

**Proposed Regulatory Language
Committee II - Program Issues**

Quick Fix: No

Origin: Fed Up #89 and #99

Issue: Need Analysis - Cost of Attendance and
Purchase of Computer

Regulatory Cite: None

Summary of Requested Change: Clarify the conditions under which the purchase or lease of a computer may be included in a student's cost of attendance as defined in section 472 of the HEA.

Regulatory Change: None.

Reason: Section 478 of the HEA specifically provides that the Secretary may not regulate in the areas of needs analysis and cost of attendance. However, the Federal Student Aid Handbook indicates that institutions may include the documented cost of the purchase or rental of a computer in a student's cost of attendance for purposes of determining need for Title IV Federal student aid funds.

In a number of discussions with the community, the community indicated that they would prefer that we not offer any more specific guidance than what is provided in the law. During our last session, the timing of the purchase of the computer was discussed.

**Proposed Regulatory Language
Committee II - Program Issues**

Quick Fix: No

Origin: Fed Up #94

Issue: Student Eligibility - Regaining Eligibility

Regulatory Cite: None

Summary of Requested Change: Clarify the conditions under which a student gains or regains eligibility for Title IV aid.

Regulatory Change: None.

Reason: The regulations do not specifically speak to when a student gains or regains eligibility. However, the Department has, over the years and in a number of ways, provided the following guidance in this area.

The circumstances addressed by this guidance are those where the student resolves an eligibility issue related to when the student:

- Becomes a "regular student"
- Resolves a default or overpayment problem
- Is no longer incarcerated
- Becomes a high school graduate or successfully passes an approved ATB test
- Satisfies the citizenship requirements
- Registers with Selective Service
- Is considered to be making satisfactory academic progress

For the FFEL and Direct Loan programs, the student becomes eligible for the enrollment period in which the eligibility issue was resolved.

In general a student becomes eligible for Pell Grant and campus-based aid beginning with the payment period in which the eligibility issue was resolved. The exceptions are that if the initial ineligibility was due to a question related to the citizenship requirements, valid social security number or selective service registration the student becomes eligible for Pell and campus-based aid for the entire award year.

**Proposed Regulatory Language
Committee II - Program Issues**

Quick Fix: No

Origin: Fed Up #5

Issue: Acceptability of Electronic Signatures

Regulatory Cite: None

Summary of Requested Change: Clarify the conditions under which communications between Title IV program participants may be accomplished electronically. Also clarify when a signature that is required by the regulations may be provided electronically.

Regulatory Change: None.

Reason: Since, in almost all instances, the current language of the regulations does not specifically require either a printed "pen and ink" communication or a "wet" signature, there is no need to modify the regulations. The guidance that has previously been provided in this area stands. That is, unless a regulatory requirement specifically states that a notification, certification, authorization, or signature must be in a paper format, such communications may be accomplished electronically.

However, care should be taken that any electronic process used complies with applicable laws (HEA, E-Sign, etc.), especially requirements that relate to consumer (student, borrower, parent, etc.) consent, privacy, and security. Participants should also comply with any Department issued guidance, such as last year's Standards for Electronic Signatures in Electronic Student Loan Transactions.

Later this year, the Department expects to provide additional guidance for the use of electronics in the administration of the Title IV programs. They will address issues related to:

- The sending of electronic notices
- Obtaining electronic authorizations
- Use of electronics in the verification process
- The use of "shared secrets" such as PINs
- Issues of ensuring privacy
- Security issues in the use of electronics
- Other issues relating to evolving technologies

**Proposed Regulatory Language
Committee II - Program Issues**

Quick Fix: No

Origin: Fed Up #67

Issue: "90/10 Rule"

Regulatory Cite: §600.5

Summary of Requested Change: There were two components to the request for modification to the regulations governing the so called "90/10" rule. First was a request to allow institutions to include in the calculation of their 90/10 ratio the institutional matching that is required under the FSEOG Program. Second was a request to add distributions from "IRS 529" tuition savings plans to the list of exceptions to the general rule that assumes that Title IV aid paid institutional charges first.

Regulatory Change: None at this time.

Reason: On the first issue, the Department does not agree to make the suggested change. As was discussed during the negotiated rulemaking on this issue two years ago, unless the institution's matching came from outside of the school, counting such contribution in the formula (especially in the denominator) would violate the 90/10 measurement of outside sources of revenue. It would also be contrary to the "cash basis" accounting standards that must be used in calculating the 90/10 ratio.

On the second issue, before proceeding the Department needs additional information on how an institution would track and document that payments made by families were derived from the 529 tuition savings plans and wants to identify what other information would be available during that process. The Department also needs additional information on how monies from 529 tuition savings plans are different from any other monies that a family uses to satisfy their EFC. One distinction between a prepaid State tuition plan and a 529 tuition savings plan as we understand it, is that a prepaid State tuition plan is used as a resource in calculating need (is excluded from calculating the EFC) and with a 529 tuition savings plan, the funds are counted in determining the EFC and actually result in increasing the EFC. Further, part of a 529 tuition savings plan distribution is income to the beneficiary and could increase the EFC based on the beneficiary's income.

**Proposed Regulatory Language
Committee II - Program Issues**

Quick Fix: No

Origin: Fed Up #75

Issue: Modification to the EADA Requirements

Regulatory Cite: §668.41

Summary of Requested Change: The request was to modify the regulations that provide when an institution must make public its consumerism information related to its intercollegiate athletic program.

Regulatory Change: None at this time.

Reason: As agreed at the last meeting, the Department and NAICU have had several conversations about this provision. The original request was to make the disclosure date correspond to the date that institutions submit their annual audited financial statements. However, the statutory date of October 1 for the first year's disclosure (which was modified by regulations to October 15 for subsequent years) was based upon the NCAA's early signing date for major women's sports. The issue for discussion is whether shifting the date to a later date such as January 15 will assist institutions and will continue to serve the needs of the students for obtaining this consumer information.

**Proposed Regulatory Language
Committee II - Program Issues**

Quick Fix: No

Origin: ED

Issue: Home Schooled Students

Regulatory Cite: §§600.4, 600.5, 600.6, and 668.32

Summary of Requested Change: To clarify and define the Title IV eligibility requirements for home schooled students and to make the institutional eligibility requirements consistent with the student eligibility requirements.

Regulatory Change: None.

Reason: The requirements addressed in this request cannot be changed because they are based specifically on statutory provisions of the HEA. However, the Department is considering issuing guidance that will help clarify our position that if a student who completes home schooling is not bound by compulsory education statute under state law, admitting such a student as a regular student will not jeopardize an institution's eligibility to participate in the Title IV programs.

**Proposed Regulatory Language
Committee II - Program Issues**

Quick Fix: No

Origin: Fed Up #42

Issue: Return of Title IV Funds--50% Grant
Protection

Regulatory Cite: §668.22(h)(2)

Summary of Requested Change: Expand applicability of 50% grant protection for students who withdraw.

Regulatory Change: None.

Reason: We have concluded that the statute does not permit the expansion of this provision and will explain our decision at the next negotiating session.

**Proposed Regulatory Language
Committee II - Program Issues**

Quick Fix: No

Origin: 1/7/02 Suggestion

Issue: School Eligibility--50% Rule

Regulatory Cite: §600.7

Summary of Requested Change: Clarify the "50% Rule" for correspondence and telecommunications courses.

Regulatory Change: None.

Reason: We have concluded that our regulations correctly reflect the statute. However, we have significantly revised the Federal Student Aid Handbook to clarify how these provisions apply to various types of institutions. A draft of the revised Handbook was circulated to a few institutional negotiators for their review and comment.

**Proposed Regulatory Language
Committee II - Program Issues**

Quick Fix: No

Origin: Fed Up #6 and #8

Issue: Federal Work Study - Electronic FWS Payroll
Systems

Regulatory Cite: §675.19(b)(2)(i)

Summary of Requested Change: Permit the use of electronic time systems as alternatives to paper time records signed by a supervisor for Federal Work-Study (FWS).

Regulatory Change: None.

Reason: The current FWS regulations allow a school as of November 1, 2000 to use an electronic certification by the supervisor that each FWS student has worked and earned the amount being paid. The current FWS regulations provide the flexibility that allows a school to implement an electronic payroll system that can process time records for its FWS students. However, to emphasize and clarify the flexibility available to schools under the FWS Program, the Department will revise the Student Financial Aid Handbook.

**Proposed Regulatory Language
Committee II - Program Issues**

Quick Fix: No

Origin: Fed Up #88

Issue: Federal Work-Study (FWS) - Community Service Waivers

Regulatory Cite: §675.18(g)(2)

Summary of Requested Change: Clarify the conditions under which the Secretary may grant a waiver of the requirement that a school use a certain percentage of its FWS Federal allocation for community service.

Regulatory Change: None.

Reason: The current FWS regulations provide for a waiver of the community service requirement if the Secretary determines that enforcing the requirement would cause a hardship for students at the school. The Department has been sensitive to the concerns of the schools in the waiver process. To allow flexibility to consider all factors that are valid reasons for a waiver, the regulations do not specify the circumstances that would receive a waiver of the community service requirement.

The negotiators requested information on reasons provided by schools for a community service waiver request. The schools indicated that enforcing the community service requirements would cause a hardship for their students because:

- A. The building used for community service activities was destroyed or a natural disaster impacted the operation of the school.
- B. The school received a very small FWS allocation and seven percent of that amount only provided enough funds for a student to work for a short period of time.
- C. The school offers a single area of specialized study, such as health professions, that results in its students having extensive curriculum and classroom workloads that prevent the students from performing community service jobs at the time those opportunities are available.

- D. The school is located in a rural area and its students lack a means of transportation to get to the town where the community service jobs are located. In some cases where the transportation does exist, the costs are very high.
- E. The school enrolls only adult students whose schedules and family responsibilities do not allow them to fill the available community service job time slots in the area.
- F. The students are unable to perform the family literacy or reading tutoring aspect because the students are not up to the academic levels or do not have the skills for reading and writing.

**Proposed Regulatory Language
Committee II - Program Issues**

Quick Fix: No

Origin: Fed Up #100

Issue: Overaward Tolerances

Regulatory Cites: §§673.5(d), 682.604(i), and 685.303(e)

Summary of Requested Change: Use the \$300 overaward threshold for all Title IV aid programs so there is consistency with all programs.

Regulatory Change: None

Reason: Current campus-based regulations provide for this \$300 overaward threshold when it occurs after campus-based aid has been packaged. However current regulations for the William D. Ford Federal Direct Loan (Direct Loan) and Federal Family Education Loan (FFEL) programs only provide for a \$300 overaward threshold if the student has Federal Work-Study (FWS). If there is no FWS in the student's aid package, an overaward threshold is not allowed under the Direct Loan and FFEL programs.

Sections 428G(d)(2) and 451(b)(2) of the Higher Education Act of 1965, as amended (HEA), only provide for an exception of a \$300 overaward threshold for the case where a Direct Loan or FFEL borrower has FWS in his or her aid package. The HEA would have to be amended in order to allow a general overaward threshold under these two loan programs.

**Proposed Regulatory Language
Committee II - Program Issues**

Quick Fix: No

Origin: 1/7/02 Suggestion

Issue: Timely Refunds

Regulatory Cite: §668.173(b) and (c)

Summary of Requested Change: Determine timely making of refunds to take into account mitigating circumstances.

Regulatory Change: None at this time.

Reason: We will use the information recently received from the non-federal negotiators as a basis for our discussion at the March session. We received the information too late to consider for draft regulatory language to meet our agreed upon deadline for providing the language to the negotiators.