



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

Issue Paper 1: Cash Management
Session 3: March 4-7, 2024

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

Issue: Cash Management

Statutory cites: § 498(a) of the Higher Education Act of 1965, as amended (HEA)

Regulatory cites: 34 CFR 668.162, 668.164, 668.165, 668.167, and 668.168

Proposed Regulation Redline:

§ 668.32

A student is eligible to receive Title IV, HEA program assistance if the student either meets all of the requirements in paragraphs (a) through (m) of this section or meets the requirement in paragraph (n) of this section as follows:

(g)(4) Is not liable for a grant or Federal Perkins loan overpayment for which the student has not made satisfactory repayment arrangements with the school or the Department. A student receives a grant or Federal Perkins loan overpayment if the student received grant or Federal Perkins loan payments that exceeded the amount he or she was eligible to receive; or if the student withdraws, that exceeded the amount he or she was entitled to receive for non-institutional charges.

§ 668.162(c)- Reimbursement payment method

(c)(5) An institution that loses eligibility while on the reimbursement payment method must submit its final request for funds within 180 days from the date of loss of eligibility. Institutions must comply with any additional reporting requirements or procedures specified by the Secretary in relation to the submission of their final request for funds after the loss of eligibility. Failure to submit the final request for funds within the specified 180-day timeframe may result in forfeiture of the requested funds.

§ 668.162(d)(3) - Heightened cash monitoring payment method

(d) **Heightened cash monitoring payment method.** (1) Under the heightened cash monitoring payment method, an institution must credit a student's ledger account for the amount of title IV, HEA program funds that the student or parent is eligible to receive, and pay the amount of any credit balance due under § 668.164(h), before the institution—

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

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

~~(3)~~ (2) An institution that loses eligibility while on a heightened cash monitoring payment method must submit its final request for funds within 180 days from the date of loss of eligibility. Institutions must comply with any additional reporting requirements or procedures specified by the Secretary in relation to the submission of their final request for funds after the loss of eligibility. Failure to submit the final request for funds within the specified 180-day timeframe may result in forfeiture of the requested funds.

§ 668.164(c)(1), and (2) and ~~(3)~~ - Crediting a student's ledger account

(c) Crediting a student's ledger account.

(1) An institution may credit a student's ledger account with title IV, HEA program funds to pay for allowable charges associated with the current payment period. Allowable charges are

(i) The amount of tuition, fees, and institutionally provided food and housing ~~room and board~~ assessed the student for the payment period or, as provided in paragraph (c)(~~5~~) of this section, 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;

(A) An institution may only include costs of books and supplies as a part of tuition and fees if the institution demonstrates there is a compelling health or safety reason to do so. **the student is a confined or incarcerated individual as defined under 34 CFR 600.2.**

(B) Any title IV, HEA program funds allocated for cash value meal plans for recipients of title IV, HEA program funds must be fully utilized for the benefit

of the respective students. No institution may retain unused **cash value** meal plan funds that were paid for with title IV, HEA program funds, and any remaining balance at the end of the payment period must be returned to the student as soon as possible but no later than 14 days after the end of the payment period; A school is not required to pay a remaining balance that is less than \$1.00. With a student's written authorization under § 668.165(b)(1)(ii)(B), an institution may—

(1) Retain unused cash value meal plan funds through the earlier of the end of the academic year or 14 days after the end of the payment period in which the student ceases enrollment at the institution; or

(2) Apply unused **cash value** meal plan funds to unpaid allowable charges; and

(ii) The amount 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), provided that —

(A) For each payment period, the institution individually discloses the cost of such books, supplies, and other educationally related goods and services to the student prior to any authorization being signed and the student or parent chooses to purchase those materials provided by the institution; and

(B) The institution makes those books or supplies available to students at or below competitive market rates; **and**

~~(2) An institution may include the costs of books and supplies as part of tuition and fees under paragraph (c)(1)(i) of this section if —~~

~~(i) The institution documents on a current basis that the books or supplies, including digital or electronic materials, are not available elsewhere or accessible by students enrolled in that program from sources other than those provided or authorized by the institution; or~~

~~(ii) The institution demonstrates there is a compelling health or safety reason—~~

~~(A) Has an arrangement with a book publisher or other entity that enables it to make those books or supplies available to students below market competitive rates;~~

~~(B) Provides a way for a student to obtain those books and supplies by the seventh day of a payment period; and~~

~~(C) Has a policy under which the student may opt out of the way the institution provides for the student to obtain books and supplies under paragraph (c)(2). A student who opts out under this paragraph (c)(2) is considered to also opt out~~

~~under paragraph (m)(3) of this section;~~

~~(ii) The institution documents on a current basis that the books or supplies, including digital or electronic materials, are not available elsewhere or accessible by students enrolled in that program from sources other than those provided or authorized by the institution; or~~

~~(iii) The institution demonstrated there is a compelling health of safety reason.~~

(32)

(i) An institution may include in one or more payment periods for the current year, prior year charges of not more than ~~\$200~~ \$300 for—

(A) Tuition, fees, and institutionally provided ~~room and board~~ food and housing, as provided under paragraph (c)(1)(i) of this section, without obtaining the student's or parent's authorization; and

(B) Educationally related goods and services provided by the institution, as described in paragraph (c)(1)(ii) of this section if the institution obtains the student's or parent's authorization under § 668.165(b).

(43) An institution may include in the current payment period unpaid allowable charges from any previous payment period in the current award year or current loan period for which the student was eligible for title IV, HEA program funds.

(54) 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 substantially 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 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.

§ 668.164(d) – Direct Payments

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

(+) 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.~~

§ 668.164(e) – Tier one arrangement

(2) Under a T1 arrangement, the institution must —

(v) Ensure that –

(A) The financial account or access device is not marketed or portrayed as, or converted into, a credit card;

(B) No credit is extended or associated with the financial account, and no fee is charged to the student for any transaction or withdrawal that exceeds the balance in the financial account or on the access device, except that a transaction or withdrawal that exceeds the balance may be permitted only for an inadvertently authorized overdraft, so long as no fee is charged to the student for such inadvertently authorized overdraft; ~~and~~

(C) The institution, third-party servicer, or third-party servicer's associated financial institution provides a student account holder convenient access to title IV, HEA program funds in part and in full up to the account balance via domestic withdrawals and transfers without charge, during the student's entire period of enrollment following the date that such title IV, HEA program funds are deposited or transferred to the financial account;

(D) The institution, third-party servicer, or third-party servicer's associated financial institution does not discriminate between title IV, HEA program funds and other funds when assessing any fees, charges, or other costs associated with the financial account;

(E) No fee is charged to the student for any attempted transaction or withdrawal where the institution, third-party servicer, or third-party servicer's associated financial institution rejects or denies such a transaction due to insufficient funds in the financial account; and

(F) No ~~“sunset” fee~~ fee is automatically charged to a the student at any point in the lifecycle of a financial account or access device when the student graduates, separates from the institution, or reaches a specified age, including, for

~~example, any fee automatically imposed when a student graduates or separates, or reaches a specified age.~~
(G) No fee is charged to a student for inactivity on the account.

(ix) Ensure that the terms of the accounts offered pursuant to a T1 arrangement are not inconsistent with the best financial interests of the students opening them. The Secretary considers this requirement to be met if—

(A) The institution documents that it conducts reasonable due diligence reviews at least every two years to ascertain whether the fees imposed under the T1 arrangement are, considered as a whole, consistent with or below prevailing market rates; ~~and~~

(B) All contracts for the marketing or offering of accounts pursuant to T1 arrangements to the institution's students make provision for termination of the arrangement by the institution based on complaints received from students or a determination by the institution under paragraph (e)(2)(ix)(A) of this section that the fees assessed under the T1 arrangement are not consistent with or are higher than prevailing market rates; ~~and~~

(C) The Secretary shall presume that the terms of accounts are not inconsistent with the best financial interests of the students opening them if fees, other than those prohibited in paragraphs (e)(2)(v)(E), ~~and~~ (F), ~~and~~ (G), imposed under the T1 arrangement are substantially similar to the fees permitted under the Consumer Financial Protection Bureau's model "Safe Student Account."

§ 668.164(f) – Tier two arrangement

(2) Under a T2 arrangement, an institution must —

(viii) Ensure that the terms of the accounts offered pursuant to a T2 arrangement are not inconsistent with the best financial interests of the students opening them. The Secretary considers this requirement to be met if—

(A) The institution documents that it conducts reasonable due diligence reviews at least every two years to ascertain whether the fees imposed under the T2 arrangement are, considered as a whole, consistent with or below prevailing market rates; ~~and~~

(B) All contracts for the marketing or offering of accounts pursuant to T2 arrangements to the institution's students make provision for termination of the arrangement by the institution based on complaints received from students or a

determination by the institution under paragraph (f)(4)(viii)(A) of this section that the fees assessed under the T2 arrangement are not consistent with or are above prevailing market rates; and

(C) The Secretary shall presume that the terms of accounts are not inconsistent with the best financial interests of the students opening them if the fees imposed under the T2 arrangement are substantially similar to the fees permitted under the Consumer Financial Protection Bureau's model "Safe Student Account."

(xiii) Ensure that the institution, third-party servicer, or third-party servicer's associated financial institution does not discriminate between title IV, HEA program funds and other funds when assessing any fees, charges, or other costs associated with the financial account.

§ 668.164(h)(1) - Title IV, HEA credit balances

(h) Title IV, HEA credit balances.

A title IV, HEA credit balance occurs whenever the amount of title IV, HEA program funds **and in combination with any other Federal or non-Federal funds, including but not limited to scholarships, grants, or private loans**, credited to a student's ledger account for a payment period exceeds the amount assessed the student for allowable charges associated with that payment period as provided under paragraph (c) of this section.

§ 668.164 (j)(4)(i) and (ii) - Late disbursements

(j) Late disbursements –

(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 (j)(1) of this section. **However, in the event of an audit**

or program review conducted by the Department, the Secretary may, at their discretion, direct institutions to make late disbursements after the applicable 180-day period.

~~(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.~~

Note to the committee - We propose to move the text from 668.164(l) to the newly proposed 668.167(a)

§668.164(l) and (m) – Returning Funds and Provision for books and supplies

~~(l) 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.~~

~~(m) 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—

(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 (h) 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 (m). A student who opts out under this paragraph is considered to also opt out under paragraph (c)(2)(i)(C) of this section;~~

~~(4) If a student uses the method 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)(1)(ii) of this section and § 668.165(b) for this purpose.~~

§668.165(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)(1)(ii) or (c)(3)(i)(B) that are included in that authorization; and

(ii) Unless the Secretary provides funds to the institution under the reimbursement payment method or the heightened cash monitoring payment method described in § 668.162(c) or (d), respectively, —

(A) 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 as a credit balance under § 668.164(h)–;

(B) Retain unused cash value meal plan funds; or

(C) Apply unused cash value meal plan funds to unpaid allowable charges on the student's account.

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

(i) Must clearly describe what the authorization allows the institution to do and how it will be implemented;

(ii) Must provide these authorizations conspicuously and separate from other documents a student or parent is required to sign;

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

~~(#)~~ (iii) May not require or coerce the student or parent to provide that authorization;

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

Note to the committee -

1. *We propose to rename § 668.167 from "Severability" to "Returning Funds and Overpayments".*
2. *We propose to move existing severability language from current § 668.167 to a newly established § 668.168.*
3. *As noted earlier, we propose to move the text from § 668.164(l) to the newly proposed § 668.167(a).*
4. *We propose to move the text in § 690.79 (Liability for and recovery of Federal Pell Grant overpayments) to paragraph § 668.167(c).*
5. *We propose to move the text in § 668.61 (Recovery of funds from interim disbursements) to paragraph § 668.16(d).*
6. *We propose to move the text from § 686.45 (Liability for a recovery of TEACH Grant overpayments) to § 668.167(e) and to rename the section "TEACH Grant Overpayments".*
7. *We propose to move the text from § 673.5(f) (Liability for and recovery of Federal Perkins loans and FSEOG overpayments) to § 668.167(f) and to rename the section "FSEOG Overpayments".*
8. *We propose to move the text from § 668.35(e) to § 668.167(h) and to rename the section "Student overpayment debts."*

§ 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 non-attendance 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 payment amount to be reasonable and affordable if it is consistent with the Direct Loan rehabilitation requirements under 34 CFR 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 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 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) The student remains eligible to receive Title IV, HEA program assistance under 34 CFR 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; or

(ii) The student fails to make any payment pursuant to the repayment plan for a period of 120 or more days.

(12) 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 satisfactory to the Secretary. In this case, the Secretary shall recalculate the monthly payment amount pursuant to paragraph (c)(7) 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 shall 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 payment amount to be reasonable and affordable if it is consistent with the Direct Loan rehabilitation requirements under 34 CFR 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 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 the Secretary with any 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 provides the student with a written statement confirming the student's reasonable and affordable monthly payment amount calculated under paragraph (f)(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 (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.

(11) The student remains eligible to receive Title IV, HEA program assistance under 34 CFR 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; or

(ii) The student fails to make any payment pursuant to the repayment plan for a period of 120 or more days.

(12) 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 satisfactory to the Secretary. In this case, the Secretary shall recalculate the monthly payment amount pursuant to paragraph (f)(7) of this section.

(g) *Direct Loan overpayments.*

~~(4)~~ A student is not liable for, and the institution is not required to attempt recovery of, a Direct Loan overpayment if the amount is less than \$100 and is not a remaining balance. Federal student loan servicers and lenders must write-off totals for borrowers (principal + interest) of \$100 or less after 30 days.

(h) *Student overpayment debts.*

(1) Except as provided in 34 CFR 668.22(h), a student who receives an overpayment under a title IV, HEA grant program may nevertheless be eligible to receive title IV, HEA program assistance if—

(i) The student pays the overpayment in full;

(ii) The student makes arrangements satisfactory to the holder of the overpayment debt to pay the overpayment;

(iii) The overpayment amount is less than ~~\$25~~ \$50 and is neither a remaining balance nor a result of the application of the overaward threshold in 34 CFR 673.5(d); or

(iv) The overpayment is an amount that a student is not required to return under § 668.22(h)(3)(ii)(B).

Note to the committee – as noted earlier we propose to move existing severability language from current §668.167 to a newly established §668.168.

§ 668.168 Severability

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the section or the application of its provisions to any person, act, or practice shall not be affected thereby.