

Issue Papers

Proposed Regulatory Language General Provisions Committee

- Issue:** Consistent enrollment status definitions for all Title IV programs
- Regulatory Cite:** §668.2(b) (full-time student); §668.10(a)(3)(v), and (vi) (half-time student, three-quarter time student); §674.2(b) half-time graduate or professional student, half-time undergraduate student); §682.200 (half-time student), §685.102 (half-time student); §690.2(c) (half-time student, less-than-half-time student, three-quarter time student)
- Summary of Issue:** Should the various enrollment status definitions found throughout the Title IV regulations be updated and consolidated, where possible, to provide for consistent and current enrollment status definitions for all Title IV programs?

Issue: Consistent definitions of undergraduate and graduate student for all Title IV programs

Regulatory Cite: §668.47(b)(6) (undergraduate student); §674.2(b) (graduate or professional student, undergraduate student); §675.2(b) (graduate or professional student, undergraduate student); §676.2(b) (undergraduate student); §682.200 (graduate or professional student, undergraduate student); §690.2 (undergraduate student); §691.2 (undergraduate student)

Summary of Issue: Should the definitions of undergraduate student and graduate student be consolidated, where possible, to provide for consistent enrollment status definitions for all Title IV programs?

Issue:	Define independent study
Regulatory Cite:	§600. 2 (educational program), §668.10(a)(3)(iii)
Summary of Issue:	<p>In some cases, independent study may count as an educational activity for Title IV purposes. For example, the Higher Education Reconciliation Act of 2005 added direct assessment programs to the list of programs that may be Title IV eligible. The regulations implementing this addition include “faculty-guided independent study” as a type of educational activity that counts toward a week of instructional time for academic year and eligible program purposes. However, the regulations currently do not define independent study. As a result, there has been some confusion over what forms of independent study are acceptable for Title IV purposes. In some cases, institutions find it difficult to distinguish between independent study and telecommunications or correspondence study.</p> <p>Should the regulations include a definition of independent study that is acceptable for Title IV purposes?</p>

Issue: Nonterm credit hour programs--Use of completion of half the weeks of instructional time for timing of loan disbursements

Regulatory Cite: §668.4, §668.164(b)(1), §682.604(c)(6), (c)(7), and (c)(8), §685.301(b)(2), (b)(3), (b)(5), and (b)(6), §674.16(b), §676.16(a), §690.76, §691.76

Summary of Issue: Inconsistency in the timing of Title IV disbursements from different Title IV programs can result in additional burden and confusion for both institutions and students. The Department believes it would be beneficial to change the regulations to provide as much consistency as possible. Some requirements for disbursement of FFEL (and, by extension, Direct Loans) are set out in section 428G(a) of the HEA and, therefore, may not be changed through regulation. The law requires that the interval between the first and second installment be not less than one half of the period of enrollment, except in the case of programs offered in semesters, quarters, or a similar division of the period of enrollment.

When paying FFEL and Direct Loan funds to a student in a nonterm credit hour program, an institution may not make a second disbursement until the later of (1) the calendar midpoint between the first and last scheduled days of class of the loan period, or (2) the date, as determined by the institution, that the student has completed half of the academic coursework in the loan period. However, when paying Title IV grant or Perkins Loan funds to a student in a nonterm credit hour program, an institution may not make a second disbursement until the student has completed half the number of credit hours and half the number of weeks of instructional time in the academic year or program, as appropriate. As a result, a student may receive the second disbursement of his or her grant funds or Perkins Loan funds at a different point in time than his or her FFEL or Direct Loan funds. Should the FFEL and Direct Loan regulations be changed to require student completion of half the weeks of instructional time to be consistent with the requirements for Title IV grants and Perkins Loan second disbursements?

While the same timing issue between Title IV programs does not exist for clock hour programs and nonstandard term credit hour programs with terms that are not substantially equal in length, for consistency within the FFEL and Direct Loan regulations, we suggest making the same change to the FFEL and Direct Loan disbursement rules for clock hour and nonstandard term credit hour programs with terms that are not substantially equal in length. That is, require student completion of half the weeks of instructional time, rather than using the calendar midpoint.

Also, currently, for Title IV grant or Perkins Loan funds, subsequent disbursements may be made after completion of the clock hours in the payment period. Should the regulations be changed to require the completion of weeks in the payment period as well to be consistent with requirements for second disbursements of FFEL and Direct Loan funds?

Issue: Determining loan eligibility for nonstandard term programs

Regulatory Cite: §682.204, §685.203

Summary of Issue: A student must successfully complete an academic year to progress to the next FFEL or Direct Loan annual loan limit. For a standard term based program, a student progresses to the next loan limit if he or she completes an academic year in time. So, once the time period associated with all of the terms in the academic year has elapsed, a student gains eligibility for a new annual loan limit. However, for clock hour, nonterm credit hour, and non-standard term programs, a student does not progress to the next loan limit until he or she completes an academic year in both time and hours. In final regulations published in 2000, the Department applied the disbursement requirements for term-based programs—disbursements are made each term—to programs measured in nonstandard terms that are substantially equal in length. Along those lines, the Department is considering permitting a student to progress to the next loan limit in a non-standard term-based program based on time only, if the terms in the program are of a minimum length and are substantially equal in length.

Issue: Require institutions to use consistent disbursement periods for Title IV programs, where allowed under the law

Regulatory Cite: §668.4, §668.164(b)(1), §668.22(e)(5), §674.16(b), §676.16(a), §682.604(c)(6), (c)(7), and (c)(8), §685.301(b)(2), (b)(3), (b)(5), and (b)(6).

Summary of Issue: Inconsistency in the timing of Title IV disbursements from different Title IV programs can result in additional burden and confusion for both institutions and students. The Department believes it would be beneficial to change the regulations to provide as much consistency as possible. Some requirements for disbursement of FFEL (and, by extension, Direct Loans) are set out in section 428G(a) of the HEA and, therefore, may not be changed through regulation. The law requires that the interval between the first and second installment be not less than one half of the period of enrollment, except in the case of programs offered in semesters, quarters, or a similar division of the period of enrollment.

For students who withdraw from a non-term or nonstandard term-based program, an institution has the choice of calculating earned Title IV aid on either a payment period, as that term is defined in 668.4, or period of enrollment basis. When calculated on a payment period basis, FFEL or Direct Loan funds that are not disbursed each payment period must be attributed to a payment period. To simplify the Return of Title IV Aid calculation, we believe that institutions should be required use consistent disbursement periods to the extent permitted under the law and regulations. Therefore, for clock hour programs an institution would be required to begin their second payment period for Title IV grant and Perkins Loan funds, when one-half of the clock hours in the academic year, or program, as appropriate have been completed. For nonterm credit hour programs, an institution would be required to begin their second payment period when the student has completed half the number of credit hours and half the number of weeks of instructional time in the loan period.

For example, for a clock hour program of 900 hours, an institution would be required to disburse Title IV grant and Perkins Loan funds using two 450 hour payment periods.

We note that under §690.76 and §691.76, an institution may pay a student Pell Grant, ACG and/or National SMART Grant funds at such times and in such installments in each payment period as it determines will best meet the student's needs. So, for example, an institution could make two Pell Grant payments within each payment period for a total of four Pell Grant payments for the program.

Issue:	Cash management—Timeframe for recovery of funds not claimed by student or parent
Regulatory Cite:	None.
Summary of Issue:	<p>Some institutions and auditors have questioned the disposition of Title IV funds when the funds are disbursed to a student (or parent for a parent PLUS loan) by check and the student or parent never cashes the check or does not cash it for a long time. We have provided some guidance on this issue in the Federal Student Aid Handbook, but have not specifically dealt with it in the regulations.</p> <p>By law and/or regulation, an institution is a fiduciary with respect to federal student aid funds and, as such, holds those funds for the benefit of the student. Since the funds belong to the student, guidance in the FSA Handbook provides that these funds may never escheat to the State, and any unclaimed Title IV funds must be returned to the Department or lender. Although the guidance in the FSA Handbook suggests that schools employ reasonable practices for returning unclaimed funds, we are aware of many cases where institutions have failed to do so for lengthy time periods. We believe the rules should be amended to provide for a timely return of unclaimed funds.</p>

Issue:	Cash management—Electronic disbursements
Regulatory Cite:	§668.164(c) and §668.165(b)(1)
Summary of Issue:	<p>A school must obtain a student’s permission to disburse Title IV funds via EFT to his or her checking account (and through Dear Colleague Letter GEN-05-16, to a bank account that underlies a stored-value card). As the electronic handling of funds has become more commonplace since the regulations were written, we would like to re-examine the EFT rules to determine whether they should be updated. Should the rules be modified to allow schools to make EFT disbursements without obtaining the student’s permission? (If this meant, that an institution could require a student to receive Title IV disbursements by EFT, should the student be able to choose the bank to which the EFT is directed?) In October 2005, the Department published guidance on the use of stored-value cards and other alternative methods of managing Title IV funds. Should the rules be amended to include the use of stored-value cards, and similar instruments, as acceptable disbursement methods?</p>

Issue: Cash management—Definition of issuing a check when a check is made available for pickup

Regulatory Cite: §668.164(c)(2) 690.78(b) and 69178(b)

Summary of Issue: A school issues a check on the date it’s mailed or on the date the school notifies a student that the check is available for immediate pickup. The date the check is issued is used to determine whether a school complies with the 14-day credit balance requirements. We have found instances where schools using a third-party servicer as a disbursing agent mistakenly claim that checks are available for immediate pickup. We believe the “immediate pickup” provision needs to be amended to ensure that students receive their credit balances timely.

Issue:	Cash management—Late, late disbursements
Regulatory Cite:	§668.164(g)
Summary of Issue:	<p>Under certain conditions, a school has 120 days from the date that a student ceases to be enrolled (or drops below half-time status) to make a late disbursement to the student. After 120 days, the school must request approval from the Department, and the Department may approve the request if the reason the disbursement was not made was not the fault of the student. We refer to these post 120-day disbursements as late, late disbursements. Over the past three years, the number of late, late disbursement requests have increased, raising some concern that schools have not taken sufficient steps to ensure that disbursements are made within the general regulatory timeframes for disbursements, and for late disbursements. In establishing the late, late disbursement rules the Department did not intend to mitigate administrative issues at schools, and now believes the rules should be reexamined.</p>

Issue: Cash management—Affirmative confirmation of a loan

Regulatory Cite: None.

Summary of Issue: Under the Graduate PLUS program, the institution or the lender must collect the requested loan amount from a student prior to school certification or lender approval of each PLUS loan made to a graduate or professional student. The current procedures for Stafford Loan and Perkins Loan funds permit institutions to advance loan funds to a student's account under certain circumstances where the student may not have actively confirmed that he or she wanted those funds, provided that the school notifies the student that the loan may be declined. We are considering streamlining these procedures by extending the Graduate PLUS requirements to Stafford and Perkins loans to obtain prior confirmation that the borrower wants the loan proceeds in these circumstances.

Issue: Cash management—Excess cash tolerances

Regulatory Cite: §668.166(b)

Summary of Issue: The rules provide that a school may hold excess cash for up to seven days to make disbursements to eligible students. After this seven-day period, the funds must be returned to the Department. The amount of excess funds that may be held beyond three days is 1 percent or 3 percent of the school's prior year draw downs, depending on whether the funds were initially drawn down during a peak period of enrollment, which is defined as occurring when at least 25 percent of the school's students start classes within a given 30-day period. We believe the rules should be simplified.

In addition, we would like to amend the definition of excess cash to include previously disbursed Title IV funds that an institution has returned to its Federal account due to any adjustment, recovery or cancellation of those funds.

Issue: Treatment of FFEL and Direct Loan funds when a student withdraws before beginning class—make consistent with other programs

Regulatory Cite: §668.21, §682.604(d)(3) and (4), §685.303(b)(3)

Summary of Issue: Section 668.21 prescribes the general rule for the treatment of funds when a student withdraws before beginning class for all the Title IV programs except the FFEL and Direct Loan programs (not including FWS, which must be treated differently). The corresponding FFEL and Direct Loan rules are more complex and contain numerous cross references. We would like to simplify the rules and consolidate the FFEL and Direct Loan program rules with the provisions of §668.21 to achieve as much consistency as practical.

Issue: Eliminate the single disbursement provision for Perkins and FSEOG funds

Regulatory Cite: §674.16 and §676.16

Summary of Issue: Under current regulations, an institution may make a single disbursement of a Perkins Loan or FSEOG award if the annual award under either program is less than \$501. We believe the exception should be eliminated as it is no longer needed and unnecessarily complicates the Return of Title IV Funds calculation.

Issue: Technical Corrections

Regulatory Cite:

Summary of Issue: