

MEMORANDUM

Date: February 14, 2024
To: U.S. Department of Education
From: Robyn Smith and Sophie Laing, Negotiators for Legal Assistance Organizations
Re: Issue Paper 2 – Cash Management: Pell Grant Overpayment Proposal

Proposal Summary: We propose supplementing the proposed deadlines at 34 C.F.R. § 668.17(b) with a requirement that the Department provide the student a reasonable and affordable repayment plan for Pell Grant and FSEOG overpayments with similar parameters as a SAVE income-driven repayment plan, and additional protections to encourage voluntary repayment and continued access to higher education.

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.³ These circumstances can include issues regarding housing stability, child-care, employment, family finances, and/or physical and mental health, among other issues. Overpayments can also occur for reasons as simple as a student dropping a class in the period between receiving their financial aid disbursement and the school's census date. For example, students can incur Pell Grant overpayments when they intend to be enrolled full-time, receive a financial aid disbursement, but then drop to three-quarters-time enrollment when a class they need to take is over-enrolled.

Students impacted by Pell Grant overpayments, who also face paying higher amounts of student loan debt than other students,⁴ can rarely afford to pay back these debts in one lump sum. To ease these challenges, Pell Grant students should have reliable access to affordable repayment options so they can complete their education.

An example from the Legal Aid Foundation of Los Angeles (LAFLA) illustrates the hardships current Pell Grant overpayment regulations have on low-income students. Mr. Rodriguez,⁵ is a 58-year-old man who lives on a monthly income of about \$1,500 per month composed of SSDI benefits and need-based SSI benefits (a total annual income of \$18,100) for mental health issues, including a bipolar mood

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. Dep't of Educ., Federal Pell Grant Program End-of-year Report, 2019-2020).

³ FED. STUDENT AID, *2023-2024 Federal Student Aid Handbook: Overawards and Overpayments*, <https://fsapartners.ed.gov/knowledge-center/fsa-handbook/2023-2024/vol4/ch3-overawards-and-overpayments>.

⁴ 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/>.

⁵ Unless otherwise specified, the names of borrowers have been changed to protect their privacy.

disorder. In spring 2020, he obtained Pell Grant funding to enroll in a computer science program at a public community college.

In spring 2021, Mr. Rodriguez started having difficulty keeping up with his lab work because his bipolar mood disorder was worsening. As a result, he had to drop three of his four classes. Four months later, in July 2021, he received a letter from the school's financial aid office assessing him a Pell Grant overpayment in the amount of \$1,192. The school informed him that until he repaid the full amount, he would be barred from reenrolling and receiving any further financial aid. Mr. Rodriguez wanted to continue his program after his mental health improved but could not afford to repay the full \$1,192. He had already spent the money on living expenses while he had completed his remaining class. He tried negotiating with the financial aid office but was unsuccessful.

In 2023, he sought help from LAFLA. On Mr. Rodriguez's behalf, LAFLA asked for a \$40/month repayment plan. The school's financial aid officer refused the offer, stating that Mr. Rodriguez's only option was to repay the full amount or the school would transfer the overpayment for collection to the Department. The financial aid officer stated that the school did not offer repayment plans for Pell Grant overpayments because it did not have any staff to collect and keep track of them.

Other legal services organizations have helped borrowers in similar cases. For example, clients of Brooklyn Legal Services have experienced similar difficulties when facing Pell Grant overpayments, including the following:

- 18-year-old Sabrina Ramos set out to achieve her dream of becoming a nurse and obtained Pell Grants to enroll in classes at the New York City College of Technology, a public college.⁶ Two weeks into the fall semester, Ms. Ramos had to leave school to help care for her mother who had been hospitalized due to schizophrenia. She was assessed \$2,775 for Pell Grant overpayments, but could not pay because she was only earning about \$250 per week cleaning apartments. Three years later, Ms. Ramos wanted to return to school so that she could eventually find better employment to support herself and her young child. She learned, however, that she was no longer eligible for financial aid due to the Pell Grant overpayment which she cannot afford to repay. Although she provided the school with her mother's psychiatric records to explain her withdrawal, the school refused to waive the debt and never referred the debt to the federal government.
- Ms. Santos faced similar challenges while attending a public, community college in New York City. During the 2015-2016 academic year, Ms. Santos' sister, with whom she was living, lost her two babies who were born prematurely. Because her sister's husband was away in the Marines, it fell on Ms. Santos' to support her sister as well as their mother. Unable to balance these traumatic events with school, Ms. Santos withdrew from college, triggering the return of her Pell Grant. Last year, at age 27, Ms. Santos tried to return to school. However, she learned she could not return to college without first paying the Pell Grant overpayment. Ms. Santos now is a single parent supporting a disabled child who receives SSI. Although she also works a minimum wage

⁶ Jillian Berman, *How Low-Income Students Can Avoid This College Debt Trap*, MARKETWATCH (Oct. 16, 2023) <https://www.marketwatch.com/story/how-low-income-students-can-avoid-this-college-debt-trap-2017-10-12>.

job, she cannot afford to repay the Pell Grant overpayment and is effectively blocked from increasing her income and better supporting her daughter.

- Lastly, in the fall 2019 semester, 20-year-old Ms. Campbell had to withdraw from community college when she became ill and was hospitalized and diagnosed with schizophrenia. She advised her school that she was sick and withdrew, which triggered a \$1,900 Pell Grant overpayment. In 2023, she tried to re-enroll in school, but could not due to the unpaid Pell Grant overpayment. Currently, Ms. Campbell is unemployed and has never earned more than minimum wage.

Proposal Explanation: The current regulations do not contain any affordable repayment options for Pell Grant or FSEOG overpayments. The regulations (which are the same for both types of grants) provide that when a student is liable for a Pell Grant overpayment, the school must promptly send a written notice to the student requesting repayment of the entire amount and may make arrangements satisfactory to the school for repayment.⁷ The current 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.⁸ In addition, the school is then required to refer the debt to the Department for collection.⁹

The current regulations do not address whether a student has access to an affordable repayment plan once the overpayment is transferred to the Department. During negotiations on February 5, 2024, the Department stated that Maximus, the debt collector that currently services these overpayments, provides students with the option to enroll in payment arrangements similar to those available to borrowers rehabilitating their defaulted Direct Loans (setting payments at 15% of the student’s taxable income exceeding 150% of the poverty guidelines). The Department explained that if the payment arrangement is not affordable for the student, Maximus allows the student to fill out an income and expenses worksheet, which Maximus will then use to determine if lower payments are appropriate. The Department further explained that there is no minimum payment required for these payment arrangements, which can be as low as \$5 or \$10 per month, however payments are never set at \$0. When the overpayment is referred to the Department, the student becomes ineligible for additional Title IV aid. Although eligibility is restored if the student enters into a payment arrangement with Maximus, the student will lose eligibility if they even miss one of the monthly payments. Should the student fail to enter into a payment arrangement or pay off the overpayment within 65 days, the debt is referred to the Treasury for offset.

The current policy treats these overpayments like defaulted loans, forcing students to immediately face debt collection and escalating negative consequences. We do not feel as though this treatment is necessary or fair to students. Students are forced to drop credits or withdraw due to myriad reasons. These sudden changes in circumstances should not automatically trigger punitive collection practices, in which the student continues to be at risk, month to month, of potential offsets, garnishments, and loss of federal financial aid eligibility. Current regulations fail to take into account that the students facing these

⁷ 34 C.F.R. § 690.79(b)(1).

⁸ *Id.*

⁹ 34 C.F.R. § 690.79(c).

overpayments are low-income and in need of affordable repayment options. Failing to provide meaningful opportunities for repayment unnecessarily shuts these borrowers out of higher education and risks the harmful collection of much needed sources of income.

We and our colleagues have worked with many students with overpayment debts, and 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. Even though the Department does allow, and advise, its debt collectors to offer repayment plans, we are concerned that leaving repayment arrangements up to guidance and discretion will not solve the problems we describe. Any 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. For these reasons, we believe it is essential to ensure, through regulation, that students have actually affordable repayment options for overpayments.

Requiring debt collectors to use the SAVE plan repayment formula would not require additional data collection by the Department. Enrollment information is already available through NSLDS, and income and family size information is already collected by Maximus under the current overpayment guidance. Should the Department need additional data from these students, they can request that information directly from the student.

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. Current regulations do not ensure that students will have access to affordable repayment options once these overpayments are with the Department. As a result, it is imperative that the Department offers these low-income students actually affordable repayment arrangements in order to prevent the loss of Title IV eligibility and involuntary collection by the Treasury.

Proposed Changes to Proposed 34 C.F.R. § 668.17:¹⁰ We propose adding a new provision providing that the student would remain eligible for financial aid, and not be obligated to immediately repay the full amount of the Pell Grant or FSEOG overpayment, as long as they were enrolled in a reasonable and affordable repayment plan with similar terms as a SAVE Income-Driven Repayment (IDR) plan.

§ 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.

¹⁰ Note that throughout, the **red** text is the Department of Education’s proposed language, and **blue** text is our suggested language.

(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.

(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.

(d) 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) 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 a reasonable and affordable monthly payment plan on the basis of the borrower's total financial circumstances.
- (2) The Secretary considers the student's reasonable and affordable monthly payment amount to be an amount equal to 5 percent of the amount by which the student's Adjusted Gross

Income (AGI) exceeds 225 percent of the poverty guideline amount applicable to the student's family size and State, divided by 12. If the amount is less than \$0, and the student is enrolled at least half-time, the student's monthly payment is \$0. If the amount is less than \$5, the student's monthly payment is \$5.

(3) The Secretary may calculate the payment amount based on information provided in the student's FAFSA or orally, electronically, or in writing by the student or the student's representative and provide the student with a payment plan using that amount. A student may provide documentation to confirm the student's information by giving permission, in writing, electronically, or orally, for the disclosure of applicable tax information to the Secretary, or by providing alternative documentation of income and family size. If the student does not provide the Secretary with any documentation requested by the Secretary to calculate or confirm the reasonable and affordable payment amount within a reasonable time deadline set by the Secretary that is not less than 30 days, the payment agreement provided is null and void.

(4) Within 15 business days of the Secretary's determination of the student's payment amount, the Secretary provides the student with a written statement confirming the student's reasonable and affordable monthly payment amount calculated under paragraph (d)(2) of this section, the date on which the first payment is due, a statement that the payment amount is null and void if the student does not provide any documentation requested by the Secretary pursuant to paragraph (d)(3), and an explanation of any other terms and conditions applicable to the payments that must be made. The Secretary will not impose any conditions unrelated to the amount or timing of the payments.

(5) The student shall be eligible for financial aid when the student enters into a reasonable and affordable payment plan pursuant to paragraphs (d)(2) through (d)(4) of this section, provided the student would be otherwise eligible for financial aid without the Pell Grant overpayment. The student shall become ineligible for financial aid if the student fails to make any payment, pursuant to the payment plan, for a period of 270 or more days.

(6) A student may request that the monthly payment amount be recalculated due to a change in the student's total financial circumstances by submitting alternative documentation of the student's income or family size. In this case, the Secretary shall recalculate the monthly payment amount pursuant to paragraphs (d)(2) through (d)(4) of this section.

(de) Recovery of funds from interim disbursements.

(1) If an institution discovers, as a result of verification, that an applicant received under § 668.58(a)(2)(i)(B) more financial aid than the applicant was eligible to receive, the institution must eliminate the Federal Pell Grant or FSEOG overpayment by-

(i) Adjusting subsequent disbursements in the award year in which the overpayment occurred; or

(ii) Reimbursing the appropriate program account by—

(A) Requiring the applicant to return the overpayment to the institution if the institution cannot correct the overpayment under paragraph (d)(1) of this section; or

(B) Making restitution from its own funds, by the deadline specified in paragraph (b)(4) of this section.

(2) If an institution discovers, as a result of verification, that an applicant received under § 668.58(a)(2)(ii) more financial aid than the applicant was eligible to receive, the institution must eliminate the FWS overpayment by—

- (i) Adjusting the applicant's other financial aid; or
- (ii) Reimbursing the FWS program account by making restitution from its own funds if the institution cannot correct the overpayment under paragraph (d)(2)(i) of this section. The applicant must still be paid for all work performed under the institution's own payroll account.

(3) If an institution disbursed subsidized student financial assistance to an applicant under § 668.58(a)(3) and did not receive the valid SAR or valid ISIR reflecting corrections within the deadlines established under § 668.60, the institution must reimburse the appropriate program account by making restitution from its own funds. The applicant must still be paid for all work performed under the institution's own payroll account.

(e) TEACH Grant overpayments.

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

(2) The institution is liable for a TEACH Grant overpayment if the overpayment occurred because the institution failed to follow the procedures in this part or in 34 CFR part 668. The institution must restore an amount equal to the overpayment to its TEACH 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 TEACH Grant overpayment if the amount of the overpayment is less than \$25 \$50 and is not a remaining balance.

(4) Except as provided in paragraph (e)(3) of this section, if an institution makes a TEACH 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 the requested 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 TEACH Grant overpayment.

(5) If a student objects to the institution's TEACH Grant overpayment determination, the institution must consider any information provided by the student and determine whether the objection is warranted.

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

~~(f)~~ *FSEOG overpayments.*

(1) Except as provided in paragraphs (f)(2) and (3) of this section, a student is liable for any FSEOG overpayment made to them. An FSEOG overpayment for purposes of this paragraph does not include the non-Federal share of an FSEOG award if an institution meets its FSEOG matching share by the individual recipient method or the aggregate method.

(2) The institution is liable for an FSEOG overpayment if the overpayment occurred because the institution failed to follow the procedures in this part or 34 CFR parts 668, 674, or 676. The institution must restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its FSEOG account for an FSEOG overpayment.

(3) A student is not liable for, and the institution is not required to attempt recovery of an FSEOG overpayment, nor is the institution required to refer an FSEOG overpayment to the Secretary, if the overpayment—

- (i) Is less than ~~\$25~~ \$50; and
- (ii) Is neither a remaining balance nor a result of the application of the overaward threshold in § 673.5(d).

(4) Except as provided in paragraph (f)(3) of this section, if an institution makes an FSEOG 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 pay the overpayment, makes the student ineligible for further title IV, HEA program funds until final resolution of the overpayment.

(5) If a student objects to the institution's FSEOG 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 (f)(3) of this section, if a student fails to repay an FSEOG overpayment or make arrangements satisfactory to the holder of the overpayment debt to repay the FSEOG overpayment after the institution has taken the action required by paragraph (f)(4) of this section, the institution must refer the FSEOG overpayment to the Secretary for collection purposes in accordance with procedures required by the Secretary. After referring the

FSEOG overpayment to the Secretary under this section, the institution need make no further effort to recover the overpayment.

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

(1) When a student becomes obligated to repay a FSEOG overpayment, the Secretary shall provide the student the opportunity to repay the amount in accordance with a reasonable and affordable monthly payment plan on the basis of the student's total financial circumstances.

(2) The Secretary considers the student's reasonable and affordable monthly payment amount to be an amount equal to 5 percent of the amount by which the student's Adjusted Gross Income (AGI) exceeds 225 percent of the poverty guideline amount applicable to the student's family size and State, divided by 12. If the amount is less than \$0, and the student is enrolled at least half-time, the student's monthly payment is \$0. If the amount is less than \$5, the student's monthly payment is \$5.

(3) The Secretary may calculate the payment amount based on information provided in the student's FAFSA or orally, electronically, or in writing by the student or the student's representative and provide the student with a payment plan using that amount. A student may provide documentation to confirm the student's information by giving permission, in writing, electronically, or orally, for the disclosure of applicable tax information to the Secretary, or by providing alternative documentation of income and family size. If the student does not provide the Secretary with any documentation requested by the Secretary to calculate or confirm the reasonable and affordable payment amount within a reasonable time deadline set by the Secretary that is not less than 30 days, the payment agreement provided is null and void.

(4) Within 15 business days of the Secretary's determination of the student's payment amount, the Secretary provides the student with a written statement confirming the student's reasonable and affordable monthly payment amount calculated under paragraph (d)(2) of this section, the date on which the first payment is due, a statement that the payment amount is null and void if the student does not provide any documentation requested by the Secretary pursuant to paragraph (d)(3), and an explanation of any other terms and conditions applicable to the payments that must be made. The Secretary will not impose any conditions unrelated to the amount or timing of the payments.

(5) The student shall be eligible for financial aid when the student enters into a reasonable and affordable payment plan pursuant to paragraphs (d)(2) through (d)(4) of this section, provided the student would be otherwise eligible for financial aid without the Pell Grant overpayment. The student shall become ineligible for financial aid if the student fails to make any payment, pursuant to the payment plan, for a period of 270 or more days.

(6) A student may request that the monthly payment amount be recalculated due to a change in the student's total financial circumstances by submitting alternative documentation of the

student's income or family size. In this case, the Secretary shall recalculate the monthly payment amount pursuant to paragraphs (d)(2) through (d)(4) of this section.

(g) *Direct Loan overpayments* [the rest as the Department proposed]