

VETERANS' READMISSION
Preamble to Final Regulations
October 29, 2009

Federal Register/ Vol. 74, No. 208/ Thursday, October 29, 2009

Preamble to Final Regulations (pp. 55905-7)

Part 668 Student Assistance General Provisions

Readmission Requirements for Servicemembers (§668.18)

Comments: One commenter supported the proposed regulations, including the proposed requirement limiting the institutional charges that an institution may charge a returning servicemember. Several commenters opposed the proposed requirement limiting the institutional charges that an institution may charge a returning servicemember because they stated it would be administratively and financially burdensome for institutions. For the same reason, some of these commenters also opposed the requirement that an institution waive charges for previously purchased equipment for the first academic year in which the servicemember returns if the returning servicemember is readmitted to the same program for the same reason. Many of these commenters asserted that, because many of the affected servicemembers charging the returning servicemember the current institutional charges for a program, rather than the same charges that the returning servicemember was or would have been assessed for the academic year during which he or she left the institution, will not penalize the student for having left to serve in the uniform services. One commenter added that this argument is supplemented by the fact that at least one State waives any tuition charges not paid by the GI Bill at public universities. One of these commenters stated that limiting charges to the first year only would create an unrealistic expectation for returning servicemembers for the full cost of the program. A few of the commenters stated that limiting institutional charges for returning servicemembers would be unfair to other students at the institution who would assume higher costs, or noted that the proposed requirement could preempt State requirements.

Several commenters asserted that the forced manual billing determinations that the regulations would require of institutions would be unduly burdensome as the billing software used by most institutions, which uses pre-programmed data, including current year charges, does not accommodate special case situations, such as the proposed regulations would create. Specifically, a few commenters noted that institutions would be forced to maintain multi-faceted data tables over an undetermined number of years to recreate the prior institutional charges for servicemembers who may or may not return, as institutions do not keep student financial records for the entire period covered by the readmission requirements and billing systems are not designed to archive the data necessary to calculate institutional charges years later. The commenters contended that, even if an institution has all the information necessary, recreating the institutional charges would be complicated as institutional charges cover many types of charges involving

variations by program. One commenter asserted that some Department of Defense tuition assistance systems, such as GoArmy, do not allow variations in tuition rates and could potentially delay tuition assistance processing for both impacted and nonimpacted servicemembers. A few commenters stated that determining institutional charges for returning servicemembers who may have been admitted, but were not enrolled or attending prior to leaving to serve, would be particularly difficult as they had never incurred specific charges, with one of these commenters noting that their institution has an open admission policy resulting in a large number of these students.

One commenter generally supported the requirement limiting the institutional charges that an institution may charge a returning servicemember, but stated that an institution should be permitted to charge a returning servicemember for new classes when a program has changed, requiring the servicemember to take additional classes in the form of prerequisites or new requirements. A few commenters noted that requiring an institution to provide, if necessary, refresher courses at no extra cost seemed to preclude an institution from collecting funding from other entities to cover those expenses. One commenter stated that requiring an institution to make reasonable efforts to help the servicemember become prepared to resume the program or to enable the servicemember to complete the program at no extra cost, would impose an undue financial hardship and administrative burden on the institution. The commenter asserted that, when there is only the normal reasonable progression from one year to the next, rather than any actual change to the program in the servicemember's absence, it is the servicemember's responsibility to retain the knowledge attained in the normal course of educational progression. In addition, the commenter stated that the definition of "reasonable efforts" is ambiguous and would be difficult to determine.

Discussion: The Department believes that the goal of these provisions is to minimize the disruption to the lives of persons performing service in the uniformed services, allowing a servicemember to return to an institution without penalty for having left because of that service. We believe that limiting charges for the year in which the servicemember returns to the charges the servicemember was or would have been assessed for the academic year during which the servicemember left is an important part of this goal, and may necessitate additional efforts by institution as well as the absorption of some costs. However, we agree that this goal would still be achieved if any increase in charges from the amount the servicemember was or would have been assessed for the academic year during which the servicemember left the institution is covered by veterans' or servicemember education benefits. In addition, we believe that requiring institutions to maintain only past tuition and fee charges, rather than requiring them to maintain all institutional charges and waive charges for new equipment required in lieu of equipment previously paid for, will accomplish this goal, while minimizing burden to institutions that may have had difficulty determining the previous institutional charges beyond tuition and fees, as well as difficulty determining which of the current institutional charges beyond tuition and fees would be covered by veterans' and servicemember education benefits. Therefore, for a servicemember who is readmitted to the same program, an institution will be considered to have admitted the servicemember with the same academic status if, for the first academic year in which the servicemember returns, the

institution does not increase the tuition and fee charges above the prior amount the servicemember was or would have been assessed for the academic year when the servicemember left the institution, unless there are sufficient veterans' education benefits or other servicemember education benefits to pay the increased amount of those tuition and fee charges. Consider, for example, a servicemember who is readmitted to the same program and was assessed tuition and fee charges of \$5,000 for the academic year when the servicemember left the institution. The current tuition and fee charges for the program are \$7,000, a \$2,000 increase over the charges formerly assessed the student. In addition to the original \$5,000 in charges, the institution may charge the readmitted servicemember for any portion of that \$2,000 increase that will be covered by veterans' education benefits or other servicemember education benefits. If this student receives \$1,000 in veterans' education benefits or other servicemember education benefits for tuition and fees, the institution may assess the student tuition and fee charges of up to \$6,000. If the student receives \$2,000 or more in veterans' education benefits or other servicemember education benefits for tuition and fees, the institution may assess up to \$7,000, the tuition and fee charges for other students admitted to the program for the current academic year. This approach will significantly reduce the burden on institutions to track many of the variable charges that were included in the proposed regulation, and will simplify the determinations of what tuition or fee amounts would be subject to the one-year transition period for a returning servicemember. The portion of tuition and fees that are subject to this temporary restriction may also be reduced or eliminated by other policies set by the institution, or under State law, but the Federal requirement will provide a consistent base line for all institutions in every State and serve the purpose intended by this provision in the law.

We agree that students who are not informed of any increase in tuition and fee charges for subsequent years may have unrealistic expectations of the total cost of the program. We would expect that an institution would actively inform affected servicemembers upon readmission of any subsequent increase and the total expected charges for the program (an institution is required to make this information available at all times and include it in its annual distribution of institutional and financial information to all enrolled students in accordance with § 668.41(c) and (d)). To the extent that this temporary restriction on the amount of tuition and fees for returning servicemembers is a benefit not provided to the other students at an institution, it is provided under the law to ease the transition back to the institution for the returning servicemembers. We also believe that this provision will not create conflicts for benefits provided to other servicemembers under the GoArmy education program.

Although we appreciate that current institutional billing software may not easily accommodate affected servicemembers, we believe that any burden incurred by an institution that must manually process such a student is outweighed by the benefit to the returning servicemember. We also believe that limiting the covered costs to tuition and fees significantly simplifies this provision for institutions.

In accordance with § 668.18(a)(2)(iv), an institution may not charge a returning servicemember for additional classes offered by the institution that are prerequisites for

the program. The institution does not have to readmit such a servicemember if the institution can demonstrate that providing the classes at no cost places an undue hardship on the institution. If new classes are required for the program and those classes are taken by the servicemember in the academic year in which he or she returns, the institution may not charge the additional tuition and fees for those programs unless doing so does not increase the tuition and fee charges above the prior amount the student was or would have been assessed for the academic year when he or she left the institution, or there are sufficient veterans' education benefits or other servicemember education benefits to pay the increased amount of those tuition and fee charges. In requiring an institution to provide, if necessary, refresher courses at no extra cost, we did not intend to preclude an institution from collecting funding from other assisting agencies to cover those expenses. Also, we note that any reasonable efforts an institution must make to help the student become prepared to resume the program, or to enable the student to complete the program must be provided at no extra cost to the student. We do not agree that requiring an institution to make reasonable efforts to help a servicemember become prepared to resume the program or to enable the servicemember to complete the program at no extra cost, would automatically impose an undue financial hardship and administrative burden on the institution, nor do we agree that, in cases where there is only the normal reasonable progression from one year to the next, rather than any actual change to the program in the servicemember's absence, it is the servicemember's responsibility to retain the knowledge attained in the normal course of educational progression. Again, the goal of these provisions is to minimize the disruption to the lives of persons performing service in the uniformed services, allowing a servicemember to return to an institution without penalty for having left because of that service. Holding a servicemember responsible for retaining all knowledge attained through previous attendance of the program would be penalizing the servicemember for having left to serve. "Reasonable efforts" are actions that do not place an undue hardship on an institution. An action places an undue hardship on an institution if it requires significant difficulty or expense to the institution. The mere fact that the readmission of a student will create additional expenses or burden to the institution is not enough for an institution to deny a student readmission. The expenses must be significant when considered in light of the overall financial resources of the institution and the impact otherwise of such action upon the operation of the institution. An institution carries the burden to prove by a preponderance of the evidence that the expense or difficulty of readmitting a student would be significant.

Changes: Section 668.18(a)(2)(iii)(E) is revised to provide that, for a servicemember who is readmitted to the same program, an institution will be considered to have admitted the servicemember with the same academic status if, for the first academic year in which he or she returns, the institution does not increase the tuition and fee charges above the prior amount the student was or would have been assessed for the academic year when the student left the institution, unless there are sufficient veterans' education benefits or other servicemember education benefits to pay the increased amount of those tuition and fee charges. Proposed § 668.18(a)(2)(iii)(F), which would have required an institution to waive charges for previously purchased equipment, is removed. Section 668.18(a)(2)(iv)(A) has been revised: (1) To make clear that any reasonable efforts an institution must make to help the servicemember become prepared to resume the

program, or to enable the servicemember to complete the program must be provided at no extra cost, and (2) to make clear that those efforts must be provided at no extra cost to the student, to permit an institution to collect from other entities for costs associated with making such reasonable efforts. The definition of undue hardship in §668.18(a)(2)(iv)(C)(2) is amended to clarify that difficulty and expenses must be significant when considered in light of the overall financial resources of the institution and the impact otherwise of such action on the operation of the institution.

Comments: One commenter asked what would be required of an institution to “promptly readmit” an affected servicemember if the program to which the servicemember was previously admitted is offered infrequently, or is no longer offered. One commenter asked how long a servicemember may delay readmission to an institution by requesting to be readmitted at a later date, and at what point the institutional charges would be locked in. The commenter also questioned whether the unusual circumstances under which an institution may admit a servicemember at a date later than the next class or classes in the program pertain to the institution or just to the servicemember.

Discussion: If the program to which the servicemember was previously admitted is no longer offered, § 668.18(a)(2)(iii)(A) requires the institution to admit the servicemember to the program that is most similar to that program, unless the student requests or agrees to admission to a different program. An institution readmits a servicemember “promptly” if, in accordance with Sec. 668.18(a)(2)(ii), the institution readmits the servicemember into the next class or classes in the program beginning after he or she provides notice of his or her intent to re-enroll, unless the servicemember requests a later date of readmission or unusual circumstances require the institution to admit the servicemember at a later date.

These regulations presume that a returning servicemember who provides notice of his or her intent to reenroll at an institution plans to do so soon after providing such notice. The provision that an institution must admit a returning servicemember to the next class or classes in the student's program unless the student requests a later date of admission was included to ensure that an institution could not delay a servicemember's readmission until, for example, the next semester if classes in the student's program were offered during the upcoming semester. However, the regulations do not preclude the returning servicemember from deciding that a later admission date, such as the next semester, is acceptable. No matter when the student actually resumes his or her program, if the returning servicemember is within the window of eligibility in Sec. 668.18(c)(iii), the requirements of this section apply. Thus, for the first academic year in which the servicemember returns, the institution cannot increase the tuition and fee charges above the prior amount the servicemember was or would have been assessed for the academic year when the servicemember left the institution, unless there are sufficient veterans' education benefits or other servicemember education benefits to pay the increased amount of those tuition and fee charges. Unusual circumstances under which an institution may admit a servicemember at a date later than the next class or classes in the program may pertain to the institution or to the servicemember. There are a number of factors an institution may consider when determining whether unusual circumstances

require a later date of readmission, such as the length of any necessary retraining or intervening changes in the circumstances of the institution. State laws or requirements (including any local law or ordinance) or institutional requirements that restrict enrollment, due to class size, for example, or otherwise conflict with the requirements of this section are not "unusual circumstances" as such laws and requirements are superseded by the requirements of this section for the initial enrollment period. Institutions should take reasonable steps to resolve such restrictions as soon as possible to come into compliance with those provisions.

Changes: None.