



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

Issue Paper 4: **Withdrawals and Return of Title IV Funds**
Session 3: March 4-7, 2024

Issue: Withdrawals and return of title IV funds
Statutory cites: § 484B of the Higher Education Act of 1965, as amended (HEA)
Regulatory cites: 34 CFR 668.21 and 668.22

Proposed Regulations Redline:

§ 668.21(a)(2)(ii)

(a) If a student does not begin attendance in a payment period or period of enrollment—

(2) For FFEL and Direct Loan funds—

(ii) For remaining amounts of FFEL or Direct Loan funds disbursed directly to the student for that payment period or period of enrollment, including funds that are disbursed directly to the student by the lender for a study-abroad program in accordance with § 682.207(b)(1)(v)(C)(1) or for a student enrolled in a foreign school in accordance with § 682.207(b)(1)(v)(D), the institution is not responsible for returning the funds, but must immediately notify the lender or the Secretary, as appropriate, when it becomes aware that the student will not or has not begun attendance so that the lender or Secretary will ~~issue a final demand letter to the borrower in accordance with 34 CFR 682.412 or 34 CFR 685.211, as appropriate initiate borrower repayment under the terms of their promissory note;~~ and

§ 668.22(a)(2)(ii)(A)(2)

(a) ***

(2) ***

(ii)(A) Notwithstanding paragraph (a)(2)(i) of this section—

(1) A student who completes all the requirements for graduation from his or her program before completing the days or hours in the period that he or she was scheduled to complete is not considered to have withdrawn;

Commented [A1]: Note: Changes made from session 2 are indicated with yellow highlighting.

Commented [A2R1]: Changes made in real time during session 3 are indicated with blue highlighting.

(2) In a program offered in modules, a student is not considered to have withdrawn if the student successfully completes—~~coursework equal to or greater than the coursework required for the institution's definition of a "half-time student" under § 668.2 for the payment period;~~

~~(i) One module that includes 49 percent or more of the number of days in the payment period, excluding scheduled breaks of five or more consecutive days and all days between modules;~~

~~(ii) A combination of modules that when combined contain 49 percent or more of the number of days in the payment period, excluding scheduled breaks of five or more consecutive days and all days between modules; or~~

~~(iii) Coursework equal to or greater than the coursework required for the institution's definition of a half-time student under § 668.2 for the payment period;~~

(i) One module that includes 49 percent or more of the number of days in the payment period, excluding scheduled breaks of five or more consecutive days and all days between modules;

(ii) A combination of modules that when combined contain 49 percent or more of the number of days in the payment period, excluding scheduled breaks of five or more consecutive days and all days between modules; or

(iii) Coursework equal to or greater than the coursework required for the institution's definition of a half-time student under § 668.2 for the payment period;

§ 668.22(a)(2)(ii)(A)(6) and (7)

(a) ***

(2) ***

(ii)(A)

~~(6) A student is not considered to have withdrawn if—~~

~~(i) The institution's records treat a student as having never attended courses for that payment period or period of enrollment;~~

~~(ii) The institution returns all the title IV aid disbursed to the student for that payment period or period of enrollment;~~

~~(iii) The institution refunds all institutional charges to the student for the payment period or period of enrollment; and~~

~~(iv) The institution writes off or cancels any current year balance owed by the student to the institution due to the institution's returning of title IV funds to the Department.~~

~~(7) A confined or incarcerated individual as defined in 34 CFR 600.2 is not considered to have withdrawn anytime the requirements of an approved leave of absence are not met if any of the following events occur:~~

~~(i) A complete correctional facility wide lockdown.~~

~~(ii) Involuntary transfer to a different correctional facility.~~

~~(iii) Other events as determined by the Secretary.~~

Directed Question:

The Department reevaluated the proposal under § 668.22(a)(2)(ii)(A)(7) and we do not believe we have the authority to waive R2T4 requirements for a targeted group of students. Also, we heard concerns from several negotiators that confined or incarcerated individuals would reach their Pell lifetime eligibility used (LEU) faster. Finally, we heard that some postsecondary institutions may have already established policies that account for involuntary breaks in prison education programs (PEP), such as waiving all charges related to the affected payment period. This rule, while well intentioned, may take away, remove, or harm existing policies that are beneficial to confined or incarcerated individuals.

Instead, we would propose a new condition under the leave of absence provision (§ 668.22(d)) targeted at confined or incarcerated individuals that take a break from their PEP due to events at their correctional facility. In term-based settings, the proposal would allow a confined or incarcerated individual to not have to come back from the leave of absence where the student left off, and instead, the individual could come back at a different point in their PEP (similar to non-term treatment). The postsecondary institution would still have to adhere to all other requirements of a leave of absence as we propose they remain unchanged. The new proposed text is:

§ 668.22(d)

(d) Approved leave of absence.

(1) For purposes of this section (and, for a title IV, HEA program loan borrower, for purposes of terminating the student's in-school status), an institution does not have to treat a leave of absence as a withdrawal if it is an approved leave of absence. A leave of absence is an approved leave of absence if—

(vii) Except for a clock hour or non-term credit hour program, ~~or~~ a subscription-based program, **or an eligible prison education program**, upon the student's return from the leave of absence, the student is permitted to complete the coursework he or she began prior to the leave of absence; and

§ 668.22(b)(2)

(b) *Withdrawal date for a student who withdraws from an institution that is required to take attendance.*

(1) For purposes of this section, for a student who ceases attendance at an institution that is required to take attendance, including a student who does not return from an approved leave of absence, as defined in paragraph (d) of this section, or a student who takes a leave of absence that does not meet the requirements of paragraph (d) of this section, the student's withdrawal date is the last date of academic attendance as determined by the institution from its attendance records.

(2) An institution must, **within 14 days of a student's last date of attendance**, document a student's withdrawal date determined in accordance with paragraph (b)(1) of this section and maintain the documentation as of the date of the institution's determination that the student withdrew, ~~as defined in paragraph (1)(3) of this section.~~

§ 668.22(b)(3)(i)(D)

(b) *Withdrawal date for a student who withdraws from an institution that is required to take attendance.*

(3)(i) An institution is required to take attendance if—

(A) An outside entity (such as the institution's accrediting agency or a State agency) has a requirement that the institution take attendance;

(B) The institution itself has a requirement that its instructors take attendance; ~~or~~

(C) The institution or an outside entity has a requirement that can only be met by taking attendance or a comparable process, including, but not limited to, requiring that students in a program demonstrate attendance in the classes of that program, or a portion of that program; ~~or~~

~~(D) The institution offers a program course entirely through distance education as defined in 34 CFR 600.2.~~

~~(ii) An institution is required to take attendance for each distance education course offered entirely through distance education, as defined in 34 CFR 600.2, except for dissertation research courses.~~

~~(iii)~~ (iii) If, in accordance with paragraph (b)(3)(i) of this section, an institution is required to take attendance or requires that attendance be taken for only some students, the institution must use its attendance records to determine a withdrawal date in accordance with paragraph (b)(1) of this section for those students.

~~(iii)~~-(iv)

(A) If, in accordance with paragraph (b)(3)(i) of this section, an institution is required to take attendance, or requires that attendance be taken, for a limited period, the institution must use its attendance records to determine a withdrawal date in accordance with paragraph (b)(3)(i) of this section for that limited period.

(B) A student in attendance the last time attendance is required to be taken during the limited period identified in paragraph (b)(3)~~(iii)~~ (iv)(A) of this section who subsequently stops attending during the payment period will be treated as a student for whom the institution was not required to take attendance.

~~(iv)~~ (v) If an institution is required to take attendance or requires that attendance be taken, on only one specified day to meet a census reporting requirement, the institution is not considered to take attendance.

§ 668.22(f)(1)(ii)(A)

(f) *Percentage of payment period or period of enrollment completed.*

(1) For purposes of paragraph (e)(2)(i) of this section, the percentage of the payment period or period of enrollment completed is determined—

(ii)(A) In the case of a program that is measured in clock hours, by dividing the total number of clock hours in the payment period or period of enrollment into the number of clock hours scheduled to be completed ~~since the student began attendance in the payment period or period of enrollment~~ as of the student's withdrawal date.

§ 668.22(l)(9)

(l) *Definitions.* For purposes of this section—

(9) A student in a program offered in modules is scheduled to complete the days in a module ~~if the student's coursework in that module was used to determine the amount of the student's eligibility for title IV, HEA funds for the payment period or period of enrollment.~~ only when a student begins attendance in the module.

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