

§ 668.166

title IV, HEA program funds by the end of the last payment period in the award year for which they were awarded.

(Approved by the Office of Management and Budget under control number 1845-0038)

(Authority: 20 U.S.C. 1094)

[61 FR 60603, Nov. 29, 1996, as amended at 62 FR 27128, May 16, 1997; 65 FR 65675, Nov. 1, 2000; 67 FR 67074, Nov. 1, 2003; 71 FR 64397, Nov. 1, 2006; 72 FR 62029, Nov. 1, 2007; 73 FR 35494, June 23, 2008]

§ 668.166 Excess cash.

(a) *General.* (1) 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 or parents by the end of the third business day following the date the institution—

(i) Received those funds from the Secretary; or

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

(2) The provisions of this section do not apply to the title IV, HEA program funds that an institution receives from the Secretary under the just-in-time payment method.

(b) *Excess cash tolerances.* 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 remaining in its account after the seven-day tolerance period.

(c) *Consequences for maintaining excess cash.* Upon a finding that an institution maintains excess cash for any amount or timeframe 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 Secretary incurred in providing that excess cash to the institution; and

(2) Providing funds to the institution under the reimbursement payment

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method or cash monitoring payment method described in § 668.163(d) and (e), respectively.

(Authority: 20 U.S.C. 1094)

[72 FR 62030, Nov. 1, 2007]

§ 668.167 FFEL Program funds.

(a) *Requesting FFEL Program funds.* In certifying a loan application for a borrower under § 682.603—

(1) An institution may not request a lender to provide it with loan funds by EFT or master check earlier than—

(i) Twenty-seven days after the first day of classes of the first payment period for a first-year, first-time Federal Stafford Loan Program borrower as defined in § 682.604(c)(5); or

(ii) Thirteen days before the first day of classes for any subsequent payment period for a first-year, first-time Federal Stafford Loan Program borrower or for any payment period for all other Federal Stafford Loan Program borrowers; and

(2) An institution may not request a lender to provide it with loan funds by check requiring the endorsement of the borrower earlier than—

(i) The first day of classes of the first payment period for a first-year, first-time Federal Stafford Loan Program borrower as defined in § 682.604(c)(5); or

(ii) Thirty days before the first day of classes for any subsequent payment period for a first-year, first-time Federal Stafford Loan Program borrower or for any payment period for all other Federal Stafford borrowers; and

(3)(i) An institution may not request a lender to provide it with loan funds by EFT or master check for any Federal PLUS Program loan earlier than 13 days before the first day of classes for any payment period.

(ii) An institution may not request a lender to provide with loan funds by check requiring the endorsement of the borrower for any Federal PLUS Program loan earlier than 30 days before the first day of classes for any payment period.

(b) *Returning funds to a lender.* (1) Except as provided in paragraph (c) of this section, an institution must return FFEL Program funds to a lender if the institution does not disburse those

funds to a student or parent for a payment period within—

(i) Ten business days following the date the institution receives the funds if the lender provides those funds to the institution by EFT or master check on or after July 1, 1997 but before July 1, 1999;

(ii) Three business days following the date the institution receives the funds if the lender provides those funds to the institution by EFT and master check on or after July 1, 1999; or

(iii) Thirty days after the institution receives the funds if a lender provides those funds by a check payable to the borrower or copayable to the borrower and the institution.

(2) If the institution does not disburse the loan funds as specified in paragraph (b)(1) or (c) of this section, the institution must return those funds to the lender promptly but no later than 10 business days after the date the institution is required to disburse the funds.

(3) If an institution must return loan funds to the lender under paragraph (b)(2) of this section and the institution determines that the student is eligible to receive the loan funds, the school may disburse the funds to the student or parent rather than return them to the lender provided the funds are disbursed prior to the end of the applicable timeframe under paragraph (b)(2) of this section.

(c) *Delay in returning funds to a lender.* An institution may delay returning FFEL program funds to a lender for—

(1) Ten business days after the date set forth in paragraph (b)(1) of this section if—

(i)(A) The institution does not disburse FFEL Program funds to a borrower because the student did not complete the required number of clock or credit hours in a preceding payment period; and

(B) The institution expects the student to complete required hours within this 10-day period; or

(ii)(A) The student has not met all the FFEL Programs eligibility requirements; and

(B) The institution expects the student to meet those requirements within this 10-day period; or

(2) Thirty days after the date set forth in paragraph (b) of this section for funds a lender provides by EFT or master check if the Secretary places the institution on the reimbursement payment method under paragraph (d) or (e) of this section.

(d) *An institution placed under the reimbursement payment method.* (1) If the Secretary places an institution under the reimbursement payment method for the Federal Pell Grant, Direct Loan or campus-based programs, the institution—

(i) May not disburse FFEL Program funds to a borrower until the Secretary approves a request from the institution to make that disbursement for that borrower; and

(ii) If prohibited by the Secretary, may not certify a borrower's loan application until the Secretary approves a request from the institution to make that certification for that borrower.

(2) In order for the Secretary to approve a disbursement or certification request from the institution, the institution must submit documentation to the Secretary or entity approved by the Secretary that shows that each borrower included in that request whose loan has not been disbursed or certified is eligible to receive that disbursement or certification.

(3) Pending the Secretary's approval of a disbursement or certification request, the Secretary may—

(i) Prohibit the institution from endorsing a master check or obtaining a borrower's endorsement of any loan check the institution receives from a lender;

(ii) Require the institution to maintain loan funds that it receives from a lender via EFT in a separate bank account that meets the requirements under § 668.163; and

(iii) Prohibit the institution from certifying a borrower's loan application.

(e) *An institution participating solely in the FFEL Programs.* If the FFEL Programs are the only title IV, HEA programs in which an institution participates and the Secretary determines that there is a need to monitor strictly the institution's participation in those programs, the Secretary may subject the institution to the conditions and

limitations contained in paragraph (d) of this section.

(f) *An institution placed under the cash monitoring payment method.* The Secretary may require an institution that is placed under the cash monitoring described under paragraph § 668.162(e), to comply with the disbursement and certification provisions under paragraph (d) of this section, except that the Secretary may modify the documentation requirements and review procedures used to approve the institution's disbursement or certification request.

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Subpart L—Financial Responsibility

SOURCE: 62 FR 62877, Nov. 25, 1997, unless otherwise noted.

§ 668.171 General.

(a) *Purpose.* To begin and to continue to participate in any title IV, HEA program, an institution must demonstrate to the Secretary that it is financially responsible under the standards established in this subpart. As provided under section 498(c)(1) of the HEA, the Secretary determines whether an institution is financially responsible based on the institution's ability to—

(1) Provide the services described in its official publications and statements;

(2) Administer properly the title IV, HEA programs in which it participates; and

(3) Meet all of its financial obligations.

(b) *General standards of financial responsibility.* Except as provided under paragraphs (c) and (d) of this section, the Secretary considers an institution to be financially responsible if the Secretary determines that—

(1) The institution's Equity, Primary Reserve, and Net Income ratios yield a composite score of at least 1.5, as provided under § 668.172 and appendices A and B to this subpart;

(2) The institution has sufficient cash reserves to make required returns of unearned title IV HEA program funds, as provided under § 668.173;

(3) The institution is current in its debt payments. An institution is not current in its debt payments if—

(i) It is in violation of any existing loan agreement at its fiscal year end, as disclosed in a note to its audited financial statements or audit opinion; or

(ii) It fails to make a payment in accordance with existing debt obligations for more than 120 days, and at least one creditor has filed suit to recover funds under those obligations; and

(4) The institution is meeting all of its financial obligations, including but not limited to—

(i) Refunds that it is required to make under its refund policy, including the return of title IV, HEA program funds for which it is responsible under § 668.22; and

(ii) Repayments to the Secretary for debts and liabilities arising from the institution's participation in the title IV, HEA programs.

(c) *Public institutions.* The Secretary considers a public institution to be financially responsible if the institution—

(1)(i) Notifies the Secretary that it is designated as a public institution by the State, local or municipal government entity, tribal authority, or other government entity that has the legal authority to make that designation; and

(ii) Provides a letter from an official of that State or other government entity confirming that the institution is a public institution; and

(2) Is not in violation of any past performance requirement under § 668.174.

(d) *Audit opinions and past performance provisions.* Even if an institution satisfies all of the general standards of financial responsibility under paragraph (b) of this section, the Secretary does not consider the institution to be financially responsible if—

(1) In the institution's audited financial statements, the opinion expressed by the auditor was an adverse, qualified, or disclaimed opinion, or the auditor expressed doubt about the continued existence of the institution as a