Secretary considers a~~ A family member includes of a person's ~~family to be his or her~~---

(1) Parent or stepparent, sibling or step-sibling, spouse, ~~or~~ child or stepchild, or grandchild or step-grandchild;

(2) Spouse's parent or stepparent, ~~or~~ sibling or step-sibling, child or stepchild, or grandchild or step-grandchild;

(3) Child's spouse; and

(4) Sibling's spouse.

\* \* \* \* \*

§ 600.31 Change in ownership resulting in a change in control for private nonprofit, private for-profit and public institutions.

\* \* \* \* \*

(e) *Excluded transactions.* A change in ownership and control reported under §600.21 and otherwise subject to this section does not include a transfer of ownership and control of the legal entity covered by the institution's Program Participation Agreement~~upon the retirement or death of the owner, to~~---

- (1) ~~A~~From an owner to a "family member" of that owner of the owner's family, as described~~defined~~ in §600.3021(f); or
- (2) Upon the retirement or death of the owner, to a ~~A~~ person with an ownership interest in the institution who has been involved in management of the institution for at least two years preceding the transfer and who established the ownership interest for at least two years prior to the transfer.

\* \* \* \* \*

§ 668.174 Past performance.

\* \* \* \* \*

(c) Ownership interest.

\* \* \*

(4) ~~The Secretary considers a "Family member" is defined in §600.21(f) of a person's family to be a parent, sibling, spouse, child, spouse's parent or sibling, or sibling's or child's spouse.~~

\* \* \* \* \*

**Proposed Regulatory Language  
Committee II - Program Issues**

**Quick Fix:** No

**Origin:** ED

**Issue:** Overpayment

**Regulatory Cite:** §668.35(c), §673.5(f), and §690.79

**Summary of Change:** Current policy under Return of Title IV Funds provides that a student does not lose eligibility nor has to repay a grant overpayment resulting from withdrawal if the total amount of the Title IV grant funds the student is responsible for repaying is less than \$25 and is not a remaining balance after the application of prior payments or of institutional credit balances. These proposed regulatory changes would apply that policy to all Title IV grant or Federal Perkins loan overpayments, as long as the overpayment is not the result of school error. The under \$25 de minimis amount does not apply to amounts for which the school is liable.

Section 668.35 - The proposed change to §668.35 would provide that owing an overpayment amount of less than \$25 under the Federal Perkins Loan program or under a Title IV grant program that is not a remaining balance nor a result of the application of the campus-based overaward threshold would not cause a student to be ineligible for Title IV, HEA funds.

Section 673.5 - The proposed change to §673.5 would provide that a student is not liable for a Federal Perkins loan overpayment or an FSEOG overpayment that is less than \$25 if the overpayment is not a remaining balance nor a result of the application of the campus-based overaward threshold. For purposes of determining, recovering and referring an FSEOG overpayment, the non-Federal share is not counted unless the institution meets its FSEOG matching requirement by using the fund specific method.

For such de minimis overpayments, the school is not required to attempt recovery of the overpayment or refer it to the Secretary. However, the school must attempt recovery of all other overpayment amounts for which it is not liable and refer any FSEOG overpayment to the Secretary for collection purposes. Note that under Return to Title IV Funds policy, Perkins Loans are not treated as an overpayment. Rather, unearned Perkins Loan funds are repaid according to the terms of the loan. That is a distinction from this policy.

Section 690.79 - The proposed change to §690.79 would provide that a student is not liable for a Federal Pell Grant overpayment amount that is less than \$25 and is not a remaining balance. For such overpayments, the school is not required to attempt recovery of the overpayment or refer it to the Secretary. However, the school must attempt recovery of and refer all other Pell Grant overpayment amounts for which it is not liable.

**§ 668.35 Student debts under the HEA and to the U.S.**

\* \* \* \* \*

(c) A student who receives an overpayment under the Federal Perkins Loan Program, or under a title IV, HEA grant program may nevertheless be eligible to receive title IV, HEA program assistance if-

- (1) The student pays the overpayment in full;
- (2) The student makes arrangements satisfactory to the holder of the overpayment debt to pay the overpayment; or
- (3) The overpayment amount is less than \$25 and is not a remaining balance nor a result of the application of the overaward threshold in 34 CFR 673.5(d).

\* \* \* \* \*

**§ 673.5 Overaward.**

\* \* \* \* \*

(f) *Liability for and recovery of Federal Perkins loan and FSEOG overpayments.*

(1) Except as provided in paragraphs (f) (2) and (f) (3) of this section, a student is liable for any Federal Perkins loan or FSEOG overpayment made to him or her. The FSEOG overpayment for purposes of paragraph (f) of this section does not include the non-Federal share of FSEOG awards if an institution meets its FSEOG matching share by the individual recipient method or the aggregate method.

(2) The institution is liable for a Federal Perkins loan or FSEOG overpayment if the overpayment occurred because the institution failed to follow the procedures in this part, 34 CFR part 668, 34 CFR part 674, or 34 CFR part 676. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its loan fund for a Federal Perkins loan overpayment or to its FSEOG account for an FSEOG overpayment.

(3) A student is not liable for and the institution is not required to attempt recovery of a Federal Perkins loan or FSEOG overpayment, or refer to the Secretary an FSEOG overpayment, if the overpayment—

(i) Is less than \$25, and

(ii) Is not a remaining balance nor a result of the application of the overaward threshold in paragraph (d) of this section.

(4) *Recovery attempts for Federal Perkins loan or FSEOG overpayment.*

(i) Except as provided in paragraph (f)(3) of this section, if an institution makes a Federal Perkins loan or FSEOG overpayment for which it is not liable, it shall promptly send a notice to the student requesting repayment of the overpayment amount. The notice must state that failure to make that repayment, or to make arrangements satisfactory to the holder of the overpayment debt to pay the overpayment, makes the student ineligible for further title IV aid until final resolution of the overpayment.

(ii) If a student objects to the institution's Federal Perkins loan or FSEOG overpayment determination on the grounds that it is erroneous, the institution shall consider any information provided by the student and determine whether the objection is warranted.

(5) *Referral of FSEOG overpayment.*

Except as provided in paragraph (f)(3) of this section, if a student fails to repay an FSEOG overpayment, or make arrangements satisfactory to the holder of the overpayment debt to pay the FSEOG overpayment, after the institution has taken the action required by paragraph (f)(4) of this section, the institution shall refer the FSEOG

overpayment to the Secretary for collection purposes, in accordance with procedures required by the Secretary. After referring the FSEOG overpayment to the Secretary under this section, the institution need make no further effort to recover the overpayment.

\* \* \* \* \*

**§ 690.79 Liability for and recovery of Federal Pell Grant overpayments.**

(a) (1) Except as provided in paragraphs (a) (2) and (a) (3) of this section, a student is liable for any Federal Pell Grant overpayment made to him or her.

(2) The institution is liable for a Federal Pell Grant overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part or 34 CFR part 668. The institution shall restore an amount equal to the overpayment to its Federal Pell Grant account.

(3) A student is not liable for and the institution is not required to attempt recovery of or refer to the Secretary a Federal Pell Grant overpayment if the amount of the overpayment is less than \$25 and is not a remaining balance.

(b) *Recovery attempts for Federal Pell Grant overpayment.*

(i) Except as provided in paragraph (a) (3) of this section, if an institution makes a Federal Pell Grant overpayment for which it is not liable, it shall promptly send a written notice to the student requesting repayment of the overpayment amount. The notice must state that failure to make that repayment, or to make arrangements satisfactory to the holder of the overpayment debt to pay the overpayment, makes the student ineligible for further title IV aid until final resolution of the Federal Pell Grant overpayment.

(ii) If a student objects to the institution's Federal Pell Grant overpayment determination on the grounds that it is erroneous, the institution shall consider any information provided by the student and determine whether the objection is warranted.

*(c) Referral of Federal Pell Grant overpayment.*

Except as provided in paragraph (a) (3) of this section, if the student fails to repay a Federal Pell Grant overpayment, or make arrangements satisfactory to the holder of the overpayment debt to pay the Federal Pell Grant overpayment, after the institution has taken the action required by paragraph (b) of this section, the institution shall refer the overpayment to the Secretary for collection purposes, in accordance with procedures required by the Secretary. After referring the Federal Pell Grant overpayment to the Secretary under this section, the institution need make no further efforts to recover the overpayment.

Proposed Regulatory Language  
Committee II - Program Issues

**Quick Fix:** No  
**Origin:** Fed Up #64  
**Issue:** Incentive compensation  
**Regulatory Cite:** §668.14

**Summary of Change:** Provides clarification on the prohibitions on providing incentive compensation based on success in securing enrollments or financial aid.

**Change:**

§668.14 Program participation agreement

\* \* \* \* \*

(b) \* \* \*

(22) (i) It will not provide, ~~nor contract with any entity that provides,~~ any commission, bonus, or other incentive payment based directly or indirectly ~~on~~ upon success in securing enrollments or financial aid to any persons or entity~~s~~ ies engaged in any student recruiting or admission activities or in making decisions regarding the awarding of ~~student financial assistance~~ Title IV, HEA program funds, except that this requirement ~~shall~~ does not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Title IV, HEA program funds ~~Federal student assistance. This provision does not apply to the giving of token gifts to students or alumni for referring students for admission to the institution as long as: The gift is not in the form of money, check, or money order; no more than one such gift is given to any student or alumnus; and the gift has a value of not more than \$25;~~

(ii) Activities and arrangements that an institution may carry out without violating the provisions of paragraph (b)(22)(i) of this section include, but are not limited to:

(A) The payment of fixed compensation, such as a fixed annual salary, as long as the salary is not adjusted, by promotion or otherwise, up or down, more than twice during any twelve month period.

(B) Compensation to recruiters based upon their recruitment of students who enroll in programs that are not eligible programs under the Title IV, HEA programs.

(C) Compensation to recruiters who arrange contracts between the institution and an employer under which the employer's employees enroll in the institution, and the employer pays directly or by reimbursement all or substantially all of the tuition and fees of its employees.

(D) Compensation paid to all or substantially all of the institution's full-time professional and administrative employees as part of a profit-sharing plan, or substantially all employees at the same organizational level, except that an organizational level may not consist predominately of recruiters.

(E) Compensation paid to recruiters that is based upon students successfully completing the program or one academic year of the educational program in which they enroll, whichever is shorter. For this purpose, successful completion of an academic year means that the student has earned at least 24 semester or trimester credit hours or 36 quarter credit hours, or has successfully completed at least 900 clock hours of instruction.

(F) Compensation paid to employees who perform "pre-enrollment" activities, such as answering telephone calls or providing access to institutional information or institutional applications as long as compensation is not based on actual enrollment.

(G) Compensation to managerial or supervisory employees who do not manage or supervise employees who are directly involved in recruiting or admissions activities, or the awarding of Title IV, HEA program funds.

(H) The awarding of token gifts to the institution's students or alumni, provided that the gifts are not in the form of money, no more than one gift is provided to an individual, and the value of the gift is no more than \$100.

(I) Profit distributions to an individual who owns at least 25 percent of the institution.

(J) Internet-based recruitment and admission activities that provide information about the institution to prospective students, or permit them to apply for admission on-line.

(K) Payments to third parties, including tuition sharing arrangements, that deliver various services to the institution, provided that none of the services involve recruiting or admission activities, or the awarding of Title IV, HEA program funds.

(L) Payments to third parties that deliver various services to the institution, even if one of the services involves recruiting or admission activities, provided that the individuals performing the recruitment or admission activities, or the

awarding of Title IV, HEA Program funds, are not compensated on an incentive payment basis.

**Proposed Regulatory Language**  
**Committee II - Program Issues**

**Quick Fix:** No

**Origin:** Fed Up # 65

**Issue:** 12 hour rule

**Regulatory Cite:** §668.2 Definition of "Academic year", §668.4 Payment Period, §668.8 Eligible Program, §682.603 FFEL Loan Certification, §685.301 Direct Loan Origination, and §690.75 Pell Payment Eligibility.

**Summary of Change:** These proposed regulations change the definition of an academic year by eliminating the requirement that for non-standard and non-term programs a week of instruction is a week of at least 12 hours of regularly scheduled instruction or examinations. Instead, the rule that applies to standard term programs would also be applied to non-standard and non-term programs - that a week of instruction must have at least 1 day of regularly scheduled instruction or examination. The definition of academic year is removed from §668.2 and the revised definition is placed in a new §668.3. Similar changes are made to §668.8 - Eligible Programs.

The elimination of the 12 hour rule necessitates modifications to the definition of payment periods to insure that, in addition to the completion of a certain number of credit hours, there is also a calendar time element that must be met before subsequent disbursements of Title IV funds can be made. Thus, these rules

modify §668.4 in order to include a time element in the determination of a payment period.

These changes also necessitate minor cross-reference changes in the FFEL and Direct Loan regulations. Finally, the Pell Grant payment eligibility regulation is slightly modified to refer to the new definitions of payment periods in §668.4.

**Change :**

§ 668.3 Academic year .

Section 668.3 is revised to read as follows.

§668.3 Academic year.

(a) Except as provided in paragraph (c) of this section, an academic year is a period that begins on the first day of classes and ends on the last day of classes or examinations during which--

(1) An institution provides a minimum of 30 weeks of instructional time; and

(2) For an undergraduate educational program, a full-time student is expected to complete--

(i) At least 24 semester or trimester credit hours or 36 quarter credit hours for a program measured in credit hours, or

(ii) 900 clock hours for a program measured in clock hours.

(b) For purposes of paragraph (a) of this section--

(1) A week is a consecutive seven-day period;

(2) A week of instructional time is any week in which at least one day of regularly scheduled instruction or examinations occurs or, after the last scheduled day of classes for a term, at least one day of study for examinations occurs.

(3) Instructional time does not include any vacation periods, homework, or periods of orientation or counseling.

(c) Reduction in the length of an academic year.

(1) Upon the written request of an institution, the Secretary may approve, for good cause, an academic year of between 26 and 29 weeks of instructional time for educational programs offered by the institution if the institution offers a two-year program leading to an associate degree or a four-year program leading to a baccalaureate degree.

(2) An institution's written request must--

(i) Identify each educational program for which the institution requests a reduction, and the requested number of weeks of instructional time for that program.

(ii) Demonstrate good cause for the requested reductions; and

(iii) Include any other information that the Secretary may require to determine whether to grant the request.

(3) (i) The Secretary grants the request of an eligible institution for a reduction in the length of its academic year if the institution has demonstrated good cause for granting the request and the institution's accrediting agency and State licensing agency have approved the request.

(ii) If the Secretary approves the request, the approval terminates when the institution's program participation agreement expires. The institution may request an extension of that approval as part of the recertification process.

(Authority: 20 U.S.C. 1088)

\* \* \* \* \*

Section 668.4 is revised to read as follows.

§ 668.4 Payment period.

\* \* \* \* \*

(a) Payment periods for an eligible program that measures progress in credit hours and has academic terms.

For a student enrolled in an eligible program that is offered in terms and measures progress in credit hours, the payment period is the academic term.

(b) Payment periods for an eligible program that measures progress in credit hours and does not have academic terms.

(1) For a student enrolled in an eligible program that is one academic year or less in length--

(i) The first payment period is the period of time in which the student completes half the number of credit hours in the program and half the number of weeks in the program; and

(ii) The second payment period is the period of time in which the student completes the second half of the program.

(2) For a student enrolled in an eligible program that is more than one academic year in length--

(i) For the first academic year and any subsequent full academic year--

(A) The first payment period is the period of time in which the student completes half the number of credit hours in the academic year and half the number of weeks in the academic year ; and

(B) The second payment period is the period of time in which the student completes the academic year;

(ii) For any remaining portion of an eligible program that is more than one-half an academic year but less than a full academic year in length--

(A) The first payment period is the period of time in which the student completes half the number of credit hours in the remaining portion of the program and half the number of weeks remaining in the program; and

(B) The second payment period is the period of time in which the student completes the remainder of the program.

(iii) For any remaining portion of an eligible program that is not more than half an academic year, the payment period is the remainder of the program.

(c) For purposes of paragraph (b) of this section, if an institution is unable to determine when a student has completed half of the credit hours in a program, academic year, or the remainder of a program; the student is considered to begin the second payment period of the program, academic year, or remainder of a program at the later of--

(1) When, as determined by the institution, the student has completed half of the academic coursework in the program, academic year, or the remainder of the program; or

(2) The calendar midpoint between the first and last scheduled days of class of the program, academic year, or the remainder of the program.

(d) Payment periods for an eligible program that measures progress in clock hours.

(1) For a student enrolled in an eligible program that is one academic year or less in length--

(i) The first payment period is the period of time in which the student completes half the number of clock hours in the program; and

(ii) The second payment period is the period of time in which the student completes the program.

(2) For a student enrolled in an eligible program that is more than one academic year in length--

(i) For the first academic year and any subsequent full academic year--

(A) The first payment period is the period of time in which the student completes half the number of clock hours in the academic year; and

(B) The second payment period is the period of time in which the student completes the remaining number of clock hours in the academic year;

(ii) For any remaining portion of an eligible program that is more than one half of an academic year but less than a full academic year in length--

(A) The first payment period is the period of time in which the student completes half the number of clock hours in the remaining portion of the program; and

(B) The second payment period is the period of time in which the student completes the remainder of the program.

(iii) For any remaining portion of an eligible program that is not more than one half of an academic year, the payment period is the remainder of the program.

(e) Notwithstanding paragraphs (b) through (d) of this section, an institution may choose to have more than two payment periods. If an institution so chooses, the rules in paragraphs (b), (c), and (d) of this section are modified to reflect the increased number of payment periods. For example, if an institution chooses to have three payment periods in an academic year, each payment period must correspond to one-third of the academic year measured in both credit hours and weeks of instruction.

\* \* \* \* \*

§ 668.8 Eligible program.

\* \* \* \* \*

(b) (3) (i) The Secretary considers that an institution provides one week of instructional time in an academic program during any week the institution provides--

(A) At least one day of regularly scheduled instruction or examinations or after the last scheduled day of classes for a term or a payment period, at least one day of study for examinations.

(ii) Instructional time does not include any vacation periods, homework, or periods of orientation or counseling.

\* \* \* \* \*

§ 682.603 Certification by a participating school in connection with a loan application.

\* \* \* \* \*

(f) (1) The minimum period of enrollment for which a school may certify a loan application is --

(i) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, a single academic term (e.g., a semester or quarter); or

(ii) At a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system, the lesser of --

(A) The length of the student's program at the school; or

(B) The academic year as defined by the school in accordance with 34 CFR 668.32.

|

(2) The maximum period for which a school may certify a loan application is --

(i) Generally an academic year, as defined by 34 CFR 668.~~32~~, except that a guaranty agency may allow a school to use a longer period of time, not to exceed 12 months, corresponding to the period to which the agency applies the annual loan limits under § 682.401(b) (2) (ii); or

\* \* \* \* \*

§ 685.301 Origination of a loan by a Direct Loan Program school.

\* \* \* \* \*

(a) (9) (i) The minimum period of enrollment for which a school may originate a Direct Loan is --

(A) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, a single academic term (e.g., a semester or quarter); or

(B) At a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system, the lesser of --

(1) The length of the student's program at the school; or

(2) The academic year as defined by the school in accordance with 34 CFR 668.~~32~~.

(ii) The maximum period for which a school may originate a Direct Loan is --

(A) Generally an academic year, as defined by 34 CFR 668.~~32~~, except that a school may use a longer period of time, not to exceed 12 months, corresponding to the period to which the school applies the annual loan limits under § 685.203; or

(B) For a defaulted borrower who has regained eligibility, the academic year in which the borrower regained eligibility.

\* \* \* \* \*

§ 690.75 Determination of eligibility for payment.

\* \* \* \* \*

(a) For each payment period, an institution may pay a Federal Pell Grant to an eligible student only after it determines ~~that the requirements of 34 CFR 668.19 have been met, and that~~ the student --

(1) Qualifies as an eligible student under 34 CFR part 668, subpart C;

(2) Is enrolled in an eligible program as an undergraduate student; and

(3) ~~(i)~~ If enrolled in a clock hour program or a credit hour program without terms, Hhas completed the payment period as defined in §668.4 ~~required clock hours~~ for which he or she has been paid a Federal Pell Grant, ~~if the student is enrolled in an eligible program that is measured in clock hours; or~~  
~~(ii) Has completed the required credit hours for which he or she has been paid a Federal Pell Grant, if the student is enrolled in an eligible program that is measured in credit hours and that does not have academic terms.~~

\* \* \* \* \*

