

No Tentative Agreement

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, a spouse's children and grandchildren, and family members as a result of remarriage.

Updated Information Since 3/6-8 meetings:

In §600.31(e), the draft language, "of the legal entity covered by the institution's Program Participation Agreement" was replaced with "of all or part of an owner's undivided interest in an institution, the institution's parent corporation, or other legal entity that has signed the institution's Program Participation Agreement" to:

- (1) Clarify what entity is covered by the section (institution, parent corporation, or other entity that signed the PPA). The school that signs the PPA might be a separate corporation or it might be a sole proprietorship or partnership (therefore, it would be inaccurate to use just the term "corporation"). The exception could also be used if transfer involved a parent corporation that owned a subsidiary corporation of which the institution is a part.
- (2) Clarify that an owner can transfer all or a part of his or her interest in the institution to trigger the change. What the owner cannot do is try to break up the institution by transferring different pieces of it to family members. An owner may transfer any or all of the stock in a corporation of which the institution is a part to the owner's other family members, but could not use the exemption to

transfer pieces of the institution to other family members by taking the assets out of one corporation and putting them into another corporation.

Tentative Agreement: No

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, 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 all or part of an owner's undivided interest in an institution, the institution's parent corporation, or other legal entity that has signed 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 and retained the ownership interest for at least two years prior to the transfer.

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§ 668.174 Past performance.

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(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.~~

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Regulatory Language for Notice of Proposed Rulemaking:

PART 600 – INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 is revised to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

2. Section 600.21 is amended by revising paragraph (f) to read as follows:

§600.21 Updating application information.

* * * * *

(f) Definition. A family member includes a person's--

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

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

- (3) Child's spouse; and
- (4) Sibling's spouse.

3. Section 600.31 is amended by revising paragraph (e) to read as follows:

§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 all or part of an owner's undivided interest in an institution, the institution's parent corporation, or other legal entity that has signed the institution's Program Participation Agreement--

(1) From an owner to a "family member" of that owner as defined in §600.21(f); or

(2) Upon the retirement or death of the owner, to 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 and retained the ownership interest for at least two years prior to the transfer.

PART 668 - STUDENT ASSISTANCE GENERAL PROVISIONS

4. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1091, 1091B, 1092, 1094, 1099C, and 1099c-1, unless otherwise noted.

5. Section 668.174 is amended by revising paragraph (c)(4) to read as follows:

§668.174 Past performance.

* * * * *

(c) * * *

(4) "Family member" is defined in §600.21(f).

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

Quick Fix: No

Origin: Fed Up #35

Issue: Late Disbursements

Regulatory Cite: §668.164(g)

Summary of Change: This section has been restructured to read more easily. The substantive changes from current regulations to this section would:

- (1) Eliminate the requirement that, for Pell Grant purposes, the school must have received a 'valid' SAR or ISIR before the student withdrew [§668.164(g) (1)].
- (2) Change the requirement that in order to make a late disbursement the school must have received a SAR or ISIR with an official EFC while the student was still eligible, to that the Secretary must have processed a SAR or ISIR with an official EFC while the student was still eligible [§668.164(g) (2) (i)].
- (3) Exclude a late disbursement of a PLUS loan from the above SAR/ISIR processing requirement [§668.164(g) (2) (i)].
- (4) Clarify the current requirement that an institution must make any required post-withdrawal disbursement to a student who has withdrawn and is subject to the provisions of §668.22 [§668.164(g) (3) (i)].
- (5) Provide that an institution must offer a late disbursement to a student who had completed a payment or loan period [§668.164(g) (3) (ii)].
- (6) Provide an additional 30 days (total of 120 days) for the institution to make a late disbursement [§668.164(g) (4) (i)].
- (7) Add PLUS loans to the prohibition of making a second or subsequent late disbursement of a FFEL or Direct

Loan unless the student completed the period for which the loan was intended [§668.164(g)(4)(ii)].

- (8) Provide that a school may make a late disbursement to a first-year, first-time borrower if the school is exempt from the delayed disbursement requirements [§668.164(g)(4)(iii)].

Updated Information Since 3/6-8 Meetings:

- (1) This section has been redrafted to read more easily. Because a marked-up version would be difficult to follow, a clean version of the draft language is provided.
- (2) Makes clear that a SAR or ISIR is not required for a late disbursement of a PLUS loan.
- (3) Changes the requirement that in order to make a late disbursement the school must have received a SAR or ISIR with an official EFC while the student was still eligible, to that the Secretary must have processed a SAR or ISIR with an official EFC while the student was still eligible.
- (4) For a late disbursement to a student who completed a payment or enrollment period, clarifies that the school may credit the student's account to pay for allowable costs but must offer any remaining funds to the student.
- (5) Provides that a late disbursement must be made within 120 days instead of 90 days.
- (6) Provides that a school may make a late disbursement to a first-year, first-time borrower if the school is exempt from the 30-day delayed disbursement requirements.

Tentative Agreement: No

Change:

§668.164 Disbursing funds.

* * * * *

(g) Late disbursements. (1) Ineligible student. For purposes of this paragraph, an otherwise eligible student becomes ineligible to receive title IV, HEA program funds on the date that--

(i) For a loan under the FFEL and Direct Loan programs, the student is no longer enrolled at the institution as at least a half-time student for the loan period; or

(ii) For an award under the Federal Pell Grant, FSEOG, and Federal Perkins Loan programs, the student is no longer enrolled at the institution for the award year.

(2) Conditions for a late disbursement. Except as limited under paragraph (g) (4) of this section, a student who becomes ineligible (or the student's parent) may receive a late disbursement if before the date the student became ineligible--

(i) Except in the case of a PLUS loan, the Secretary processed a SAR or ISIR with an official expected family contribution; and

(ii) (A) For a loan under the FFEL or Direct Loan programs, the institution certified or originated the loan; or

(B) For an award under the Federal Perkins Loan or FSEOG programs, the institution made that award to the student.

(3) Making a late disbursement. Provided that the conditions described in paragraph (g) (2) of this section are satisfied-

(i) If the student withdrew from the institution during a payment period or period of enrollment, the institution must make any post-withdrawal disbursement required under §668.22(a) (3) in accordance with the provisions of §668.22(a) (4);

(ii) If the student successfully completed the payment period or period of enrollment, the institution must provide the student (or parent) the opportunity to receive the amount of title IV HEA funds that the student (or parent) was eligible to receive while the student was enrolled at the institution. For a late disbursement in this circumstance, the institution may credit the student's account to pay for current and allowable charges as described in paragraph (d) of this section, but must offer any remaining amount to the student or parent;
or

(iii) If the student did not withdraw but ceased to be enrolled as at least a half-time student, the institution

may make the late disbursement of a loan under the FFEL or Direct Loan programs to pay for educational costs that the institution determines the student incurred for the period in which the student was eligible.

(4) Limitations. (i) An institution may not make a late disbursement later than 120 days after the date of the institution's determination that the student withdrew, as provided under §668.22, or, for a student who did not withdraw, 120 days after the date the student otherwise became ineligible;

(ii) An institution may not make a second or subsequent late disbursement of a loan under the FFEL or Direct Loan program unless the student successfully completed the period of enrollment for which the loan was intended; and

(iii) An institution may not make a late disbursement of a loan under the FFEL or Direct Loan program if the student was a first-year, first-time borrower unless the student completed the first 30 days of his or her program of study. This limitation does not apply if the institution is exempt from the 30-day delayed disbursement requirements under §682.604(c) (5) (i) - (iii) or §685.303(b) (4) (i) (A) - (C).

Regulatory Language Format for Notice of Proposed Rulemaking

PART 668 - STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1091, 1091B, 1092, 1094, 1099C, and 1099c-1, unless otherwise noted.

2. Section 668.164(g) is revised to read as follows:
§668.164 Disbursing funds.

* * * * *

(g) Late disbursements. (1) Ineligible student. For purposes of this paragraph, an otherwise eligible student becomes ineligible to receive title IV, HEA program funds on the date that--

(i) For a loan under the FFEL and Direct Loan programs, the student is no longer enrolled at the institution as at least a half-time student for the loan period; or

(ii) For an award under the Federal Pell Grant, FSEOG, and Federal Perkins Loan programs, the student is no longer enrolled at the institution for the award year.

(2) Conditions for a late disbursement. Except as limited under paragraph (g)(4) of this section, a student who becomes ineligible (or the student's parent) may

receive a late disbursement if before the date the student became ineligible--

(i) Except in the case of a PLUS loan, the Secretary processed a SAR or ISIR with an official expected family contribution; and

(ii) (A) For a loan under the FFEL or Direct Loan programs, the institution certified or originated the loan; or

(B) For an award under the Federal Perkins Loan or FSEOG programs, the institution made that award to the student.

(3) Making a late disbursement. Provided that the conditions described in paragraph (g) (2) of this section are satisfied--

(i) If the student withdrew from the institution during a payment period or period of enrollment, the institution must make any post-withdrawal disbursement required under §668.22(a) (3) in accordance with the provisions of §668.22(a) (4);

(ii) If the student successfully completed the payment period or period of enrollment, the institution must provide the student (or parent) the opportunity to receive the amount of title IV, HEA funds that the student (or parent) was eligible to receive while the student was

enrolled at the institution. For a late disbursement in this circumstance, the institution may credit the student's account to pay for current and allowable charges as described in paragraph (d) of this section, but must offer any remaining amount to the student or parent; or

(iii) If the student did not withdraw but ceased to be enrolled as at least a half-time student, the institution may make the late disbursement of a loan under the FFEL or Direct Loan programs to pay for educational costs that the institution determines the student incurred for the period in which the student was eligible.

(4) Limitations. (i) An institution may not make a late disbursement later than 120 days after the date of the institution's determination that the student withdrew, as provided under §668.22, or, for a student who did not withdraw, 120 days after the date the student otherwise became ineligible;

(ii) An institution may not make a second or subsequent late disbursement of a loan under the FFEL or Direct Loan program unless the student successfully completed the period of enrollment for which the loan was intended; and

(iii) An institution may not make a late disbursement of a loan under the FFEL or Direct Loan program if the

student was a first-year, first-time borrower unless the student completed the first 30 days of his or her program of study. This limitation does not apply if the institution is exempt from the 30-day delayed disbursement requirements under §682.604(c)(5)(i) through (iii) or §685.303(b)(4)(i)(A) through (C).

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

Quick Fix: No

Origin: Fed Up #39

Issue: Limit the definition of "an institution required to take attendance."

Regulatory Cite: §668.22(b)(3)

Summary of Change: Clarify that for the Return of Title IV Aid purposes institutions are "required to take attendance" only if an outside entity, such as the institution's accrediting agency or state agency, has determined that they require the institution to take attendance.

Updated Information Since 3/6-8 Meetings: Adding the sentence, "If an outside entity requires an institution to take attendance for only a portion of the payment period or period of enrollment, as applicable, the institution must use its attendance records to determine a withdrawal date in accordance with paragraph (b)(1) of this section for only the period for which attendance taking is required.", qualifies the duration of attendance taking to that required by the outside entity.

The phrase at the end of the sentence, "[f]or some or all of its students.", was eliminated as unnecessary given the provision in §668.22(b)(3)(ii) which is included at the request of the negotiators for clarity but remains unmodified.

Tentative Agreement: No

Change:

§ 668.22 Treatment of title IV funds when a student withdraws.

* * * * *

(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 an outside entity the institution is required to take attendance for some or all of its students by an entity outside of the institution (such as the institution's accrediting agency, or a state agency) has a requirement, as determined by the entity, that the institution take attendance. ~~for some or all of its students.~~

(ii) If an outside entity requires an institution to take attendance 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) If an outside entity requires an institution to take attendance for only a portion of the payment period or period of enrollment, as applicable, the institution must use its attendance records to determine a withdrawal date in accordance with paragraph (b)(1) of this section for only the period for which attendance taking is required.

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Regulatory Language Format for Notice of Proposed Rulemaking:

PART 668 – STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as

follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1091, 1091b, 1092, 1094, 1099c, and 1099c-1, unless otherwise noted.

2. Section 668.22 is amended by revising paragraph (b)(3)(i)

and by adding a new paragraph (b)(3)(iii) to read as follows:

§668.22 Treatment of title IV funds when a student withdraws.

* * * * *

(b) * * *

* * *

(3)(i) An institution is required to take attendance if an outside entity (such as the institution's accrediting agency, or a state agency) has a requirement, as determined by the entity, that the institution take attendance.

* * * * *

(iii) If an outside entity requires an institution to take attendance for only a portion of the payment period or period of enrollment, as applicable, the institution must use its attendance records to determine a withdrawal date in accordance with paragraph (b)(1) of this section for only the period for which attendance taking is required.

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

Quick Fix: No

Origin: Fed Up #41

Issue: Leave of Absence (LOA) definition

Regulatory Cite: §668.22(d)

Summary of Change: Simplify the LOA definition and allow multiple LOAs not to exceed a total of 180 days within a 12-month period.

Updated Information Since 3/6-8 Meetings:

In the redesignated §668.22(d) (2) the word "on" is removed and replaced with "at" for clarity to indicate that a student does not return "on" the end of a leave of absence, but rather "at" the end of a leave of absence.

The Department was asked to consider amending the regulations to permit temporary interruptions in a student's education to count as a Title IV leave of absence when, upon the student's return, the student does not continue his or her education where he or she left off. We have discussed the issue and do not believe that a change to the regulations is needed. We will discuss our decision at the next negotiating session.

Tentative Agreement: No

Change:

§ 668.22 Treatment of title IV funds when a student withdraws.

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(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 --

(i) The institution has a formal policy regarding leaves of absence;

(ii) The student follows the institution's policy in requesting the leave of absence;

(iii) The institution determines that there is a reasonable expectation that the student will return to the school;

(iv) The institution approves the student's request in accordance with the institution's policy;

(v) The leave of absence does not involve additional charges by the institution;

~~(vi) It is the only leave of absence granted to the student in a 12-month period, except as provided for in paragraph (d)(2) of this section;~~ The number of days in the approved leave of absence, when added to the number of days in all other approved leaves of absence, does not exceed 180 days in any 12-month period;

~~(vii) The leave of absence does not exceed 180 days in any 12-month period;~~

~~(viii)~~ 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

~~(ixviii)~~ If the student is a title IV, HEA program loan recipient, the institution explains to the student, prior to granting the leave of absence, the effects that the student's failure to return from a leave of absence may have on the student's loan repayment terms, including the exhaustion of some or all of the student's grace period.

~~(2) Notwithstanding paragraph (d)(1)(vi) of this section, provided that the total number of days of all leaves of absence does not exceed 180 days in any 12-month period, an institution may treat --~~

~~(i) One leave of absence subsequent to a leave of absence that is granted in accordance with (d)(1)(vi) of this section as an approved leave of absence if the subsequent leave of absence does not exceed 30 days and the institution determines that the subsequent leave of absence is necessary due to unforeseen circumstances; and~~

~~(ii) Subsequent leaves of absence as approved leaves of absence if the institution documents that the leaves of absence are granted for jury duty, military reasons, or circumstances covered under the Family and Medical Leave Act of 1993.~~

~~(32)~~ If a student does not resume attendance at the institution ~~at or~~ before the end of a leave of absence that meets the requirements of this section, the

institution must treat the student as a withdrawal in accordance with the requirements of this section.

(43) For purposes of this paragraph --

(i) The number of days in a leave of absence ~~are~~^{is} counted beginning with the first day of the student's initial leave of absence in a 12-month period.

(ii) A "12-month period" begins on the first day of the student's initial leave of absence.

(iii) An institution's leave of absence policy is a "formal policy" if the policy --

(A) Is in writing and publicized to students; and

(B) Requires students to provide a written, signed, and dated request that includes the reason for the request for a leave of absence prior to the leave of absence. However, if unforeseen circumstances prevent a student from providing a prior written request, the institution may grant the student's request for a leave of absence, if the institution documents its decision and collects the written request at a later date.

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Regulatory Language Format for Notice of Proposed Rulemaking:

PART 668 - STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1091, 1091B, 1092, 1094, 1099C, and 1099c-1, unless otherwise noted.

2. Section 668.22 is amended as follows:

A. By revising paragraph (d) (1) (vi).

B. By revising paragraph (d) (1) (vii).

C. By redesignating paragraph (d) (1) (viii) as (d) (1) (vii).

D. By redesignating paragraph (d) (1) (ix) as (d) (1) (viii).

E. By removing paragraph (d) (2).

F. By redesignating paragraph (d) (3) as (d) (2) and revising the redesignated paragraph.

G. By redesignating paragraph (d) (4) as (d) (3) and revising the redesignated paragraph.

§ 668.22 Treatment of title IV funds when a student withdraws.

* * * * *

(d) * * *

(1) * * *

(vi) The number of days in the approved leave of absence, when added to the number of days in all other approved leaves of absence, does not exceed 180 days in any 12-month period;

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(2) If a student does not resume attendance at the institution at or before the end of a leave of absence that meets the requirements of this section, the institution must treat the student as a withdrawal in accordance with the requirements of this section.

(3) For purposes of this paragraph --

(i) The number of days in a leave of absence is counted beginning with the first day of the student's initial leave of absence in a 12-month period.

(ii) A 12-month period begins on the first day of the student's initial leave of absence.

(iii) An institution's leave of absence policy is a formal policy if the policy --

(A) Is in writing and publicized to students; and

(B) Requires students to provide a written, signed, and dated request that includes the reason for the request for a leave of absence prior to the leave of absence.

However, if unforeseen circumstances prevent a student from providing a prior written request, the institution may grant the student's request for a leave of absence if the institution documents its decision and collects the written request at a later date.

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

Quick Fix: No

Origin: 1/7/02 Suggestion

Issue: Timely Refunds

Regulatory Cite: §668.173(a), (b), and (c)

Summary of Change: This section has been restructured to read more easily. The substantive changes from current regulations to this section would:

- (1) Clarify when the Secretary considers a return of Title IV, HEA program funds to have been made [§668.173(b)].
- (2) Increase from one to two the number of late returns that would not trigger a letter of credit [§668.173(c)(1)].
- (3) Provide that a letter of credit must be submitted no later than 30 days after the institution submits its compliance audit or 30 days after the Secretary or a guaranty agency issues a review report or written notice to the institution [§668.173(d)(2)(ii)].
- (4) Add a provision that allows an institution, that would otherwise be required to submit a letter of credit, to request the Secretary to reconsider an audit or review finding that it failed to return title IV, HEA program funds timely because of exceptional circumstances beyond its control [§668.173(d)(3)].

Updated Information Since 3/6-8 Meetings:

These updates represent changes to the draft distributed by the Department to negotiators during the March meetings.

- (1) This section has been redrafted to read more easily. Because a marked-up version would be difficult to follow, a clean version of the draft language is provided.

- (2) Adds a time requirement for the return of FFEL funds made under a "hold and release" process [§668.173(b)(3)].
- (3) Increases from 30 to 35 the number of days for check clearance [§668.173(b)(4)].
- (4) Increases from one to two the number of late returns that would not trigger a letter of credit [§668.173(c)(1)].
- (5) Specifies that an institution has 30 days from the date the Secretary or the guaranty agency issues a review report or written notice to submit the letter of credit [§668.173(d)(2)(ii)].
- (6) Replaces the term "appeal" with the phrase "request the Secretary to reconsider a finding" [§668.173(d)(3)].

Tentative Agreement: No

Change:

§668.173 Refund reserve standards.

(a) General. The Secretary considers that an institution has sufficient cash reserves, as required under §668.171(b)(2), if the institution--

(1) Satisfies the requirements for a public institution under §668.171(c)(1);

(2) Is located in a State that has a tuition recovery fund approved by the Secretary and the institution contributes to that fund; or

(3) Returns, in a timely manner as described in paragraph (b) of this section, unearned title IV, HEA

program funds that it is responsible for returning under the provisions of §668.22 for a student that withdrew from the institution.

(b) Timely return of title IV, HEA program funds.

An institution returns to the Secretary or FFEL Program lender unearned title IV, HEA funds timely if, in accordance with procedures established by the Secretary or FFEL Program lender--

(1) The institution deposits or transfers the funds into the bank account it maintains under §668.163(a) or (b) no later than 30 days after the date it determines that the student withdrew;

(2) The institution initiates an electronic funds transfer (EFT) to the Secretary or FFEL Program lender no later than 30 days after the date it determines that the student withdrew;

(3) The institution initiates an electronic transaction for returning the funds no later than 30 days after the date it determines that the student withdrew; or

(4) The clearance date of the check used by the institution to return the funds is not later than 35 days after the date it determines that the student withdrew.

(c) Audit or review findings. The Secretary does not consider that an institution has returned unearned title

IV, HEA program funds in a timely manner if the independent auditor who conducted the institution's compliance audit, or the Secretary or guaranty agency that conducted a review of the institution, finds--

(1) In the sample of student records audited or reviewed, that the institution did not return the funds within the timeframes described in paragraph (b) of this section funds for at least two students and those students represent 5% or more of the students in the sample. (For purposes of determining this percentage, the sample includes only students for whom the institution was required to return unearned title IV, HEA program funds under §668.22); or

(2) A material weakness or reportable condition in the institution's report on internal controls relating to the return of unearned title IV, HEA program funds for either of its two most recently completed fiscal years.

(d) Letter of credit. (1) Except as provided under paragraph (d)(3) of this section, if an institution does not satisfy a refund standard under paragraphs (a)(1) or (2) of this section, and a finding is made in an audit or review that the institution is not returning unearned title IV, HEA program funds in a timely manner as provided under paragraph (c) of this section for either of its two most

recently completed fiscal years, the institution must submit an irrevocable letter of credit, acceptable and payable to the Secretary.

(2) A letter of credit under this paragraph must—

(i) Equal 25 percent of the total amount of unearned title IV, HEA program funds that it returned or should have returned under §668.22 during the institution's most recently completed fiscal year; and

(ii) Be submitted by the institution no later than 30 days after the institution submits its compliance audit, or no later than 30 days after the Secretary or guaranty agency either issues a review report or sends a written notice to the institution requesting the letter of credit.

(3) An institution may delay submitting a letter of credit and request the Secretary to reconsider a finding made in its most recent compliance audit or review report that it failed to return unearned title IV, HEA program funds in a timely manner if--

(i) The institution submits documentation that shows that the unearned title IV, HEA program funds were not returned in a timely manner solely because of exceptional circumstances beyond the institution's control and that the institution would not have come within the provisions of paragraph (c)(1) of this section had it not been for these exceptional circumstances; and

(ii) The institution's request, along with the documentation described in paragraph (d)(3)(i) of this section, is submitted to the Secretary no later than 30 days after the institution submits its compliance audit, or no later than 30 days after the Secretary or guaranty agency either issues a review report or sends a written notice to the institution requesting the letter of credit.

(4) If the Secretary denies the institution's request under paragraph (d)(3) of this section, the Secretary notifies the institution of the date it must submit the letter of credit described in paragraph (d)(2) of this section.

Regulatory Language Format for Notice of Proposed Rulemaking:

PART 668 - STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as

follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1091, 1091b, 1092, 1094, 1099c, and 1099c-1, unless otherwise noted.

2. Section 668.173 is amended by redesignating paragraph (d) as paragraph (e); revising paragraphs (a), (b), and (c); and adding a new paragraph (d) to read as follows:

§668.173 Refund reserve standards.

(a) General. The Secretary considers that an institution has sufficient cash reserves, as required under §668.171(b) (2), if the institution--

(1) Satisfies the requirements for a public institution under §668.171(c) (1);

(2) Is located in a State that has a tuition recovery fund approved by the Secretary and the institution contributes to that fund; or

(3) Returns, in a timely manner as described in paragraph (b) of this section, unearned title IV, HEA program funds that it is responsible for returning under

the provisions of §668.22 for a student that withdrew from the institution.

(b) Timely return of title IV, HEA program funds.

An institution returns to the Secretary or FFEL Program lender unearned title IV, HEA funds timely if, in accordance with procedures established by the Secretary or FFEL Program lender--

(1) The institution deposits or transfers the funds into the bank account it maintains under §668.163(a) or (b) no later than 30 days after the date it determines that the student withdrew;

(2) The institution initiates an electronic funds transfer (EFT) to the Secretary or FFEL Program lender no later than 30 days after the date it determines that the student withdrew;

(3) The institution initiates an electronic transaction for returning the funds no later than 30 days after the date it determines that the student withdrew; or

(4) The clearance date of the check used by the institution to return the funds is not later than 35 days after the date it determines that the student withdrew.

(c) Audit or review findings. The Secretary does not consider that an institution has returned unearned title IV, HEA program funds in a timely manner if the independent

auditor who conducted the institution's compliance audit, or the Secretary or guaranty agency that conducted a review of the institution, finds--

(1) In the sample of student records audited or reviewed, that the institution did not return the funds within the timeframes described in paragraph (b) of this section funds for at least two students and those students represent 5% or more of the students in the sample. (For purposes of determining this percentage, the sample includes only students for whom the institution was required to return unearned title IV, HEA program funds under §668.22); or

(2) A material weakness or reportable condition in the institution's report on internal controls relating to the return of unearned title IV, HEA program funds for either of its two most recently completed fiscal years.

(d) Letter of credit. (1) Except as provided under paragraph (d)(3) of this section, if an institution does not satisfy a refund standard under paragraphs (a)(1) or (2) of this section, and a finding is made in an audit or review that the institution is not returning unearned title IV, HEA program funds in a timely manner as provided under paragraph (c) of this section for either of its two most recently completed fiscal years, the institution must

submit an irrevocable letter of credit, acceptable and payable to the Secretary.

(3) A letter of credit under this paragraph must—

(i) Equal 25 percent of the total amount of unearned title IV, HEA program funds that it returned or should have returned under §668.22 during the institution's most recently completed fiscal year; and

(ii) Be submitted by the institution no later than 30 days after the institution submits its compliance audit, or no later than 30 days after the Secretary or guaranty agency either issues a review report or sends a written notice to the institution requesting the letter of credit.

(3) An institution may delay submitting a letter of credit and request the Secretary to reconsider a finding made in its most recent compliance audit or review report that it failed to return unearned title IV, HEA program funds in a timely manner if--

(i) The institution submits documentation that shows that the unearned title IV, HEA program funds were not returned in a timely manner solely because of exceptional circumstances beyond the institution's control and that the institution would not have come within the provisions of paragraph (c)(1) of this section had it not been for these exceptional circumstances; and

(ii) The institution's request, along with the documentation described in paragraph (d)(3)(i) of this section, is submitted to the Secretary no later than 30 days after the institution submits its compliance audit, or no later than 30 days after the Secretary or guaranty agency either issues a review report or sends a written notice to the institution requesting the letter of credit.

(4) If the Secretary denies the institution's request under paragraph (d)(3) of this section, the Secretary notifies the institution of the date it must submit the letter of credit described in paragraph (d)(2) of this section.

* * * * *

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

Quick Fix: No

Origin: Fed Up #75

Issue: Modification to the EADA Requirements

Regulatory Cite: §668.41

Summary of Requested Change: The request was to modify the regulations that provide when an institution must make public its consumerism information related to its intercollegiate athletic program.

Regulatory Change: None at this time.

Reason: As agreed at the last meeting, the Department and NAICU have had several conversations about this provision. The original request was to make the disclosure date correspond to the date that institutions submit their annual audited financial statements. However, the statutory date of October 1 for the first year's disclosure (which was modified by regulations to October 15 for subsequent years) was based upon the NCAA's early signing date for major women's sports. The issue for discussion is whether shifting the date to a later date such as January 15 will assist institutions and will continue to serve the needs of the students for obtaining this consumer information.

Updated Information

Since 3/6-8 Meetings: The NCAA requires its Division I participants to provide this information by October 15, and we have been told that these institutions would be unlikely to amend that data to reflect any changes resulting from its annual financial audit. Given that information and that advocates not represented at this negotiating session have expressed concerns to the Department about modifying the disclosure date, we suggest an alternative approach to address the initial concern expressed in Fed Up that the information provided in these disclosures has not been audited and that when comparing the initial data to the audited data there could be discrepancies. The Department will notify institutions at the time we are collecting the

data that we are aware that the data may not have been audited prior to its submission.

Tentative Agreement: No

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

Quick Fix: No

Origin: Fed Up #94

Issue: Student Eligibility - Regaining
Eligibility

Regulatory Cite: None

Summary of Requested Change: Establish uniform retroactive treatment for ineligible students who regain eligibility within a payment period.

Regulatory Change: None.

Reason: The regulations do not specifically speak to when a student gains or regains eligibility. However, the Department has, over the years and in a number of ways, provided the following guidance in this area.

The circumstances addressed by this guidance are those where the student resolves an eligibility issue related to when the student:

- Becomes a "regular student"
- Resolves a default or overpayment problem
- Is no longer incarcerated
- Becomes a high school graduate or successfully passes an approved ATB test
- Satisfies the citizenship requirements
- Registers with Selective Service
- Is considered to be making satisfactory academic progress

For the FFEL and Direct Loan programs, the student becomes eligible for the enrollment period in which the eligibility issue was resolved.

In general a student becomes eligible for Pell Grant and campus-based aid beginning with the payment period in which the eligibility issue was resolved. The exceptions are that if the initial ineligibility was due to a question related to the citizenship requirements, valid social security number or selective service registration the student becomes eligible for Pell and campus-based aid for the entire award year.

Updated Information Since 3/6-8 Meetings: The negotiators asked the Department to look at the provision that allows a student who is in default on a Perkins Loan who brings the loan current to be eligible to receive additional Perkins

Loans, but does not allow the student to regain eligibility for the other Title IV programs. That provision is statutory (sections 464(b) and 462(g)(1)(E) of the HEA) and applies exclusively to Perkins Loans.

The negotiators asked the Department to review its current policies concerning when a student establishes or regains eligibility for the Title IV programs and to consider applying the policy that is in effect for the FFEL and Direct Loan Programs to all of the Title IV programs. At this point, the Department is not willing to change the policy. However, the Department will continue to review this issue.

Tentative Agreement:No

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

Quick Fix: No

Origin: Fed Up #67

Issue: "90/10 Rule"

Regulatory Cite: §600.5

Summary of Requested Change: There were two components to the request for modification to the regulations governing the so called "90/10" rule. First was a request to allow institutions to include in the calculation of their 90/10 ratio the institutional matching that is required under the FSEOG Program. Second was a request to add distributions from "IRS 529" tuition savings plans to the list of exceptions to the general rule that assumes that Title IV aid paid institutional charges first.

Regulatory Change: None.

Reason: On the first issue, the Department does not agree to make the suggested change. As was discussed during the negotiated rulemaking on this issue two years ago, unless the institution's matching came from outside of the school, counting such contribution in the formula (especially in the denominator) would violate the 90/10 measurement of outside sources of revenue. It would also be contrary to the "cash basis" accounting standards that must be used in calculating the 90/10 ratio.

On the second issue, before proceeding the Department needs additional information on how an institution would track and document that payments made by families were derived from the 529 tuition savings plans and wants to identify what other information would be available during that process. The Department also needs additional information on how monies from 529 tuition savings plans are different from any other monies that a family uses to satisfy their EFC. One distinction between a prepaid State tuition plan and a 529 tuition savings plan as we understand it, is that a prepaid State tuition plan is used as a resource in calculating need (is excluded from calculating the EFC) and with a 529 tuition savings plan, the funds are counted in determining the EFC and actually result in increasing the EFC. Further, part of a 529 tuition savings plan distribution is income to the beneficiary and could increase the EFC based on the beneficiary's income.

**Updated Information
Since 3/6-8 Meetings:**

The Department has given further consideration to the request that distributions from 529 tuition savings plans be added to the list of exceptions to the general rule that assumes that Title IV aid pay institutional charges first. The Department does not agree to make the suggested change. There are significant differences in the treatment of funds provided under prepaid tuition plans (which are counted before Title IV funds) and funds provided under a 529 plan. As noted in the preamble to the regulations that permitted prepaid tuition plans to count before Title IV funds, those funds are provided by a third party to the institution. Under provisions of the HEA, prepaid tuition plan funds are treated as a defined benefit (resource or estimated financial assistance) in the determination of a student's eligibility for Title IV aid. Funds from 529 savings plans are treated the same way as other family savings such as Education IRAs. Those funds do not displace Title IV funds in the 90/10 calculation, and only count in the 90/10 calculation when paying institutional costs that exceed the Title IV funds for a student.

Tentative Agreement: Agreed not to make a change addressing the FSEOG matching funds issue. No agreement reached on the 529 tuition savings plan issue.

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 Program.

The elimination of the 12 hour rule necessitates modifications to the definition of payment period 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 period in §668.4.

Updated Information Since 3/6-8 Meetings:

The following technical changes were made to the draft regulatory language:

- (3) The phrase, "at least" was moved from §668.3(a)(2)(i) to §668.3(a)(2) to reflect that the full-time student requirement for an undergraduate clock hour program is at least 900 clock hours.
- (4) The phrase "or payment period" was added to §668.3(b)(2) to conform to the language of §668.8(b)(3)(i)(A).
- (5) The word "final" was added to §663(b)(2) and §668.8(b)(3)(i)(A) to conform to the language in the current regulations which provides that any week in which at lease on day of study for final examinations occurs counts as a week of instructional time.
- (6) The phrase, "the second half of" was removed from §668.4(b)(1)(ii) because it is unnecessary.
- (7) Section 690.75(a)(3) was revised to make clear that it would apply to credit hour programs without terms and all clock hour programs, term or nonterm.

Tentative Agreement: No

Change:

§ 668.3 Academic year .

Section 668.3 is revised to read as follows.

§668.3 Academic year.

(a) General. 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 at least--

(i) ~~At least 24~~Twenty-four 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) Definitions. 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 or payment period, at least one day of study for final examinations occurs; and.

(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.

(3e) For purposes of paragraph (b) (1) and (b) (2) 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--

(~~i1~~) 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

(~~ii2~~) The calendar midpoint between the first and last scheduled days of class of the program, academic year, or the remainder of the program.

(~~cd~~) 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.

(de) Number of payment periods. Notwithstanding paragraphs (b) ~~through (d)~~ and (c) of this section, an institution may choose to have more than two payment periods. If an institution so chooses, the rules in paragraphs (b), and (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) 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 final 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 credit hour program without terms or a clock hour program, ~~H~~has 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.~~

* * * * *

Regulatory Language Format for Notice of Proposed

Rulemaking:

PART 668 - STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1091, 1091b, 1092, 1094, 1099c, and 1099c-1, unless otherwise noted.

2. Section 668.3 is revised to read as follows:

§668.3 Academic year.

(a) General. 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 at least--

(i) Twenty-four 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) Definitions. 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 or payment period, at least one day of study for final examinations occurs; and

(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)

3. 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 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.

(3) For purposes of paragraphs (b) (1) and (b) (2) 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--

(i) 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

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

(c) 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 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.

(d) Number of payment periods. Notwithstanding paragraphs (b) and (c) of this section, an institution may choose to have more than two payment periods. If an institution so chooses, the rules in paragraphs (b) and (c) 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.

(Authority: 20 U.S.C. 1070 *et seq.*)

4. Section 668.8 is amended by revising paragraph (b) (3) and removing paragraph (b) (4) to read as follows:
§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 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 final examinations.

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

* * * * *

PART 682--FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

5. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

6. Sections 682.603(f)(1)(ii)(B) and (f)(2)(i) are revised by changing "34 CFR 668.2" to "34 CFR 668.3".

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7. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a et seq., unless otherwise noted.

8. Sections 685.301(a)(9)(i)(B)(2) and (a)(9)(ii)(A) are revised by changing "34 CFR 668.2" to "34 CFR 668.3".

PART 690 - FEDERAL PELL GRANT PROGRAM

9. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

10. Section 690.75 paragraph (a) is revised to read as follows:

§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 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) If enrolled in a credit hour program without terms or a clock hour program, has completed the payment period as defined in §668.4 for which he or she has been paid a Federal Pell Grant.

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**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.

Updated Information Since 3/6-8 meetings:

- (8) Subparagraph A--Added language from the conference report to clarify that adjustments may not be based solely on the number of students recruited, admitted, enrolled, or awarded financial aid, and an exemption for cost of living increases.
- (9) Subparagraph B--Clarified that the students must only enroll in non-Title IV eligible programs in order for this practice to qualify as an acceptable activity.
- (10) Subparagraph C--Clarified that the employer must pay more than 50% of the tuition and fees, that the compensation is not based upon the number of employees who enroll or the revenue they generate, and that the recruiter have no contact with the employees.
- (11) Subparagraph D--Added admissions and financial aid staff.
- (12) Subparagraph F--Clarified "pre-enrollment" activities.
- (13) Subparagraph G--Added "directly" per our last session.
- (14) Subparagraph H--Changed "value" to "cost" per our last session.

- (15) Subparagraph I--Clarified that profit distributions are proportional to the individual's ownership interest per our last session.
- (16) Subparagraph K--Conforming changes to paragraph I and changed to "compensation in a manner that would be impermissible under this paragraph" per our last session.

Tentative agreement: No

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 entities ~~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~~ limitation ***[the use of the word "limitation" in place of "requirement" is a change from the last meeting]*** ~~shall~~ does not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive ~~Federal student assistance~~ Title IV, HEA program funds. ~~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;~~

[None of the following language is in the current regulations. The mark-up shows the changes from the language presented at the last meeting.]

(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~~that compensation is not adjusted,~~by promotion or otherwise,~~ up or down, more than twice during any twelve month ~~period.~~
period, and any adjustment is not based solely on the number of students recruited, admitted, enrolled, or awarded financial aid. For this purpose, an increase in fixed compensation resulting from a cost of living increase that is paid to all or substantially all employees is not considered an adjustment.

(B) Compensation to recruiters based upon their recruitment of students who enroll only 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~~more than 50 percent of the tuition and

fees ~~of paid to all or substantially all~~ charged to its employees; provided that compensation is not based upon the number of employees who enroll in the institution, or the revenue they generate, and the recruiters have no contact with the employees.

(D) Compensation 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 of the full-time employees at the same organizational level, except that an organizational level may not consist ~~predominately of recruiters.~~ predominantly of recruiters, admissions staff, or financial aid staff.

—— (E) Compensation ~~paid to recruiters~~ that is based upon students successfully completing ~~the program~~ their educational programs or one academic year of their educational program in which they enroll, programs, 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~~ hours ~~or 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~~calls, referring inquiries, or distributing institutional materials, as long as compensation is not based on actual ~~enrollment.~~
enrollment.

(G) Compensation to managerial or supervisory employees who do not directly 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 annually to an individual, and the ~~value~~cost of the gift is ~~no more than~~less than \$100.

——(I) Profit distributions ~~to an individual who owns at least 25 percent of~~proportionately based upon an individual's ownership interest in the institution.

(J) Compensation paid for 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 involvess

recruiting or admission activities, or the awarding of Title IV, HEA program funds.

(L) Payments to third parties, including tuition sharing arrangements, that deliver various services to the institution, even if one of the services involves recruiting or admission activities or the awarding of Title IV, activities, HEA program funds, 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.~~ in a manner that would be impermissible under paragraph (b) (22) of this section.

Regulatory Language Format for Notice of Proposed

Rulemaking:

PART 668 - STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as

follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1091, 1091b, 1092, 1094, 1099c, and 1099c-1, unless otherwise noted.

2. Section 668.14(b) (22) is revised to read as follows:

§668.14 Program participation agreement.

* * * * *

(b) * * *

(22) (i) It will not provide any commission, bonus, or other incentive payment based directly or indirectly upon success in securing enrollments or financial aid to any person or entity engaged in any student recruiting or admission activities or in making decisions regarding the awarding of Title IV, HEA program funds, except that this limitation does not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Title IV, HEA program funds.

(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 that compensation is not adjusted, up or down, more than twice during any twelve month period, and any adjustment is not based solely on the number of students recruited, admitted, enrolled, or awarded financial aid. For this purpose, an increase in fixed compensation resulting from a cost of living increase that is paid to all or substantially all employees is not considered an adjustment.

(B) Compensation to recruiters based upon their recruitment of students who enroll only 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 more than 50 percent of the tuition and fees charged to its employees; provided that compensation is not based upon the number of employees who enroll in the institution, or the revenue they generate, and the recruiters have no contact with the employees.

(D) Compensation 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 of the full-time employees at the same organizational level, except that an organizational level may not consist predominantly of recruiters, admissions staff, or financial aid staff.

(E) Compensation that is based upon students successfully completing their educational programs or one academic year of their educational programs, 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, referring inquiries, or distributing institutional materials, as long as compensation is not based on actual enrollment.

(G) Compensation to managerial or supervisory employees who do not directly 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 annually to an individual, and the cost of the gift is less than \$100.

(I) Profit distributions proportionately based upon an individual's ownership interest in the institution.

(J) Compensation paid for 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 involves recruiting or admission activities, or the awarding of Title IV, HEA program funds.

(L) Payments to third parties, including tuition sharing arrangements, that deliver various services to the institution, even if one of the services involves recruiting or admission activities or the awarding of Title IV, HEA program funds, provided that the individuals performing the recruitment or admission activities, or the awarding of Title IV, HEA Program funds, are not compensated in a manner that would be impermissible under paragraph (b) (22) of this section.

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