

## **Issue Paper 4**

### **Program Integrity and Improvement Issues**

**Issue:** Cash Management

**Statutory Cites:** §§484, 487, and 498 of the HEA

**Regulatory Cites:** 34 CFR Part 668, Subpart K

**Summary of Change:** The current regulations in 34 CFR Part 668, Subpart K, govern the ways that an institution requests, maintains, disburses, and otherwise manages title IV, HEA program funds. The proposed changes would revise existing regulations to address the allowable methods and procedures for institutions to pay students their title IV student aid credit balances; would prohibit practices that expose title IV funds to financial risk; would provide additional consumer protections governing the use of prepaid cards and similar financial instruments; would include provisions designed to provide students free access to their full title IV credit balances; would require neutrality in presenting options for students to secure their credit balances; would acknowledge the Secretary's authority to make direct disbursements of title IV aid; and would clarify permissible disbursement practices and agreements between institutions and other entities that assist the institution in making title IV payments to students. The proposed changes also include a number of technical changes, the most significant of which eliminates language that governed the disbursement of FFEL program funds.

**Changes:** See attached regulatory text.

## §668.161 Scope

(a) General. (1) This subpart establishes the rules under which a participating institution requests, maintains, disburses, and otherwise manages title IV, HEA program funds.

(2) As used in this subpart—

(i) The title IV, HEA programs include the Federal Pell Grant, Iraq-Afghanistan Service Grant, TEACH Grant, FSEOG, Federal Perkins Loan, FWS, and Direct Loan programs, and any other program designated by the Secretary;

(ii) A day is a calendar day, unless otherwise specified;

(iii) The term “parent” refers to the parent borrower of a Direct PLUS Loan;

(iv) An “institution” includes a foreign institution as defined in 34 CFR 600.52, unless otherwise specified;

(v) The term “student ledger account” refers to a bookkeeping account maintained ~~and used~~ by an institution to record the financial transactions pertaining to a student’s enrollment at the institution-;

(vi) The term “financial account” refers to a student’s or parent’s checking or savings account, prepaid card account, or other consumer asset account, ~~including a debit card account or prepaid card account,~~ held by a financial institution;

(vii) The term “financial institution” means a bank, savings association, ~~or credit union,~~ or any other person or entity that is insured by the Federal Deposit Insurance Corporation (FDIC) or National Credit Union Share Insurance Fund (NCUSIF); directly or indirectly holds an account belonging to a student or parent or that issues an access device and agrees with a student or parent to provide electronic fund transfer services;

(viii) The term “pass-through deposit or share insurance” means that ~~FDIC or NCUSIF~~ Federal Deposit Insurance Corporation (FDIC) or National Credit Union Association (NCUA) deposit insurance coverage applies to the beneficiaries (students and parents) of a custodial account held at a financial institution-;

(ix) The term “EFT” (Electronic Funds Transfer) means a transaction initiated electronically instructing the crediting or debiting of a financial account, or an institution’s depository account;

(x) The term “custodial account” means any account at a depository institution into which title IV, HEA program funds awarded to students and parents are deposited by a third party servicer as nominal accountholder; and

(xi) The term “subaccount” means the interest of an individual parent or student in a custodial account, as reflected in records that satisfy the requirements of pass through deposit or share insurance, including both identifying the student or parent as an owner of funds in the account, as well as the amount of those funds that the student or parent owns.

(b) Federal interest in title IV, HEA program funds. Except for funds provided by the Secretary for administrative expenses, and for funds used for the Job Location and Development Program under subpart B of the FWS regulations, funds received by an institution under the title IV, HEA programs are held in trust for the intended beneficiaries or the Secretary. The institution, as a trustee of those funds, may not—~~(1) Use use~~ or hypothecate (i.e., use as collateral) the funds for any other purpose; ~~or (2) Transfer or maintain the funds in a sweep account~~, or otherwise engage in any practice that risks the loss of those funds.

(c) Standard of conduct. An institution must exercise the level of care and diligence required of a fiduciary with regard to managing title IV, HEA program funds under this subpart.

#### **§668.162 Requesting funds.**

(a) General. The Secretary has sole discretion to determine the method under which the Secretary provides title IV, HEA program funds to an institution. In accordance with procedures established by the Secretary, the Secretary may provide funds to an institution under the advance ~~payment method~~, reimbursement ~~payment method~~, or cash monitoring payment method.

(b) Advance payment method. (1) Under the advance payment method, an institution submits a request for funds to the Secretary. The institution's request may not exceed the amount of funds the institution needs immediately for disbursements the institution has made or will make to eligible students and parents;

(2) If the Secretary accepts that request, the Secretary initiates an ~~electronic funds transfer (EFT)~~ of that amount to the ~~Federal bank depository~~ account designated by the institution; and

(3) The institution must disburse the funds requested as soon as administratively feasible but no later than three business days following the date the institution received those funds.

(c) Reimbursement payment method. (1) Under the reimbursement payment method, an institution must credit a student's ledger account, ~~or pay the student or parent directly~~, for the amount of title IV, HEA program funds that the student or parent is eligible to receive, ~~including and pay~~ the amount of any credit balance due under §668.164(f), before the institution seeks reimbursement from the Secretary for those disbursements;.

(2) An institution seeks reimbursement by submitting to the Secretary a request for funds that does not exceed the amount of the disbursements the institution made to students ~~or parents~~ included in that request;.

(3) As part of its reimbursement request, the institution must—

(i) Identify the students or parents for whom reimbursement is sought; and

(ii) Submit to the Secretary, or ~~an~~ entity approved by the Secretary, documentation that shows that each student or parent included in the request was—

(A) Eligible to receive and has received the title IV, HEA program funds for which reimbursement is sought; and

(B) Paid directly any credit balance due under §668.164(f).

(4) The Secretary approves the amount of the institution's reimbursement request for a student or parent and initiates an EFT of that amount to the ~~Federal bank~~depository account designated by the institution, if the Secretary determines with regard to that student or parent that the institution—

(i) Accurately determined the student's or parent's eligibility for title IV, HEA program funds;

(ii) Accurately determined the amount of title IV, HEA program funds disbursed, including the amount paid directly to the student or parent; and

(iii) Submitted the documentation required under paragraph (c)(3) of this section.

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

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

(2) 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.

#### **§668.163 Maintaining and accounting for funds.**

(a)(1) ~~Federal bank~~Institutional depository account. An institution must maintain title IV, HEA program funds in a bankdepository account ~~that is in its name, under its control, and federally insured~~. For an institution located in a State, the bankdepository account must be insured by the FDIC or NCUSIFA. For a foreign institution, the bankdepository account may be insured by the FDIC or NCUSIFA, or by an equivalent agency of the ~~federal or central~~ government of the country in which the institution is located. If there is no equivalent agency, the Secretary may approve a bankdepository account designated by the foreign institution.

(2) For each bankdepository account that includes title IV, HEA program funds, an institution must clearly identify that title IV, HEA program funds are maintained in that account by—

(i) Including in the name of each bankdepository account the phrase “Federal Funds”; or

(ii)(A) Notifying the ~~financial~~depository institution that the bankdepository account contains title IV, HEA program funds that are held in trust and retaining a record of that notice; and

(B) Except for a public institution located in a State or a foreign institution, filing with the appropriate State or municipal government entity a UCC-1 statement disclosing that the bankdepository account contains Federal funds and maintaining a copy of that statement.

(b) Separate bankdepository account. ~~An~~ The Secretary may require an institution ~~must to~~ maintain title IV, HEA program funds in a separate Federal bankdepository account that contains no other funds: ~~if the Secretary determines that the institution failed to comply with—~~

(1) The requirements in this subpart;

(2) The recordkeeping and reporting requirements in subpart B of this part; or

(3) Applicable program regulations.

Comment [A1]: Reverted to existing regulations

(c) Interest-bearing bankdepository account. Except for Federal Perkins Loan Program funds, an institution is not required to maintain title IV, HEA program funds in an interest-bearing bankdepository account.

(1) Any interest earned on Federal Perkins Loan Program funds is retained by the institution as provided under 34 CFR 674.8(a).

(2) If an institution maintains other title IV, HEA program funds in an interest-bearing depository account, the institution may keep the initial \$250 it earns on those funds during an award year. By June 30 of that award year, the institution must remit to the Secretary any earnings over \$250.

(d) Accounting and fiscal records. An institution must—

(1) Maintain accounting and internal control systems that identify the cash balance of the funds of each title IV, HEA program that are included in the institution's depository account or accounts as readily as if those funds were maintained in a separate depository account;

(2) Identify the earnings on title IV, HEA program funds maintained in the institution's depository account or accounts; and

(3) Maintain its fiscal records in accordance with the provisions under §668.24.

Comment [A2]: Reverted to existing regulations

#### **§668.164 Disbursing funds.**

(a) Disbursement. (1) Except as provided under paragraph (a)(2) of this section, a disbursement of title IV, HEA program funds occurs on the date that ~~(i) The the~~ institution credits the student's ledger account or pays the student or parent directly with—

(Ai) Funds received from the Secretary; or

(Bii) Institutional funds used in advance of receiving title IV, HEA program funds. ~~;~~ ~~or~~

~~(ii) As provided under paragraph (d)(3), the Secretary pays a student or parent directly~~

(2)(i) For a Direct Loan where the student is subject to the delayed disbursement requirements under 34 CFR 685.303(b)(4), if an institution credits a student's ledger account with institutional funds earlier than 30 days after the beginning of a payment period, the Secretary considers that the institution makes that disbursement on the 30th day after the beginning of the payment period; or

(ii) If an institution credits a student's ledger account with institutional funds earlier than 10 days before the first day of classes of a payment period, the Secretary considers that the institution makes that disbursement on the 10th day before the first day of classes of a payment period.

(b) Disbursements by payment period. Except for paying a student FWS wages at least once a month, as provided under 34 CFR 675.16(a)(2), or for making early, late, or retroactive disbursements, as provided under paragraphs (g), (h), and (i) of this section respectively, an institution must disburse during each payment period the amount of title IV, HEA program funds that an enrolled student or parent is eligible to receive for that payment period.

(c) Crediting a student's ledger account. (1) An institution may credit a student's ledger account with Direct PLUS Loan funds the parent authorizes a student to receive, and other title IV, HEA program funds, to pay for allowable charges associated with the current payment period. Allowable charges include—

(i) The amount of tuition, fees, and institutionally-provided room and board assessed the student for the payment period, or as provided under 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; and

(ii) The costs 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).

(2) An institution may ~~not~~ include the cost of books and supplies as part of tuition and fees under paragraph (c)(1)(i) of this section only

~~(3) For allowable charges stemming from a previous payment period in the current award year, an institution may associate those charges with the current payment period.~~

~~(4) For charges stemming from a prior award year, an institution may associate those charges with the current payment period if those charges books and supplies, including books or supplies that are not more than \$200 for—substantially the same in content or function, are not available from any source other than the institution.~~

~~(3)(i) An institution may associate with a payment period in the current year, prior year charges of not more than \$200 for--~~

~~(A) Tuition, fees, and institutionally provided room and board; and~~

~~(ii) As, as provided in under paragraph (c)(1)(ii) of this section, without obtaining the student's or parent's authorization; and~~

~~(B) Educationally related goods and services provided by the institution for which, 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).~~

~~(ii) For purposes of this section—~~

~~(A) The current year is the current loan period for any student or parent who received a Direct Loan, or the current award year for any student who did not receive a Direct Loan; and~~

~~(B) A prior year is any loan period or award year prior to the current loan period or award year, as applicable.~~

~~(4) For allowable charges stemming from any previous payment period in the current award year or loan period, as applicable, an institution may associate those charges with the current payment period.~~

(5) 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 the student enrolls in, or is expected to complete, 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.

(d) Direct payments. (1) Except as provided under paragraph (d)(3) of this section, an institution makes a direct payment—

(i) To a student, for the amount of the title IV, HEA program funds that a student is eligible to receive, including Direct PLUS Loan funds that the student's parent authorized the student to receive, by—

(A) Initiating an EFT of that amount to the student's financial account; or, where the student has instructed the institution to send the funds by EFT to a custodial account, crediting the student's subaccount;

(B) Issuing a check for that amount payable to the student; or

(C) Dispensing cash for which the institution obtains a receipt signed by the student.

(ii) To a parent, for the amount of the Direct PLUS Loan funds that a parent does not authorize the student to receive, by—

(A) Initiating an EFT of that amount to the parent's financial account; or, where the parent has instructed the institution to send the funds by EFT to a custodial account, crediting the parent's subaccount;

(B) Issuing a check for that amount payable to the parent; or

(C) Dispensing cash for which the institution obtains a receipt signed by the parent.

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

(i) 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.

(3) Payments by the Secretary. The Secretary may pay, ~~or require an institution to pay,~~ title IV, HEA ~~program funds~~ credit balances under paragraphs (f) and (k) of this section directly to a student or parent using a method established or authorized by the Secretary and published in the Federal Register.

(4) Student choice. (i) Except as provided under paragraph (d)(4)(iii) of this section, if an institution elects to make direct payments by EFT, the institution must make direct payments to a student's or parent's existing financial account, or to a financial account opened by the student or parent without assistance from the institution.

**Comment [A3]:** Proposed 668.164(d)(4) and (d)(5) consolidated into new 668.164(d)(4)

(ii) If the student or parent does not have or provide information about a financial account, the institution may establish a process under which the student or parent is offered other options for receiving a direct payment. In establishing that process, the institution—

(A) Must ensure that the options are described and presented in a clear, fact-based, and neutral manner, e.g., the student or parent is not steered to, or compelled to select, a particular option. In describing the options, the institution may provide information about available financial accounts, provide information about a sponsored account under paragraph (e) of this section, or describe how the available financial accounts compare to the sponsored account. If one of the options includes making a direct payment to an available financial account or to the sponsored account, another option must be issuing a check or dispensing cash;

(B) May not require the student or parent to open a financial account at a specific financial institution; and

(C) May recommend only financial accounts that are insured by the FDIC or NCUA or that have pass-through insurance coverage.

(iii) After the student or parent provides information about an existing financial account—

(A) The student or parent may choose the sponsored account or another option under the process the institution has established for making direct payments in paragraph (d)(4)(ii) of this section; and

(B) The institution or the financial institution offering the account may not directly solicit the student or parent to choose the sponsored account.

~~(4) Conditions for making a direct payment. In making a direct payment, the institution—~~

~~(i) May not require any student or parent to open or use a financial account at a specific financial institution; and~~

~~(ii)(A) Must request each student or parent to provide the information needed to make an EFT to the financial account the student or parent opened without assistance from the institution and use that financial account if the student or parent provides that information; or~~

~~(B) If the student or parent does not have, or provide information about, a financial account, the institution may assist the student or parent in opening a financial account under paragraph (e).~~

~~(5) Student choice. If an institution establishes a process under which a student or parent is offered options for receiving a direct payment, the institution must ensure that—~~

~~(i) The options are described clearly and presented in a neutral manner, e.g., the student or parent is not steered to, or compelled to select, a particular option; and~~

~~(ii) The process for making direct payments electronically to a financial account designated by the student or parent under paragraph (4)(ii)(A), or otherwise selected by the student or parent, is as timely and no more onerous than making direct payments to a sponsored account under paragraph (e).~~

(e) **Sponsored account.** (1) If an institution located in a State enters into a contract or arrangement with any entity (e.g., a third-party servicer, financial institution, or other person) under which a student or parent opens, or is referred to open, a financial account offered by the entity, or has the option of using a card or device issued for institutional purposes to activate or access a financial account into which title IV, HEA program funds may be transferred or deposited, the institution or entity responsible under that contract or arrangement—

(i) Must inform the student or parent about the terms and conditions of the financial account and obtain the student's or parent's written affirmative consent to open or use the account before the institution or entity may either—

(A) Send or transmit to the student or parent a debit card, prepaid card, access device, or virtual representation of the card or device associated with the financial account; or

(B) Associate with the financial account a card or device that was previously provided to the student or parent for institutional purposes.

(ii) May not make any claims against the funds in the account without the written permission of the student or parent, except for correcting an error in transferring the funds in accordance with banking protocols;

(iii) Must ensure that the student or parent does not incur any cost associated with—

**Comment [A4]:** A number of changes have been made to paragraph (e), for purposes of readability, paragraph (e) has been replaced in redline.

(A) Opening the financial account or initially receiving the debit card, prepaid card, or access device associated with the account;

(B) Maintaining the account, such as a monthly maintenance fee, inactivity fee, or account termination fee;

(C) Using the debit card, prepaid card, or access device to conduct up to four cash withdrawals per month or statement cycle at any out-of-network ATM located in a State; and

(D) Using the debit card, prepaid card, or access device to conduct point-of-sale purchases or to receive cash back from point-of-sale purchases.

(iv) Must ensure that the debit card, prepaid card, or access device associated with the account belongs to a surcharge-free national or regional ATM network that has ATMs on or near each campus;

(v) May not market or portray the financial account, debit card, prepaid card, or access device as a credit card or credit instrument, or subsequently convert the account, card, or device to a credit card or credit instrument;

(vi) Must ensure that the student or parent is not assessed any fee or charge to cover an ATM transaction, or one-time debit card transaction, when the financial account has insufficient or unavailable funds, or when the entity declines a transaction;

(vii) Where the financial account is a subaccount, must ensure that with respect to any debit card, prepaid card, or access device—

(A) The provider of the card or device provides the student or parent with pass-through deposit or share insurance;

(B) The card or device does not have an attached line of credit or loan feature under which repayment from the account is triggered upon or associated with the delivery of a Federal payment, including a deposit or transfer of title IV, HEA program funds into the account; and

(C) The account provides the student or parent with all of the consumer protections that apply to a payroll card account under the Electronic Fund Transfer Act, as amended;

(viii) Must ensure that the financial account is—

(A) In the student's or parent's name; or

(B) A subaccount of a custodial account that is titled in the name of the third party servicer, and is set up to ensure any title IV, HEA program funds deposited in the custodial account are credited immediately to the student's or parent's subaccount (or card or device); and

(ix) Must ensure—

(A) That the circumstances and terms of the financial account afford the student or parent a reasonable opportunity to withdraw or expend the total amount of title IV, HEA program funds deposited or transferred to the financial account without incurring any cost, fees or charges and provide the student or parent with clear and timely instructions as to how that may be done; and

(B) That any other fees or charges assessed to the student or parent that are not otherwise prohibited in this section are reasonable. A fee or charge is reasonable if it is a commonly assessed fee in the industry and is comparable to, or less than, the fees usually charged for that item or service.

(2) The institution must base its decision to enter into or continue the contract or arrangement on achieving the best possible financial terms for the students and parents who choose to open the sponsored account. The institution must also—

(i) Review any information that is provided to the student or parent in connection with opening or activating the account, and the debit card, prepaid card, or access device associated with the account, to ensure that the information is presented to the student in an objective and neutral manner;

(ii) Disclose conspicuously on the institution's website, and otherwise make public, that contract or arrangement in its entirety with an accompanying summary of the terms and conditions of the contract or arrangement and other related information. The summary and related information must be updated as needed to provide information about—

(A) The name of the financial institution offering the sponsored account, and the third-party servicer or other parties involved in opening or enabling the sponsored account;

(B) Whether the contract or arrangement provides for revenue sharing or royalty payments, and if so, the nature and amount of that compensation;

(C) Whether the sponsored account is a checking account, prepaid debit card, or other type of account;

(D) Any fees or charges associated with the account;

(E) The number of allowable out-of-network surcharge-free ATM transactions;

(F) The number of network or surcharge-free ATMs located on or near the campus; and

(G) The total and average amount of fees paid by students and parents who had the sponsored account during the most recently completed award year or twelve-month period.

(3) May not share with the entity any information about the student or parent until the student or parent makes a selection under paragraph (d)(4) of this section;

~~(e) Sponsored account. If an institution located in any State, as defined in 600.2, establishes a process that a student or parent follows to open a financial account, either through a contract with a third-party servicer or through any arrangement with an entity under which any party to the arrangement exercises any control over the financial account into which the student's title IV, HEA program funds are transferred or deposited, the institution—~~

~~(1) Must disclose conspicuously on its website, and otherwise make public, that contract or arrangement in its entirety;~~

~~(2) Before the student's or parent's financial account is opened and before the student or parent may activate a debit card, prepaid card, or access device associated with the account, must—~~

~~(i) Inform the student or parent of the terms and conditions of the account; and~~

~~(ii) Obtain in writing affirmative consent from the student or parent to open the account;~~

~~(3) Must review any information that is provided to the student or parent about the account, and the debit card, prepaid card, or access device associated with the account, to ensure that the information is presented to the student in an objective and neutral manner;~~

~~(4) May not send a debit card, prepaid card, or access device associated with the account to a student or parent unless the student or parent specifically requests it after providing consent as required in paragraph (e)(2);~~

~~(5) May not offer a debit card, prepaid card, or access device associated with the account that bears the institution's logo or mascot, or that otherwise implies an affiliation with the institution;~~

~~(6) May not provide to the servicer or entity any information about the student or parent until after the student or parent consents affirmatively to open the account under paragraph (e)(2);~~

~~(7) May not make any claims against the funds in the account without the written permission of the student or parent, except for correcting an error in transferring the funds in accordance with banking protocols;~~

~~(8) Must ensure that the student does not incur any cost in—~~

~~(i) Opening the financial account or initially receiving the debit card, prepaid card, or access device associated with the account;~~

~~(ii) Maintaining the account; or~~

~~(iii) Using the debit card, prepaid card, or access device to conduct any transaction at any automated teller machine (ATM) located in any State as defined in 600.2;~~

~~(9) Must ensure that the debit card, prepaid card, or access device associated with the account can be used nationally;~~

~~(10) May not market or portray the financial account, debit card, prepaid card, or access device as a credit card or credit instrument, or subsequently convert the account, card, or device to a credit card or credit instrument;~~

~~(11) May not assess the student or parent any overdraft fees if the financial account is overdrawn;~~

~~(12) Regardless of the debit card, prepaid card, or access device associated with the financial account, must ensure that—~~

~~(i) The provider of the card or device provides the student or parent with pass-through deposit or share insurance;~~

~~(ii) The card or device does not have an attached line of credit or loan feature under which repayment from the account is triggered upon the delivery of a Federal payment, including a deposit or transfer of title IV, HEA program funds into the account; and~~

~~(iii) The account provides the student or parent with all the consumer protections that apply to a payroll card account under the Electronic Fund Transfers Act, as amended; and~~

~~(13) Ensure that the financial account is in the student's or parent's name, or for a financial account that is a pooled custodial account, the subaccount (or card or device) is in the student's or parent's name. The custodial bank account must be established in the name of the institution or the institution's third-party servicer, and must be set up to ensure that any title IV, HEA program funds that become the pooled funds of the custodial account are credited immediately to the student's or parent's subaccount (or card or device).~~

(f) Title IV, HEA credit balances. (1) A title IV, HEA- credit balance occurs whenever the amount of title IV, HEA program funds credited to a student's 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.

~~(2) Except as provided in paragraph (f)(3), an~~(2) An institution must pay a title IV, HEA credit balance directly to the student as soon as possible, but no later than—

(i) 14 days after the balance occurred if the credit balance occurred after the first day of class of a payment period; or

(ii) 14 days after the first day of class of a payment period if the credit balance occurred on or before the first day of class of that payment period.

~~(3) An institution must delay making a direct payment if the institution has information that—~~

~~(i) The student or parent is engaged in an activity that is known or intended to defraud the Federal government;~~

~~(ii) The person attending, or seeming to attend, classes at the institution is not the student for whom the payment is intended; or~~

~~(iii) The student is enrolled at the institution for the sole purpose of obtaining title IV, HEA program funds.~~

(g) Early disbursements. (1) Except as provided in paragraph (g)(2) of this section for a first-year, first-time borrower or a student employed under the FWS program, the earliest an institution may disburse title IV, HEA funds to an eligible student is—

(i) If the student is enrolled in a credit-hour program offered in terms that are substantially equal in length, 10 days before the first day of classes of a payment period;  
or

(ii) If the student is enrolled in a credit-hour program offered in terms that are not substantially equal in length, a non-term credit-hour program, or a clock hour program, the later of—

(A) Ten days before the first day of classes of a payment period; or

(B) The date the student completed the previous payment period for which he or she received title IV, HEA program funds.

(2) An institution may not—

(i) Make an early disbursement of a Direct Loan to a first-year, first-time borrower who is subject to the 30-day delayed disbursement requirements in 34 CFR 685.303(b)(4). This restriction does not apply if the institution is exempt from the 30-day delayed disbursement requirements under 34 CFR 685.303(b)(4)(i)(A) or (B); or

(ii) Compensate a student employed under the FWS program until the student earns that compensation by performing work, as provided in 34 CFR 675.16(a)(5).

(h) 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 Direct Loan, the student is no longer enrolled at the institution as at least a half-time student for the period of enrollment for which the loan was intended; or

(ii) For an award under the Federal Pell Grant, FSEOG, Federal Perkins Loan, Iraq-Afghanistan Service Grant, and TEACH Grant 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 (h)(4) of this section, a student who becomes ineligible, as described in paragraph (h)(1) of this section, qualifies for a late disbursement (and the parent qualifies for a parent Direct PLUS Loan disbursement) if, before the date the student became ineligible—

(i) The Secretary processed a SAR or ISIR with an official expected family contribution for the student for the relevant award year; and

(ii)(A) For a loan made under the Direct Loan Pprogram or for an award made under the TEACH Grant Program, the institution originated the loan or award; 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 (h)(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)(4) in accordance with the provisions of §668.22(a)(5);

(ii) If the student completed the payment period or period of enrollment, the institution must provide the student or parent the choice to receive the amount of title IV, HEA program 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 ledger account as provided in paragraph (c) of this section; 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 Direct Loan program to pay for educational costs that the institution determines the student incurred for the period in which the student or parent was eligible.

(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 (h)(1) of this section.

(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.

(iii) An institution may not make a late disbursement of a Direct Loan if the student was a first-year, first-time borrower as described in 34 CFR 685.303(b)(4) 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 34 CFR 685.303(b)(4)(i)(A), (B), or (C).

(iv) An institution may not make a late disbursement of any title IV, HEA program assistance unless it received a valid SAR or a valid ISIR for the student by the deadline date established by the Secretary in a notice published in the Federal Register.

(i) Retroactive payments. If an institution did not make a disbursement to an enrolled student for a payment period the student completed (for example, because of an administrative delay or because for some reason the student did not appear to qualify to receive the funds), the institution may pay the student for all prior payment periods in the current award year or loan period for which the student was eligible or subsequently established eligibility in accordance with program regulations.

(j) 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 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.

(k) 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 (f) 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.

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

#### **§668.165 Notices and authorizations.**

(a) Notices. (1) Before an institution disburses title IV, HEA program funds for any award year, the institution must notify a student of the amount of funds that the student or his or her parent can expect to receive under each title IV, HEA program, and how and when those funds will be disbursed. If those funds include Direct Loan ~~P~~program funds, the notice must indicate which funds are from subsidized loans and which are from unsubsidized loans.

(2) Except in the case of a post-withdrawal disbursement made in accordance with §668.22(a)(5), if an institution credits a student's account at the institution with Direct Loan, Federal Perkins Loan, or TEACH Grant Program funds, the institution must notify the student or parent of—

- (i) The anticipated date and amount of the disbursement;
  - (ii) The ~~student's right~~ student's or parent's right to cancel all or a portion of that loan, loan disbursement, TEACH Grant, or TEACH Grant disbursement and have the loan proceeds and TEACH Grant proceeds returned to the Secretary; and
  - (iii) The procedures and time by which the student or parent must notify the institution that he or she wishes to cancel the loan, loan disbursement, TEACH Grant, or TEACH Grant disbursement.
- (3) The institution must provide the notice described in paragraph (a)(2) of this section in writing—
- (i) No earlier than 30 days before, and no later than 30 days after, crediting the student's ledger account at the institution, if the institution obtains affirmative confirmation from the student under paragraph (a)(6)(i) of this section; or
  - (ii) No earlier than 30 days before, and no later than seven days after, crediting the student's ledger account at the institution, if the institution does not obtain affirmative confirmation from the student under paragraph (a)(6)(i) of this section.
- (4)(i) A student or parent must inform the institution if he or she wishes to cancel all or a portion of a loan, loan disbursement, TEACH Grant, or TEACH Grant disbursement.
- (ii) The institution must return the loan or TEACH Grant proceeds, cancel the loan or TEACH Grant, or do both, in accordance with program regulations provided that the institution receives a loan or TEACH Grant cancellation request—
    - (A) By the later of the first day of a payment period or 14 days after the date it notifies the student or parent of his or her right to cancel all or a portion of a loan or TEACH Grant, if the institution obtains affirmative confirmation from the student under paragraph (a)(6)(i) of this section; or
    - (B) Within 30 days of the date the institution notifies the student or parent of his or her right to cancel all or a portion of a loan, if the institution does not obtain affirmative confirmation from the student under paragraph (a)(6)(i) of this section.
  - (iii) If a student or parent requests a loan cancellation after the period set forth in paragraph (a)(4)(ii) ~~(A) or (B)~~ of this section, the institution may return the loan or TEACH Grant proceeds, cancel the loan or TEACH Grant, or do both, in accordance with program regulations.
- (5) An institution must inform the student or parent in writing regarding the outcome of any cancellation request.

(6) For purposes of this section—

(i) Affirmative confirmation is a process under which an institution obtains written confirmation of the types and amounts of title IV, HEA program loans that a student wants for the period of enrollment before the institution credits the student's account with those loan funds. The process under which the TEACH Grant program is administered is considered to be an affirmative confirmation process; and

(ii) An institution is not required to return any loan or TEACH Grant proceeds that it disbursed directly to a student or parent.

(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)(4) that are included in that authorization; and

(ii) ~~Except if prohibited by~~Unless the Secretary provides funds to the institution under the reimbursement ~~or payment method or the heightened~~ cash monitoring payment method described in §668.162(c) or §668.162(d), respectively, 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 under §668.164(f).

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

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

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

(3) A student or parent may authorize an institution to carry out the activities described in paragraph (b)(1) of this section for the period during which the student is enrolled at the institution.

(4)(i) If a student or parent modifies an authorization, the modification takes effect on the date the institution receives the modification notice.

(ii) If a student or parent cancels an authorization to use title IV, HEA program funds to pay for authorized charges under §668.164(c)(4), the institution may use title IV, HEA program funds to pay only those authorized charges incurred by the student before the institution received the notice.

(iii) If a student or parent cancels an authorization to hold title IV, HEA program funds under paragraph (b)(1)(ii) of this section, the institution must pay those funds directly to the student or parent as soon as possible but no later than 14 days after the institution receives that notice.

(5) If an institution holds excess student funds under paragraph (b)(1)(ii) of this section, the institution must—

(i) Identify the amount of funds the institution holds for each student or parent in a subsidiary ledger account designed for that purpose;

(ii) Maintain, at all times, cash in its bank depository account in an amount at least equal to the amount of funds the institution holds for the student; and

(iii) Notwithstanding any authorization obtained by the institution under this paragraph, pay any remaining balance on loan funds by the end of the loan period and any remaining other title IV, HEA program funds by the end of the last payment period in the award year for which they were awarded.

#### **§668.166 Excess cash.**

(a) General. The Secretary considers excess cash to be any amount of title IV, HEA program funds, other than Federal Perkins Loan Program funds, that an institution does not disburse to students by the end of the third business day following the date the institution—

(1) Received those funds from the Secretary; or

(2) Deposited or transferred to its Federal account previously disbursed title IV, HEA program funds, such as those resulting from award adjustments, recoveries, or cancellations.

(b) Excess cash tolerance. An institution may maintain for up to seven days an amount of excess cash that does not exceed one percent of the total amount of funds the institution drew down in the prior award year. The institution must return immediately to the Secretary any amount of excess cash over the one-percent tolerance and any amount of excess cash remaining in its account after the seven-day tolerance period.

(c) Consequences for maintaining excess cash. Upon a finding that an institution maintained excess cash for any amount or time over that allowed in the tolerance provisions in paragraph (b) of this section, the actions the Secretary may take include, but are not limited to—

(1) Requiring the institution to reimburse the Secretary for the costs the Federal government incurred in providing that excess cash to the institution; and

(2) Providing funds to the institution under the reimbursement payment method or heightened cash monitoring payment method described in §668.162(c) and (d), respectively.