MEMORANDUM

Date: January 16, 2024

To: U.S. Department of Education

From: Robyn Smith and Sophie Laing, Negotiators for Legal Assistance Organizations

Re: Issue Paper 1 – Cash Management

The Department of Education has proposed modifications to 34 C.F.R. § 668.167, Severability, (renamed "Returning Funds and Overpayments") that would create timelines within which schools would be required to attempt to recover payment on federal aid overpayments, enter into payment arrangements with students, and refer overpayments to the Department. We are concerned that these modifications will greatly increase the number of students with Pell Grant overpayments who are unable to complete their education, as explained below.

Proposal: To alleviate our concerns, we propose replacing the proposed deadlines at 34 C.F.R. § 668.17(b), with a requirement that the Department collect Pell Grant overpayments, provide in-school deferments and 6-month grace periods for repayment, and provide the student a repayment plan with the same requirements as a SAVE income-driven repayment plan. We further propose that the Department delete §§ 668.17(c)(4), (5), and (6), which require schools to collect Pell Grant overpayments (these sections are current law which the Department is proposing to move from § 690.79).

Background: Pell Grant overpayment issues disproportionately impact low-income students and students of color. Pell Grants are made to students who are low-income and demonstrate "exceptional financial need."[1] Students of color are more likely to be Pell Grant recipients.[2] These students are also more likely to withdraw from classes due to difficult circumstances beyond their control. These circumstances can include issues regarding housing stability, child-care, employment, family finances, and/or physical and mental health, among other issues. Students impacted by Pell Grant overpayments, who also face paying higher amounts of student loan debt than other students,[3] can rarely afford to pay back these debts in one lump sum. To ease these challenges, Pell Grant students should have access to an affordable repayment option so they can complete their education.

The current regulations do not contain any affordable repayment options for Pell Grant overpayments. The regulations provide that when a student is liable for a Pell Grant overpayment, the school must

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[1] FED. STUDENT AID, *Federal Pell Grants*, https://studentaid.gov/understand-aid/types/grants/pell.

[2] NAT'L ASS'N STUDENT FIN. AID ADM'R, *Doubling the Maximum Pell Grant* (Aug. 2022) https://www.nasfaa.org/issue_brief_double_pell (citing data from the U.S. Department of Education, Federal Pell Grant Program End-of-year Report, 2019-2020).

[3] Nancy Wong, *New Data Show Recent Graduates Who Received Pell Grants Left School with $6 Billion More in Debt than Their Peers*, THE INST. FOR COLLEGE ACCESS & SUCCESS (Dec. 21, 2020), https://ticas.org/affordability-2/new-data-show-recent-graduates-who-received-pell-grants-left-school-with-6-billion-more-in-debt-than-their-peers/.

promptly send a written notice to the student requesting repayment of the entire amount and may make arrangements satisfactory to the school for repayment.[4] The regulations do not impose any deadlines within which schools must make repayment arrangements or refer the overpayment to the Department for collection. In our experience, such payment arrangements and referrals can take months and sometimes longer. Unless the student repays the full amount of the overpayment or "makes arrangements satisfactory to the holder of the overpayment debt to repay the overpayment," the student becomes ineligible for financial aid.[5] In addition, the school is required to refer the debt to the Department for collection.[6]

The regulations do not address whether the Department may offer the student a repayment plan and reestablish the student's financial aid eligibility if a student agrees to one. During negotiations on January 8, 2024, the Department stated that it allows its debt collectors to enter into payment arrangements with students who have Pell Grant overpayments, rather than requiring lump sum payments. However, although we and our colleagues have worked with many such students, we have never encountered a case in which the Department's collectors offered repayment plans. Instead, the Department's collectors typically demand that the student pay the full amount to reestablish financial aid eligibility, which our clients can rarely afford. For this reason, in our experience the best option for a student has been to make repayment arrangements with the school before the overpayment is referred for collection to the Department – an inconsistent and uneven process for students.

Even if the Department does allow its debt collectors to offer repayment plans, we are concerned that leaving repayment arrangements solely up to the Department's debt collectors' discretion will not solve the problems we describe. Given the issues that arose in the past when debt collectors were given vast discretion to implement "reasonable and affordable" repayment plans for rehabilitation agreements (before the standard was tied to income-based repayment plan calculations), any such non-regulatory policy will continue to allow the Department's debt collectors to demand full payment and/or offer payment plans that low-income students cannot afford.

The Department's proposed regulation to impose time limits for school collection of overpayments, particularly Pell Grant overpayments, makes it more likely that such overpayments will be referred to the Department, which is unlikely to offer students any affordable repayment options. As a result, it is imperative that the Department offers these low-income students truly affordable repayment options in the form of a repayment plan consistent with SAVE, so that they are not left with unaffordable overpayments and shut out of higher education.

Proposed Changes to proposed 34 C.F.R. § 668.17:[7] We propose replacing the proposed deadlines in 34 C.F.R. § 668.167(b), with a new provision providing that the student would remain eligible for financial aid, and not be obligated to immediately repay the Pell Grant overpayment, as long as they were enrolled at least half-time, in six-month grace period after reducing enrollment to less than six-months, or in a repayment plan with the same terms as a SAVE IDR plan. We further propose deleting all of

[4] 34 C.F.R. § 690.79(b)(1).
[5] *Id*.
[6] 34 C.F.R. § 690.79(c).
[7] Note that throughout, the red text is the Department of Education's proposed language, and blue text is our suggested language.

proposed § 668.167(c)(4), (5), and (6) (which the Department has proposed moving from current § 690.79). Under this proposal, the schools would no longer be required to collect Pell Grant overpayments, which would ease the burdens on schools and simplify the process for students. Instead, the Department would automatically handle Pell Grant overpayment collection (as it automatically handles collection of loans), removing any need for an institution to refer collection to the Department.

§ 668.167 Returning Funds and Overpayments

(a) *Returning funds*.

(1) Notwithstanding any State law (such as a law that allows funds to escheat to the State), an institution must return to the Secretary any title IV, HEA program funds, except FWS program funds, that it attempts to disburse directly to a student or parent that are not received by the student or parent. For FWS program funds, the institution is required to return only the Federal portion of the payroll disbursement.

(2) If an EFT to a student's or parent's financial account is rejected, or a check to a student or parent is returned, the institution may make additional attempts to disburse the funds, provided that those attempts are made not later than 45 days after the EFT was rejected or the check returned. In cases where the institution does not make another attempt, the funds must be returned to the Secretary before the end of this 45-day period.

(3) If a check sent to a student or parent is not returned to the institution but is not cashed, the institution must return the funds to the Secretary no later than 240 days after the date it issued the check.

~~(b) Overpayments timelines.~~

~~(1) For overpayments for which the student is responsible and that are not tied to nonattendance or return of title IV, HEA funds, institutions must promptly send a written notice to the student requesting repayment of the overpayment amount. Institutions have 30 calendar days from the date the notice is sent to—~~

~~(i) Recover the overpayment in full; or~~

~~(ii) Enter into a repayment arrangement with the student that is satisfactory to the institution.~~

~~(2) If the initial 30 calendar days have elapsed and the institution has not received the full overpayment or made satisfactory repayment arrangements, the institution has 15 calendar days to—~~

~~(i) Report the overpayment to NSLDS; and~~

~~(ii) Refer the overpayment to the Department.~~

~~(3) For FSA grant overpayments for which the institution is responsible, institutions have 45 calendar days from the date of discovery to—~~

~~(i) For FSEOG, restore to the institution's FSEOG account an amount equal to the overpayment plus any administrative cost allowance claimed on the overpayment; and~~

~~(ii) For Federal Pell Grant and TEACH grant overpayments, make the appropriate downward adjustment to the student's award in the COD system and either return the funds through G5 or disburse them to other eligible students.~~

~~(4) For interim disbursement overpayments for which the institution is responsible and that are not recovered by reducing subsequent disbursements to students for the award year, institutions have 45 calendar days to make restitution to the appropriate account.~~

(b) *Repayment of Pell Grant overpayments*. If an institution makes a Federal Pell Grant overpayment for which it is not liable, a student is obligated to repay the full amount of a Pell Grant overpayment as provided in this section unless the Pell Grant overpayment is discharged pursuant to other sections of these regulations.

(1) The student is not required to repay a Pell Grant overpayment while the student is enrolled at an eligible institution on at least a half-time basis.

(2) When a student ceases to be enrolled at an eligible school on at least a half-time basis, a six-month grace period begins before the student is obligated to repay the Pell Grant overpayment, unless the grace period has been previously exhausted.

(3) When a student becomes obligated to repay a Pell Grant overpayment, the Secretary shall provide the student the opportunity to repay the amount in accordance with the Saving on a Valuable Education (SAVE) plan, as established in § 685.209(a)(1). The Secretary uses applicable tax information consistent with the process in § 685.209(l) to automatically enroll the student in the plan. If the student has not provided approval for the disclosure of such applicable tax information, the Secretary informs the student of their eligibility to repay the overpayment based on the SAVE plan and the option to provide alternative documentation of income or family size as described in § 685.209(l)(6).The instructions provided by the Secretary for enrollment in the SAVE plan will be, if it has access to financial information necessary to calculate the student's monthly payment. If the Department does not have access to financial information necessary to calculate the student's monthly payment, it shall notify the student of their right to apply for a SAVE plan and provide clear and accurate instructions.

(4) The student shall be eligible for Title IV financial aid when the student meets the criteria of subparagraphs (b)(1) or (2), or enters into a SAVE plan pursuant to subparagraph (b)(3), provided the student would be otherwise eligible for financial aid without the Pell Grant overpayment.

(c) *Liability for and recovery of Federal Pell Grant overpayments*.

(1) Except as provided in paragraphs (c)(2) and (3) of this section, a student is liable for any Federal Pell Grant overpayment made to them.

(2) The institution is liable for a Federal Pell Grant overpayment if the overpayment occurred because the institution failed to follow the procedures in this part or 34 CFR part 668. The institution must restore an amount equal to the overpayment to its Federal Pell Grant account.

(3) A student is not liable for, and the institution is not required to attempt recovery of or refer to the Secretary, a Federal Pell Grant overpayment if the amount of the overpayment is less than $50 and is not a remaining balance.

~~(4) Except as provided in paragraph (c)(3) of this section, if an institution makes a Federal Pell Grant overpayment for which it is not liable, it must promptly send a written notice to the student requesting repayment of the overpayment amount. The notice must state that failure to make that repayment, or to make arrangements satisfactory to the holder of the overpayment debt to repay the overpayment, makes the student ineligible for further title IV, HEA program funds until final resolution of the Federal Pell Grant overpayment.~~

~~(5) If a student objects to the institution's Federal Pell Grant overpayment determination on the grounds that it is erroneous, the institution must consider any information provided by the student and determine whether the objection is warranted.~~

~~(6) Except as provided in paragraph (c)(3) of this section, if the student fails to repay a Federal Pell Grant overpayment or make arrangements satisfactory to the holder of the overpayment debt to repay the Federal Pell Grant overpayment, after the institution has taken the action required by paragraphs (c)(4) and (5) of this section, the institution must refer the overpayment to the Secretary for collection purposes in accordance with procedures required by the Secretary. After referring the Federal Pell Grant overpayment to the Secretary under this section, the institution need make no further efforts to recover the overpayment.~~