



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

GEN-13-02

January 17, 2013

**Subject:** Regaining Title IV Eligibility After Exceeding Loan Limits and Treatment of Loan Funds When a Student Fails to Begin Attendance

**Summary:** This letter provides clarification to institutions on how students who have inadvertently received loan funds under the Direct Loan or FFEL programs in excess of annual or aggregate loan limits may regain Title IV eligibility. It also explains the procedures that institutions must follow when a student who has received a Direct Loan disbursement fails to begin attendance.

Dear Colleague:

We have been asked to clarify how a student who has inadvertently received Title IV loan funds in excess of an annual or aggregate loan limit may regain eligibility for additional Title IV aid. We have also been asked to clarify the procedures that must be followed when a student receives a disbursement of a loan under the Direct Loan Program but does not begin attendance or begins attendance on a less than half-time basis. This letter responds to those requests and includes, as an attachment, responses to a series of questions that provide additional information on inadvertent overborrowing.

**Inadvertently Exceeding Annual or Aggregate Loan Limits  
(Inadvertent Overborrowing)**

Under the Department's regulations governing eligibility for Federal student financial aid at 34 CFR 668.32(g)(2), a student is not eligible to receive funds under any of the Title IV student aid programs if the student has received Title IV loan funds in excess of applicable statutory loan limits. However, as explained below, the regulations at 34 CFR 668.35(d) specify actions that a student who has inadvertently exceeded an annual or aggregate loan limit may take to regain Title IV eligibility.

An institution must determine that a borrower's receipt of loan funds in excess of an annual or aggregate loan limit was inadvertent before the borrower may regain Title IV eligibility under the guidance provided in this letter.

Examples of circumstances that may have resulted in a student inadvertently exceeding an annual or aggregate loan limit include, but are not limited to: institutional processing errors, missing or incorrect National Student Loan Data System (NSLDS) information

(e.g., capitalized interest incorrectly included in a borrower's aggregate outstanding loan balance), or unintentional student error or omission.

We refer to the inadvertent receipt of loan funds in excess of annual or aggregate loan limits as "inadvertent overborrowing." (Note that inadvertent overborrowing is *not* the same as an overaward where a student's financial aid package exceeds the student's financial need or cost of attendance.)

Borrowing in excess of annual or aggregate loan limits is not considered to have been inadvertent if there is any evidence that the overborrowing was the result of deliberate action on the part of the institution that determined the borrower's eligibility for the loan, or on the part of the borrower who received the loan. If the institution determines that the overborrowing was the result of deliberate action on the part of another institution or the borrower, it must notify its Federal Student Aid School Participation Team and provide the necessary evidence. If the institution suspects fraud involving Federal student aid, it should call the Inspector General Hotline at 1-800-MIS-USED (1-800-647-8733).

Generally, an institution becomes aware that a student has exceeded an aggregate loan limit from flags (and comments) included in the student's Institutional Student Information Record (ISIR) – 2012-2013 ISIR Fields #430 – 433. Those flags are generated from information contained in NSLDS.

#### **Regaining Title IV Eligibility After Inadvertent Overborrowing**

Under the Department's regulations at 34 CFR 668.35(d), a student who has inadvertently exceeded annual or aggregate loan limits, and who is not in default on a Title IV loan, may regain Title IV eligibility if the student: (1) repays the excess loan amount in full; or (2) makes satisfactory arrangements to repay the excess amount. If the loan that caused the inadvertent overborrowing is a Direct Loan or a Federal Family Education Loan (FFEL) Program loan that is held by the Department, the student must contact the Federal loan servicer that services the loan to resolve the inadvertent overborrowing. If the loan that caused the inadvertent overborrowing is a FFEL Program loan held by a loan holder other than the Department (a "commercially held" FFEL Program loan), the student must contact the FFEL loan holder or the servicer for the loan to resolve the inadvertent overborrowing.

If a student who has inadvertently received loan funds in excess of an annual or aggregate loan limit wishes to receive additional Title IV aid, the institution where the student wishes to receive the aid must identify the loan(s) that resulted in the overborrowing, discuss the overborrowing with the student, and resolve any discrepancies in the information that is obtained.

Throughout the remainder of this letter, the term "servicer" means either one of the Federal loan servicers or the holder or servicer of a commercially held FFEL Program loan, as applicable.

*Note: If NSLDS shows that a student consolidated the loan(s) that resulted in the inadvertent overborrowing into a Direct Consolidation Loan (or, prior to July 1, 2010, into a FFEL Consolidation Loan), no further action on the part of the borrower is needed, since by signing the consolidation loan promissory note the borrower has agreed to repay any excess loan amount.*

(1) Repayment of the Excess Loan Amount

If a student who has inadvertently overborrowed wishes to regain Title IV eligibility by repaying the excess loan amount, the student must contact the applicable servicer and comply with the servicer's repayment instructions.

The institution may assist the student in identifying and contacting the servicer, but the student, not the institution, must make the payment of the excess loan funds in accordance with the servicer's instructions.

Once the student has repaid the excess loan amount in full, the servicer will send the student confirmation that the excess loan amount has been repaid. The student or servicer must provide a copy of the repayment confirmation to the institution. The inadvertent overborrowing is considered to have been resolved as of the date the servicer received the borrower's full payment of the excess loan amount.

(2) Making Satisfactory Repayment Arrangements for the Excess Loan Amount  
(Reaffirmation)

A student who has inadvertently overborrowed may regain Title IV eligibility by making satisfactory repayment arrangements acceptable to the servicer of the loan. The satisfactory repayment arrangement requirement can be met if the student agrees, in writing, to repay the excess amount according to the terms and conditions of the promissory note that supported the loan. This is called "reaffirmation."

The reaffirmation process includes the following steps:

Step 1 – Either the institution or the student contacts the servicer and explains that the student has inadvertently overborrowed and wishes to reaffirm the debt.

Step 2 – The servicer sends the student a reaffirmation agreement.

Step 3 – The student reads, signs, and returns to the servicer the reaffirmation agreement.

Step 4 – The servicer sends the student confirmation that the reaffirmation agreement has been accepted. The student or servicer must provide a copy of the reaffirmation confirmation to the institution.

Step 5 – The inadvertent overborrowing is considered to have been resolved as of the date the servicer receives the student's signed reaffirmation agreement.

### Effective Date for Regaining Title IV Eligibility

When an otherwise eligible student resolves an inadvertent overborrowing issue by one of the methods discussed above, the student regains eligibility for the Pell Grant, campus-based, TEACH Grant, and Iraq and Afghanistan Service Grant programs beginning with the payment period in which the issue was resolved, and regains Direct Loan Program eligibility retroactive to the beginning of the academic year in which the issue was resolved.

### **Treatment of Loan Funds – Student Fails to Begin Attendance or Attends Less Than Half-Time After Receiving a Direct Loan Disbursement**

To be eligible for a Direct Loan, a student must begin attendance in the period of enrollment (the loan period) for which the loan was intended. However, the Department's regulations at 34 CFR 668.164(f) allow an institution to disburse Direct Loan funds before the institution confirms that the student has actually begun attendance, including up to ten days prior to the first day of classes of the loan period. Accordingly, institutions must have a process to determine that the student actually began attendance and whether that attendance was on at least a half-time basis. As explained below, a student who received a Direct Loan disbursement but who does not begin attendance in any classes in the loan period is subject to different treatment than a student who received a disbursement and begins attendance but on a less than half-time basis.

Note that if a student who received a Direct Loan disbursement either fails to begin attendance or begins attendance on a less than half-time basis, the institution must report the change in the student's enrollment status to the Department (using the NSLDS enrollment reporting process) as required by the regulations at 34 CFR 685.309(b). Upon receiving the revised enrollment status from NSLDS, the student's Federal loan servicer will change the student's loan status as follows:

- In-school status will change to grace period status.
- In-school deferment status will change to repayment status.

### Student Fails to Begin Attendance in Any Classes

As provided in the Department's regulations at 34 CFR 668.21(a)(2)(i), if a student fails to begin attendance in any classes after a disbursement of Direct Loan funds has been made, the institution must return any Direct Loan funds that were applied to the student's account for the payment period at the institution, as well as the amount of any payments made for the payment period by, or on behalf of, the student to the institution, up to the total amount of the loan funds disbursed. Under the regulations at 34 CFR 668.21(a)(2)(ii), the institution must immediately notify the applicable Federal loan servicer that the student has not begun or will not begin attendance. The Federal loan servicer will then issue a final demand letter to the student for the remaining amount of any Direct Loan funds that were disbursed directly to the student.

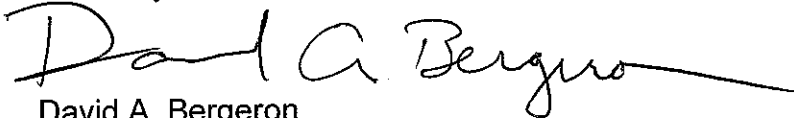
*Note: Institutions report the return of a student's Direct Loan funds by submitting a downward adjustment to the loan amount through the Department's Common Origination and Disbursement (COD) system. However, because Direct Loan funds are not student-specific, the institution may not need to actually return the funds but, instead, may be able to disburse those funds to another eligible student. If any funds actually need to be returned, they must be returned through the Department's G5 system. An institution **must not**, in this circumstance, return Direct Loan funds to the student's Federal loan servicer.*

#### Student Begins Attendance on a Less Than Half-Time Basis

If a student who received a Direct Loan disbursement begins attendance for the loan period, but does so on a less than half-time basis despite having originally enrolled (registered for classes) on at least a half-time basis, neither the institution nor the student is required to return any loan proceeds. However, the institution must not make any subsequent disbursements of the loan, unless the student resumes enrollment on at least a half-time basis.

We thank all institutions for their cooperation in the administration of the Federal student loan programs and the other Title IV student assistance programs. Questions on any of the guidance provided in this letter should be directed to the Federal Loan School Support Team by e-mail at [dlops@ed.gov](mailto:dlops@ed.gov).

Sincerely,

A handwritten signature in black ink that reads "David A. Bergeron". The signature is written in a cursive style with a long, sweeping underline.

David A. Bergeron  
Acting Assistant Secretary

***Inadvertent Overborrowing  
Questions and Answers  
(DCL GEN-13-02)***

**1. How does the student or institution identify the servicer that must be contacted to resolve inadvertent overborrowing?**

The "Loan Summary" section of the borrower's loan history in NSLDS identifies the servicer for each loan the borrower has received.

**2. May a student who inadvertently overborrowed and who has regained Title IV eligibility by either repaying the excess loan amount or by signing a "reaffirmation agreement" receive additional Direct Loan funds?**

A student who regains Title IV eligibility after having exceeded an annual loan limit for an academic year would not be eligible to receive additional Direct Loan funds for that same academic year, but could receive other types of Title IV aid for the year. The student may be eligible to receive additional Direct Loan funds for subsequent academic years if the student has remaining eligibility under the aggregate loan limits, depending on which aggregate limit was exceeded. A student who had inadvertently exceeded the combined subsidized/unsubsidized aggregate loan limit may not receive any additional Direct Subsidized Loans or Direct Unsubsidized Loans (though a dependent student's parent or a graduate or professional student could receive Direct PLUS Loans). However, if the student exceeded only the subsidized aggregate limit, the student could receive Direct Unsubsidized Loans up to the annual and aggregate maximums.

*Examples:*

- A dependent undergraduate student who inadvertently exceeded the \$31,000 combined subsidized/unsubsidized aggregate loan limit may regain eligibility for other types of Title IV aid (e.g., Pell Grants, campus-based aid) by signing a reaffirmation agreement, but may not receive any additional Direct Subsidized Loans or Direct Unsubsidized Loans as a dependent undergraduate student. The student's parent may receive a Direct PLUS Loan. However, if a dependent student exceeded the \$23,000 subsidized aggregate loan limit but did not exceed the combined subsidized/unsubsidized aggregate loan limit, the student regains eligibility for Direct Unsubsidized Loan funds up to the student's annual loan limit for the academic year, subject to the combined subsidized/unsubsidized aggregate loan limit of \$31,000.
- An independent undergraduate student who inadvertently exceeded the \$23,000 subsidized aggregate loan limit, but who has remaining eligibility for unsubsidized loans under the \$57,500 combined subsidized/unsubsidized aggregate limit, could regain eligibility for Title IV aid – including Direct *Unsubsidized* Loans – by signing a reaffirmation agreement. However, the student may not receive any additional Direct *Subsidized* Loans.

**3. Does NSLDS indicate that a student who inadvertently exceeded the loan limits has regained Title IV eligibility by signing a reaffirmation agreement?**

No. However, a student who signs a reaffirmation agreement receives documentation from the loan servicer confirming that the student has made arrangements to repay the excess loan amount (reaffirmation). This documentation can be used as evidence that the student has regained Title IV eligibility and should be retained by the institution in accordance with the Department's regulations governing the retention of required records in 34 CFR 668.24(c).

**4. If a student inadvertently received subsidized loan funds in excess of the applicable annual or aggregate loan limits and then regains eligibility by signing a reaffirmation agreement, does the student retain the interest subsidy on the excess subsidized amount that the student reaffirmed?**

Yes. All of the normal terms and conditions that apply to Direct Subsidized Loans will apply to the excess subsidized amount that the student will eventually repay.

**5. Is it necessary to resolve an inadvertent overborrowing situation if the student inadvertently exceeded an undergraduate annual or aggregate loan limit but the student is now a graduate student with higher annual and aggregate loan limits?**

Yes, because the student lost eligibility for Title IV funds prior to changing status and becoming eligible for the higher graduate/professional student annual and aggregate loan limits. Therefore, the student cannot receive any additional Title IV aid until the student regains eligibility by one of the two methods discussed earlier.

**6. May a student who received subsidized loan funds in excess of the applicable subsidized annual or aggregate loan limit regain Title IV eligibility by having the excess subsidized loan amount changed to an unsubsidized loan?**

No. Although in some cases it would be possible to change an excess loan amount from subsidized to unsubsidized, this could not be done in all cases. For example, an excess subsidized loan amount could not be changed to an unsubsidized loan if it was part of a Subsidized FFEL Stafford Loan that was made prior to July 1, 2010, or if it was part of a Direct Subsidized Loan made during a Direct Loan processing year that has closed. To ensure equity in the treatment of students who have inadvertently received subsidized loan funds in excess of the subsidized annual or aggregate loan limits, excess subsidized loan amounts cannot be changed to unsubsidized loans.