

Date: March 5, 2024

To: U.S. Department of Education

From: Robyn Smith and Sophie Laing, Negotiators for Legal Assistance Organizations

Re: Issue Paper 2 – Cash Management

We propose adding language to the Department’s March 4-7 proposal that would allow students to request an alternative reasonable and affordable monthly payment calculation (similar to how they may do so for rehabilitation) for Pell Grant FSEOG overpayment, as follows:

§ 668.167 Returning Funds and Overpayments

(a) 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 to the institution 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.

(b) Overpayments timelines.

(1) For overpayments for which the student is responsible and that are not tied to nonattendance or return of title IV, HEA funds, institutions must promptly send a written notice to the student requesting repayment of the overpayment amount. Institutions have 30 calendar days from the date the notice is sent to—

(i) Recover the overpayment in full; or

(ii) Enter into a repayment arrangement with the student that is satisfactory to the institution.

(2) If the initial 30 calendar days have elapsed and the institution has not received the full overpayment or made satisfactory repayment arrangements, the institution has 15 calendar days to—

(i) Report the overpayment to NSLDS; and

(ii) Refer the overpayment to the Department.

(3) For FSA grant overpayments for which the institution is responsible, institutions have 45 calendar days from the date of discovery to—

(i) For FSEOG, restore to the institution’s FSEOG account an amount equal to the overpayment plus any administrative cost allowance claimed on the overpayment; and

(ii) For Federal Pell Grant and TEACH grant overpayments, make the appropriate downward adjustment to the student’s award in the COD system and either return the funds through G5 or disburse them to other eligible students.

(4) For interim disbursement overpayments for which the institution is responsible and that are not recovered by reducing subsequent disbursements to students for the award year, institutions have 45 calendar days to make restitution to the appropriate account.

(c) Liability for and recovery of Federal Pell Grant overpayments.

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

(2) The institution is liable for a Federal Pell Grant overpayment if the overpayment occurred because the institution failed to follow the procedures in this part or 34 CFR part 668. The institution must 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 \$50 and is not a remaining balance.

(4) Except as provided in paragraph (c)(3) of this section, if an institution makes a Federal Pell Grant overpayment for which it is not liable, it must 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 repay the overpayment, makes the student ineligible for further title IV, HEA program funds until final resolution of the Federal Pell Grant overpayment.

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

(6) Except as provided in paragraph (c)(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 repay the Federal Pell Grant overpayment, after the institution has taken the action required by paragraphs (c)(4) and (5) of this section, the institution must 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.

(7) When a Pell Grant overpayment has been referred to the Secretary under paragraph (c)(6) of this section, the Secretary must provide the student the opportunity to repay the amount in accordance with a reasonable and affordable monthly payment plan on the basis of the borrower's total financial circumstances.

(8) The Secretary considers the ~~monthly~~ student's reasonable and affordable payment amount to be an amount equal to 15 percent of the amount by which the student's Adjusted Gross Income (AGI) exceeds 150% percent of the poverty guideline amount applicable to the student's family size and State, divided by 12, except that if this amount is less than \$5, the student's monthly payment is \$5 ~~reasonable and affordable if it is consistent with the Direct Loan rehabilitation requirements under 34 C.F.R. 685.211(f)(1).~~

(9) The Secretary may calculate the payment amount based on information provided in the student's FAFSA or orally, electronically, or in writing by the student or the student's representative and provide the student with a payment plan using that amount, a prominent statement that the student may object orally or in writing to the payment amount, with the method and timeframe for raising such an objection. A student may confirm their information by giving written, electronic, or oral permission to disclose applicable tax information to the Secretary, or by providing alternative documentation of income and family size. If the student does not provide documentation requested by the Secretary to calculate or confirm the reasonable and affordable payment amount within a reasonable time deadline set by the Secretary that is not less than 30 days, the payment agreement provided is null and void.

(10) Within 15 business days of the Secretary's determination of the student's payment amount, the Secretary must provide the student with a written statement confirming the student's reasonable and affordable monthly payment amount calculated under paragraph (c)(7) of this section, the date on which the first payment is due, a statement that the payment amount is null and void if the student does not provide any documentation requested by the Secretary pursuant to paragraph (c)(9), and an explanation of any other terms and conditions applicable to the payments that must be made. The Secretary will not impose any conditions unrelated to the amount or timing of the payments.

(11) If the student objects to the monthly payment amount determined under paragraph (c)(7) of this section, the Secretary must recalculate the payment amount based solely on information provided on a form approved by the Secretary and, if requested, supporting documentation from the student and other sources, and must consider—

- (i) The student's, and if applicable, the spouse's current disposable income, including public assistance payments, and other income received by the student and the spouse, such as welfare benefits, Social Security benefits, Supplemental Security Income, and workers' compensation. Spousal income is not considered if the spouse does not contribute to the student's household income;
- (ii) Family size as defined in 34 C.F.R. § 682.215(a)(3); and
- (iii) Reasonable and necessary expenses, which include—
 - a. Food;
 - b. Housing;
 - c. Utilities;
 - d. Basic communication expenses;
 - e. Necessary medical and dental costs;
 - f. Necessary insurance costs;
 - g. Transportation costs;
 - h. Dependent care and other work-related expenses;
 - i. Legally required child and spousal support;
 - j. Other title IV and non-title IV student loan payments; and
 - k. Other expenses approved by the Secretary.
- (iv) The Secretary must provide the student with a new payment amount. Within 15 business days of the Secretary's determination of the student's new payment amount, the Secretary must provide the student with a written statement confirming the student's reasonable and affordable monthly payment amount.

(12) The student remains eligible to receive Title IV, HEA program assistance under 34 C.F.R. 668.32(g)(4) until-

- (i) The student does not respond or provide documentation satisfactory to the Secretary for 90 days to the Department's offer to enter into a reasonable and affordable repayment plan;
- (ii) The student fails to make any payment pursuant to the payment plan for a period of 120 or more days.

(13) A student may request that the monthly payment amount be recalculated due to a change in the student's total financial circumstances by submitting alternative documentation of the student's income or family size. In this case, the Secretary shall recalculate the monthly payment amount pursuant to paragraphs (c)(7) through (c)(11) of this section.

(d) *Recovery of funds from interim disbursements.*

(1) If an institution discovers, as a result of verification, that an applicant received under § 668.58(a)(2)(i)(B) more financial aid than the applicant was eligible to receive, the institution must eliminate the Federal Pell Grant or FSEOG overpayment by-

- (i) Adjusting subsequent disbursements in the award year in which the overpayment occurred; or
- (ii) Reimbursing the appropriate program account by—
 - (A) Requiring the applicant to return the overpayment to the institution if the institution cannot correct the overpayment under paragraph (d)(1) of this section; or
 - (B) Making restitution from its own funds, by the deadline specified in paragraph (b)(4) of this section.

(2) If an institution discovers, as a result of verification, that an applicant received under § 668.58(a)(2)(ii) more financial aid than the applicant was eligible to receive, the institution must eliminate the FWS overpayment by—

- (i) Adjusting the applicant's other financial aid; or
- (ii) Reimbursing the FWS program account by making restitution from its own funds if the institution cannot correct the overpayment under paragraph (d)(2)(i) of this section. The applicant must still be paid for all work performed under the institution's own payroll account.

(3) If an institution disbursed subsidized student financial assistance to an applicant under § 668.58(a)(3) and did not receive the valid SAR or valid ISIR reflecting corrections within the deadlines established under § 668.60, the institution must reimburse the appropriate program account by making restitution from its own funds. The applicant must still be paid for all work performed under the institution's own payroll account.

(e) *TEACH Grant overpayments.*

(1) Except as provided in paragraphs (e)(2) and (e)(3) of this section, a student is liable for any TEACH Grant overpayment made to them.

(2) The institution is liable for a TEACH Grant overpayment if the overpayment occurred because the institution failed to follow the procedures in this part or in 34 CFR part 668. The institution must restore an amount equal to the overpayment to its TEACH 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 TEACH Grant overpayment if the amount of the overpayment is less than ~~\$25~~ \$50 and is not a remaining balance.

(4) Except as provided in paragraph (e)(3) of this section, if an institution makes a TEACH Grant overpayment for which it is not liable, it must promptly send a written notice to the student requesting repayment of the overpayment amount. The notice must state that failure to make the requested repayment, or to make arrangements satisfactory to the holder of the overpayment debt to repay the overpayment, makes the student ineligible for further title IV, HEA program funds until final resolution of the TEACH Grant overpayment.

(5) If a student objects to the institution's TEACH Grant overpayment determination, the institution must consider any information provided by the student and determine whether the objection is warranted.

(6) Except as provided in paragraph (e)(3) of this section, if the student fails to repay a TEACH Grant overpayment or make arrangements satisfactory to the holder of the overpayment debt to repay the TEACH Grant overpayment, after the institution has taken the action required by paragraphs (e)(4) and (5) of this section, the institution must refer the overpayment to the Secretary for collection in accordance with procedures required by the Secretary. After referring the TEACH Grant overpayment to the Secretary under this section, the institution need make no further efforts to recover the overpayment.

(f) FSEOG overpayments.

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

(2) The institution is liable for an FSEOG overpayment if the overpayment occurred because the institution failed to follow the procedures in this part or 34 CFR parts 668, 674, or 676. The institution must restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount 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 an FSEOG overpayment, nor is the institution required to refer an FSEOG overpayment to the Secretary, if the overpayment—

- (i) Is less than ~~\$25~~ \$50; and
- (ii) Is neither a remaining balance nor a result of the application of the overaward threshold in § 673.5(d).

(4) Except as provided in paragraph (f)(3) of this section, if an institution makes an FSEOG overpayment for which it is not liable, it must 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, HEA program funds until final resolution of the overpayment.

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

(6) 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 repay the FSEOG overpayment after the institution has taken the action required by paragraph (f)(4) of this section, the institution must 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.

(7) When a FSEOG overpayment has been referred to the Secretary under paragraph (f)(6) of this section, the Secretary must provide the student the opportunity to repay the amount in accordance with a reasonable and affordable monthly payment plan on the basis of the borrower's total financial circumstances.

(8) The Secretary considers the ~~monthly~~ student's reasonable and affordable payment amount to be an amount equal to 15 percent of the amount by which the student's Adjusted Gross Income (AGI) exceeds 150% percent of the poverty guideline amount applicable to the student's family size and State, divided by 12, except that if this amount is less than \$5, the student's monthly payment is \$5 ~~reasonable and affordable if it is consistent with the Direct Loan rehabilitation requirements under 34 C.F.R. 685.211(f)(1).~~

(9) The Secretary may calculate the payment amount based on information provided in the student's FAFSA or orally, electronically, or in writing by the student or the student's representative and provide the student with a payment plan using that amount, a prominent statement that the student may object orally or in writing to the payment amount, with the method and timeframe for raising such an objection. A student may confirm their information by giving written, electronic, or oral permission to disclose applicable tax information to the Secretary, or by providing alternative documentation of income and family size. If the student does not provide documentation requested by the Secretary to calculate or confirm the reasonable and affordable payment amount within a reasonable time deadline set by the Secretary that is not less than 30 days, the payment agreement provided is null and void.

(10) Within 15 business days of the Secretary's determination of the student's payment amount, the Secretary must provide the student with a written statement confirming the student's

reasonable and affordable monthly payment amount calculated under paragraph (f)(7~~8~~) of this section, the date on which the first payment is due, a statement that the payment amount is null and void if the student does not provide any documentation requested by the Secretary pursuant to paragraph (f)(9), and an explanation of any other terms and conditions applicable to the payments that must be made. The Secretary will not impose any conditions unrelated to the amount or timing of the payments.

(14) If the student objects to the monthly payment amount determined under paragraph (f)(7) of this section, the Secretary must recalculate the payment amount based solely on information provided on a form approved by the Secretary and, if requested, supporting documentation from the student and other sources, and must consider—

(v) The student's, and if applicable, the spouse's current disposable income, including public assistance payments, and other income received by the student and the spouse, such as welfare benefits, Social Security benefits, Supplemental Security Income, and workers' compensation. Spousal income is not considered if the spouse does not contribute to the student's household income;

(vi) Family size as defined in 34 C.F.R. § 682.215(a)(3); and

(vii) Reasonable and necessary expenses, which include—

- a. Food;
- b. Housing;
- c. Utilities;
- d. Basic communication expenses;
- e. Necessary medical and dental costs;
- f. Necessary insurance costs;
- g. Transportation costs;
- h. Dependent care and other work-related expenses;
- i. Legally required child and spousal support;
- j. Other title IV and non-title IV student loan payments; and
- k. Other expenses approved by the Secretary.

(viii) The Secretary must provide the student with a new payment amount. Within 15 business days of the Secretary's determination of the student's new payment amount, the Secretary must provide the student with a written statement confirming the student's reasonable and affordable monthly payment amount.

(15) The student remains eligible to receive Title IV, HEA program assistance under 34 C.F.R. 668.32(g)(4) until-

- (iii) The student does not respond or provide documentation satisfactory to the Secretary for 90 days to the Department’s offer to enter into a reasonable and affordable repayment plan;
 - (iv) The student fails to make any payment pursuant to the payment plan for a period of 120 or more days.
- (16) A student may request that the monthly payment amount be recalculated due to a change in the student’s total financial circumstances by submitting alternative documentation of the student’s income or family size. In this case, the Secretary shall recalculate the monthly payment amount pursuant to paragraphs (f)(7) through (f)(11) of this section.