



*Updates on relevant events, hearings, and policy developments from the
Coalition of Higher Education Assistance Organizations*

October 25, 2023

ED Releases Final Financial Responsibility Rule

Yesterday, the US Department of Education announced their intention to release a final rule entitled "**Financial Responsibility, Administrative Capability, Certification Procedures, Ability to Benefit (ATB)**" with the Docket ID of **ED-2023-OPE-0089**. This document has yet to be published in the Federal Register. Earlier this year the Department released a Notice of Proposed Rulemaking to which COHEAO submitted comments. Specifically, the Department proposed restricting institutions of higher education from withholding transcripts when an institutions mistakes cause a student to owe a balance; however, in the discussion ED hinted at expanding the reach of this provision. COHEAO submitted a **letter** addressing the issue and complications of expansion. In the draft final rule, ED is required to respond to each argument presented. To summarize, ED pretty much disagreed with every COHEAO point; however, did acknowledge certain process complications that were raised.

Here is the final language, which is fairly similar to what was originally proposed and is being added to the Code of Federal Regulations at 668.14(b) pertaining to an institution's Program Participation Agreement (PPA):

(33) It will not withhold official transcripts or take any other negative action against a student related to a balance owed by the student that resulted from an error in the institution's administration of the title IV, HEA programs, or any fraud or misconduct by the institution or its personnel;

(34) Upon request by a student, the institution will provide an official transcript that includes all the credit or clock hours for payment periods— (i) In which the student received title IV, HEA funds; and (ii) For which all institutional charges were paid or included in an agreement to pay at the time the request is made;

Analysis: Paragraph (33) does NOT prevent an institution from withholding a transcript IF the balance owed by the student is a legitimate debt. If however, it is found that an institution made a

mistake in its calculations, that would be considered a debt created by an institutional error and would prevent the institution from withholding that transcript.

Contrast that language with paragraph (34) (and for those regulatory technical nuts er I mean people, this may be a subparagraph or even finer), which says that if the student received any federal funds - Pell, direct loans, Federal Work-Study, SEOG funds, and potentially other Title IV funds like TRIO or GEARUP. The paragraph states that an institution may not withhold a transcript when the student received these funds AND did not owe a debt to the institution for a given academic session.

In other words, a student receiving federal aid is current on their balances through their second year, but end up incurring a debt in their third year, and requests a transcript for whatever purpose; the institution is only obligated to provide a transcript containing the first two year's of courses. To make matters a little more complicated, if the student is paid through the first semester of their third year and the debt is incurred during the second semester or another term (J-term, summer), the institution would be required to provide a transcript including the first two years AND the first semester coursework.

There are certainly more questions that I haven't addressed in this simplified version. We will have to wait to see how and whether the Handbook clarifies or further complicates these questions.

Bottom line - Institution makes a mistake to cause a debt, it can't withhold a transcript. No mistake on institution, then it can. However, if any of the completed coursework was paid for, in-whole or in-part, then institution must release for terms where no debt existed. If student is not benefitting from any Title IV/HEA funds, then school may continue to withhold.

The discussion of this issue starts on page 425 using the link above, it will definitely be a different page number when it is finally printed in the Federal Register.

Perkins Loan Revolving Fund Distribution of Assets Timeline

On October 6, 2023, the Department released [Electronic Announcement CB-23-18](#) outlining the calculation and conditions for how institutions are required to make a capital distribution from the institution's Perkins Loan Revolving Fund (Perkins Fund). ED will notify institutions of the amount upon processing the institution's FISAP, so no action is required until you receive that note. However, the notice outlines how ED will make the calculation for the amount that they send in the institution's notice.