

**Regulatory Proposal Regarding Liability of Overpayment
 – Result from Day 2 Caucus –
 Issue One: §§ 690.5 (ineligibility) & 690.80(d) (recalculation)**

**Matthew Feehan, J.D., Senior Policy Advisor
 Veterans Education Project
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On behalf of Students who are veterans, U.S. military service members or groups representing them

Submitted with support from the following constituencies:

- Employers and groups representing the business community, including small, medium, and large businesses
- Legal assistance organizations that represent students and borrowers, consumer advocates, and civil rights groups that represent students.
- Organizations Representing Taxpayers and the Public Interest.

§ 690.5 Ineligibility due to assistance from non-Federal grants	
Education Department Original Draft Language	Education Department Modified Language (December 9, 2025)
<p>§ 690.5 Ineligibility due to assistance from non-Federal grants.</p> <p>A student shall not be eligible for a Federal Pell Grant for an award year during which the student receives grant aid from non-Federal sources, including States, eligible institutions, or private sources, in an amount that equals or exceeds the student’s cost of attendance for the award year.</p>	<p>34 CFR 690.5 - Ineligibility due to grant or scholarship assistance from non-Federal grants.</p> <p>(a) A student shall not be eligible for a Federal Pell Grant for an award year during which the student receives grant or scholarship assistance aid from non-Federal sources including States, eligible institutions, or private sources, in an amount that equals or exceeds the student’s cost of attendance for the award year;</p> <p>(b) Grant or scholarship assistance from non-Federal sources does not include sources that are excluded under Section 480(i) of the Higher Education Act of 1965, as amended.</p>

By incorporating feedback from multiple negotiators into subsection (b), the Department has effectively prevented what could have been a chilling effect on states and private entities that support military-affiliated students. Because the provision concerns non-Federal funds, VA benefits were never at issue. However, state-provided assistance intended to offset specific costs can now also be excluded from both OFA calculations, and the Department’s revision appropriately aligns this treatment with the Higher Education Act.

This modification fully resolves the concerns raised by military-affiliated students regarding § 690.5, Ineligibility due to assistance from non-Federal grants. We applaud the Department.

§ 690.80(d) Ineligibility due to assistance from non-Federal grants	
Education Department Original Draft Language	Education Department Modified Language (December 9, 2025)
<p>(d) Receipt of assistance from non-Federal grants.</p> <p>If at any time during the award year the student receives assistance from non-Federal sources that equals or exceeds the student’s cost of attendance as described in 34 CFR 690.5, the institution must either reduce the non-Federal assistance until it does not equal or exceed the student’s cost of attendance or return all of the Federal Pell Grant funds that the student received for that award year.</p>	<p>(d) Receipt of assistance from non-Federal grants.</p> <p>If, prior to the final disbursement of a student’s Pell Grant for an award year, the institution becomes aware that the at any time during the award year the student has received or will receive grant or scholarship assistance from non-Federal sources that equals or exceeds the student’s cost of attendance as described in 34 CFR 690.5, the institution must either—</p> <p>(1) Reduce the non-Federal grant or scholarship assistance until it does not equal or exceed the student’s cost of attendance; or</p> <p>(2) Return all of the Federal Pell Grant funds that the student received for that award year and cancel any future disbursements of such funds for that award year.</p>

While the Department’s modification certainly addressed and cured the rolling and ongoing demands caused by the “If at any time” language by (1) reverting the passive onus onto the institution (not the student, which would have been active) and (2) changing the timeline to “prior to the final disbursement of a student’s Pell Grant for an award year.”

For this modification, Military-Affiliated students applaud the Department. However, the underlying issues (both pragmatic & logistical) remain with the “the institution must.”

Liability for overpayment is already regulated and the steps for which recalculation and recovery are set under Part 690.79 Liability For and Recovery of Federal Pell Grant Overpayments (see attached).

1. A written notice and challenge period is provided to a student (here, a veteran, servicemember, or family member); the Department’s proposed language obfuscates that right by (a) assuming institutions’ information (regarding another source of funding) is 100% accurate, (b) is applied correctly to the student ledger, and (c) the student has no defense/argument in the matter.
2. In effect, this is a U.S. Federal Agency mandating private colleges and universities to investigate its students’ non-federal funds in a very active role.
 - a. Logistically, that presents a few unique challenges:
 - i. Will students be asked to provide their personal banking login credentials? (i.e. verification).
 - ii. Will colleges and universities be required to hire financial investigators? (i.e., potentially exposing institutions to liability).
 - iii. How will University ABC—practically— “*Reduce the non-Federal grant or scholarship assistance until it does not equal or exceed the student’s cost of attendance*”?
 - iv. Does the University plan on contacting all sources of non-federal grants and scholarships? How would that conversation go? E.g., “I’m calling on behalf of University ABC, it has come to the University’s attention that you, Grandma, wrote a check to our student A for (the value), equaling your Granddaughter’s cost of attendance at our university; we are going to need you to cancel that check per the U.S. Department of Education’s guidance.”
3. **Most importantly**, what if the University is incorrect? Mistakes happen, and no financial aid counselor in our sector can honestly argue they have never made a mistake. And let us assume this counselor inadvertently returns funds to the Department that were not supposed to be returned? This is where Part 690.79 Liability for and Recovery of Federal Pell Grant Overpayments already regulates and draft § 690.80(d) conflicts.

Proposed Draft Language

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(d) Receipt of assistance from non-Federal grants.

(1) Verification of information

If, prior to making the final disbursement of a student's Federal Pell Grant for an award year, the institution receives verified information that the student has received or will receive non-Federal grant or scholarship assistance that would cause total grant or scholarship assistance to equal or exceed the student's cost of attendance as described in § 690.5, the institution must complete a recalculation under this section and in accordance with § 690.79.

(2) Consistency with § 690.79 (Liability for and Recovery of Federal Pell Grant Overpayments)

Before taking any action to adjust Pell Grant funds, the institution must follow the procedures in § 690.79, including—(i) Providing the student written notice of the institution's determination; (ii) Allowing the student the opportunity to contest the accuracy of the information and to provide documentation; and (iii) Making any adjustment only after completing the required review and after the student's challenge period has expired or the student has resolved the discrepancy.

(3) Adjustment of Pell Grant funds

If, after the procedures in paragraph (d)(2) are completed, the institution determines that an overaward exists, the institution must—(i) Recalculate the Pell Grant award to eliminate the overaward; (ii) Return only the amount of Pell Grant funding determined to be recoverable under § 690.79; and (iii) Cancel any pending Pell Grant disbursements for that award year to the extent required to comply with this section.

(4) Limitations

Nothing in this section shall be interpreted to—(i) Require a student to disclose personal banking information or records to the institution; (ii) Require an institution to investigate or monitor a student's private financial resources beyond the documentation the institution already receives in the normal course of administering Title IV aid; or (iii) Supersede a student's rights under § 690.79 or the institution's regulatory obligations regarding overpayment liability and recovery.

Rational
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Military-affiliated students (veterans, active-duty servicemembers, and their spouses and children) deserve regulatory protections that insulate them not only from institutional error but also from the growing threat of sophisticated fraud.

While the Department's recent modification to § 690.80(d) commendably resolves the problem created by the "*if at any time*" standard, deeper concerns remain regarding what happens when institutions are **required to act** (as opposed to "may make a policy") without verified information or clear due-process steps. Veterans and service members frequently rely on multiple streams of assistance, including state assistance (some states are more military friendly than others), private support from military and veteran support groups (Veterans Service Organizations), and family support.

When a rule suggests that an institution "**must**" adjust Pell funding or "**must**" reduce non-Federal support, it creates an ambiguous enforcement environment where institutions are now compelled (where they were not before) to take premature action—even based on unverified or inaccurate information.

Fraud & Misrepresentation

For the population we represent, that risk is not theoretical. Military-affiliated students are disproportionately targeted by scammers precisely because they interact with complex benefit systems like the GI Bill and Tuition Assistance. As Andrew Corkery reported for PBS NewsHour in *How scammers are siphoning college financial aid with stolen student identities* (Aug. 24, 2025), criminals have already demonstrated the ability to pose as enrolled students, fabricate identities, and redirect federal aid. That reporting made clear scammers can generate convincing synthetic identities, manipulate documentation, and masquerade as both institutions and students themselves.

In such an environment, a regulation that authorizes institutions to take action simply because the student **may** have received additional funding, or because an institution believes an overpayment has occurred, creates an opening for scammers to pressure real students into believing they owe money to the Department of Education. Bad actors could easily leverage the language of § 690.80(d) to send phishing emails, spoof university communications, or impersonate financial-aid offices, claiming that a veteran or military spouse "must return Pell funds immediately" because "the institution is required under federal regulation to recover an overaward." When the regulatory text appears to support that coercive message, the scam becomes far more believable.

Negligence

Compounding the problem, even well-meaning institutions make mistakes, and no financial aid professional would credibly claim otherwise. If an institution incorrectly

concludes that a student received excess non-Federal aid, or misapplies a private scholarship to the wrong term, an erroneous return of Pell funds could be triggered.

Without the procedural safeguards in § 690.79—notice, documentation, verification, and a meaningful challenge period—students lose their ability to correct the record before harm is done—otherwise known as due process.

That loss is especially consequential for veterans and servicemembers who may be deployed, in training, or otherwise unable to respond immediately to sudden institutional demands. Meanwhile, the logistical implications of obligating institutions to “reduce non-Federal grants” or to monitor private funding streams are not just impractical; they create more points of vulnerability. Requiring institutions to inquire into personal funds invites privacy breaches and opens the door to predatory behavior. In the worst cases, scammers may imitate university staff to obtain personal banking information or pressure students under the guise of “Pell Grant compliance,” a scenario made all the more plausible if the Department appears to mandate such invasive oversight.

For all of these reasons, regulatory language must clearly limit institutional authority (as it has already done in prior regulation), require verified information, and incorporate the due-process protections already established under § 690.79.

Doing so ensures that institutions cannot act precipitously, that students retain essential rights to contest errors, and that the regulation cannot be misused—whether by a negligent office or by a sophisticated fraud operation seeking to exploit the military community. Strong, precise regulatory drafting is therefore not merely a matter of administrative clarity; it is a necessary safeguard for veterans, servicemembers, and their families in an era where the threats posed by both human error and AI-enabled impersonation continue to grow.