Frequently Asked Questions Regarding Overpayments by International Students

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Some NACUBO members have raised questions about overpayments from students. “Overpayments” are payments that exceed institutional charges, such as tuition, fees, and room and board. Some overpayments may even exceed the total cost of attendance, including off-campus housing, transportation, and the like. Below are FAQs¹ about overpayments and considerations in determining how to handle them. Although some of these principles may apply to overpayments by U.S. students, these FAQs focus on overpayments by international students.

These FAQs assume that international students are not eligible for federal student financial aid. In the event that an international student who makes an overpayment is eligible for such aid (for example, a U.S. citizen living overseas), additional considerations relating to compliance with federal student financial aid regulations apply.

These FAQs do not constitute legal advice. Institutions should consult their legal counsel when applying these general principles to particular situations.

¹ Gregory Lisa, Elizabeth Meers, and Ann Koppuzha of Hogan Lovells US LLP prepared this paper for NACUBO.
1. Why would an international student overpay a U.S. university or college?

An international student might overpay a U.S. college or university for a variety of innocuous reasons, such as:

- An accidental payment
- A desire to pay tuition for several semesters or years up front to avoid transaction costs
- An attempt to cover noninstitutional expenses (such as rent, groceries, transportation, etc.) and avoid making multiple money transfers (which may impose additional transaction fees or logistical impracticalities)
- An attempt to overcome the difficulties for international students in obtaining bank accounts in the United States

While many overpayments may have legitimate purposes, in some instances, overpayments—and the legal issues relating to them—may present significant risks of noncompliance for higher education institutions. In some circumstances, overpayments may be for illicit purposes, such as to perpetuate a fraud scheme, avoid restrictions on movement of money between countries, or further a money-laundering scheme to make proceeds of criminal activity look legitimate.

2. What is “overpayment fraud”?

Overpayment fraud involves illegally obtaining funds by overpaying and then getting a refund of the excess before the initial payment is discovered to be fraudulent. “Fraudsters” have used these tactics to deceive several educational institutions. For instance, a criminal may pose as a student, or scheme to overpay a U.S. college or university on behalf of an innocent student. The fraudster may overpay the college or university with a stolen credit card, fraudulent check, or unauthorized wire transfer, then withdraw from the school early and seek a refund of the amount paid in excess of institutional charges to an account different from the source of the payment. By the time the college or university learns of the fraud, the criminal is gone; in some instances, the student may be completely unaware of the fraudulent scheme because the initial payment and final distribution of the excess were at the direction of other persons. Fraudsters also perpetuate overpayment fraud by making multiple payments over the course of a year that amount to an overpayment and then later demand a refund. As noted above, overpayment fraud is not limited to international students; American citizens and permanent residents also engage in overpayment fraud. However, there are specific risks that relate to international payments, as detailed below.

2. 5 ways to protect against escalating tuition fraud
   See also “Colleges fight payment fraud in digital age” USA Today, 6 February 2013
3. **What are “capital flight” restrictions?**

Evading capital flight restrictions is another reason that an international student may overpay a U.S. university or college. Several countries, including China, Malaysia, and others, have restrictions on the amount of money an individual can move out of the country. Many of those jurisdictions have different thresholds and exceptions for certain types of payments, such as student loan payments or charity payments. These exceptions, in turn, become potential avenues for abuse to move money out of the country. By accepting overpayments, U.S. colleges and universities risk facilitating capital flight in violation of another country’s restrictions.

4. **What is “money laundering,” and how can criminals use overpayments to further it?**

Criminal activities such as drug trafficking, organized crime, fraud, and other crimes generate proceeds, which are, in turn, difficult to place into the financial system. Essentially, money laundering is the process of making illicit proceeds (“dirty” money) look legitimate (“clean”). It often involves concealing the source, control, or ownership of the “dirty” money. A criminal may use a higher education institution as part of a money laundering scheme. First, the criminal would enroll in and overpay the college or university, then withdraw early in order to get a refund check. Then, the criminal would deposit or cash this check at a bank or other financial institution because checks from higher education institutions are unlikely to arouse the financial institution’s suspicions. This money is now “clean” and can be stored, accessed, or transferred in the international financial system.

5. **Are overpayments necessarily related to fraud or money laundering?**

No, overpayments are not necessarily related to fraud or money laundering. As noted above, students may want to overpay the college or university for harmless and legitimate reasons. Each situation is unique, but some indicators that the overpayment may be problematic include:

- The payment is dramatically greater than the amount of institutional charges currently owed.
- The payer requests an immediate refund for no explained reason.
- The payer name does not match the student’s name (possibly because of credit card fraud or stolen checks) or does not have an apparent connection to the student.
- The payer is unavailable, or it is difficult to communicate with the payer.
- The payer requests that the institution not refund the money to his or her account or asks that the institution direct the refund to a third person, a company, or other account.
- The payer requests the refund in a manner different from the payer’s method of payment.
- The payer is a corporation or other legal entity rather than an individual.
• The course of dealing raises questions about honesty, integrity, identity, or location of the people involved or the veracity of any statements made by the payer.
• Payment comes from many sources or follows a complicated series of transactions.
• Payment comes from a high-risk jurisdiction, including a jurisdiction with a known high risk of money laundering or illicit finance. For instance, the U.S. Departments of Treasury and State and the Financial Action Task Force (an international body established to combat money laundering, terrorist financing, and other threats to the integrity of the international financial system) all maintain lists of jurisdictions with high money laundering risks.\(^3\)

6. What are some of the legal risks of accepting overpayments?

Money laundering is a federal crime. Criminal payers, who receive funds from illicit activities, may use overpayments and refunds from universities and colleges to launder money. Even overpaying to avoid a country’s capital flight restrictions may be characterized as money laundering. Money laundering is punishable by civil and criminal penalties, including substantial fines, forfeiture of illicit funds, and/or lengthy incarceration.

Absent knowledge or willful blindness on the institution’s part that the funds were derived from illegal activity or part of a money laundering scheme would make it unlikely that the institution would be charged with a money laundering or fraud-related offense. However, by inadvertently participating in a money laundering or fraud scheme, the school may be required to participate in a criminal investigation—a lengthy and complicated endeavor. And if the funds used for the payment were stolen (e.g., if the money came from an unauthorized wire transfer from an unknowing victim’s account), the institution may find itself unwittingly in the middle of a dispute between a fraudster and his or her victims. Because of the possibility of an investigation, universities and colleges should be aware of potential money laundering or fraud risks. In addition, as described below, even if the funds were not part of a money laundering or fraud scheme, it is possible that the institution accepting overpayments and passing the overage to a third party would be characterized as a money transmitter.

It seems that if the school accepts overpayments, especially if the school refunds the overpayment to the student or third parties, it is acting like a bank or some other type of financial institution. Are there any legal or regulatory concerns related to that practice?

Yes, there are two principal regulatory risks of handling overpayments and processing refunds.

**Money transmitter:** First, the college or university might be categorized as a “money transmitter” under state or federal law. Being classified as a money transmitter is even more likely if the institution sends the overpayment refund to a third party.4

Being a money transmitter requires the institution to be licensed and comply with federal anti-money laundering (AML) requirements because financial organizations have an affirmative obligation to prevent money laundering. These requirements include, but are not limited to, registering with the U.S. Department of the Treasury (and possibly state licensing and regulatory authorities), developing and implementing an AML compliance program, filing required reports with the government, and maintaining certain records related to financial transactions. Failure to do so may subject the money transmitter to both civil and criminal penalties.

**Money laundering:** There is also a risk that the school may inadvertently participate in money laundering. This risk could become a criminal matter if the school knowingly facilitates money laundering in any way.

8.  **Doesn’t the company that transfers funds to the school address these issues and yet these payments? Can’t we rely on that company to ensure that the overpayment is not fraudulent, related to money laundering, etc.?**

The financial institution that transfers funds to the school may have verified only the identity of the individual and not the legitimacy of the transaction. Moreover, the school may know some information (such as information regarding the student, his or her parents, the payment arrangements, etc.) that the financial institution may not. To evaluate the legitimacy of the overpayment, the school may need to conduct its own diligence of overpayment transactions, including trying to gather as much information as possible about the payer and evaluating the risk of money laundering. See question 11 below for factors to consider when evaluating the risk of money laundering.

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4. *Money transmitters are a subspecies of the money services business. Under federal law, money transmission includes the acceptance of currency or funds from one person and their movement to another person or another location. See 31 C.F.R. § 1010.100(ff)(5). (“‘[M]oney transmission services’ means the acceptance of currency, funds, or other value that substitutes for currency from one person and the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means.”)*
9. If our institution decides not to accept overpayments, what else can the student do?

If the school decides not to accept overpayments (whether from international students only or from all students), it should communicate its policy to those students and families. If a student nevertheless sends an overpayment, the institution has several options. The school could refund the amount of overage to the account from which the money came or refuse the payment entirely and insist upon payment of the correct amount. The university or college may also consider encouraging the student to speak with a financial institution to facilitate payment and identify options that other students have used. Ultimately, it is the student’s responsibility to choose a financial institution and pay the university or college.

10. How should the school refund the overpayment if the original account from which the money came is closed?

If the school finds that the original source of payment is no longer available for a refund (e.g., the bank has closed the account), it is prudent to set up an arrangement to refund payment to the same payer in the same jurisdiction. For instance, if the student’s parent made a wire payment from Bank X in Country Y, it would be prudent for the school to get proof that Bank X has closed the account and make a return wire payment to another bank in Country Y in the name of that same payer.

11. If our institution decides to accept overpayments, what are some ways to mitigate potential legal risks?

If an institution decides to accept overpayments, certain actions might mitigate some of the legal risks described above:

- Develop and communicate clear overpayment and refund policies and train the staff who are handling such receipts and refunds.
- In order to evaluate the risk of money laundering, conduct diligence on the payer to understand the source of the money, the location of the payer, the account from which the money originated, the reason for overpayment, and the relationship between the payer and the student.
- Flag and review overpayments with any of these characteristics:
  - The payment is dramatically greater than the amount of institutional charges currently owed.
  - The payer requests an immediate refund for no explained reason.

• The payer name does not match the student’s name (possibly because of credit card fraud or stolen checks) or does not have an apparent connection to the student.
• The payer is unavailable, or it is difficult to communicate with the payer.
• The payer requests that the institution not refund the money to his or her account or asks that the institution direct the refund to a third person, a company, or other account.
• The payer requests the refund in a manner different from the payer’s method of payment.
• The payer is a shell company or a corporation.
• Payment comes from a variety of sources or follows a complicated series of transactions.
• Payment comes from a high-risk jurisdiction, for example a jurisdiction with a known high risk of money laundering or illicit finance.
• In the course of the business dealings, something raises questions about the honesty, integrity, identity, or location of the people involved or the veracity of any statements made by the payer.
• Report suspicious payments on Form 8300 to the Internal Revenue Service (IRS). The IRS requires that institutions must report on IRS Form 8300 any cash payments from a single payer exceeding $10,000 aggregated over the course of 12 months. Institutions may also use Form 8300 voluntarily to submit suspicious transactions under $10,000. Such transactions include any situations where a payer appears to be trying to prevent the institution from filling out a Form 8300, or filling out a truthful and complete Form 8300, or there is any indication of possible illegal activity such as breaking down large payments into smaller payments potentially to avoid money laundering detection. Institutions may also call the IRS Criminal Investigation Division Hotline at 800-800-2877 with information about any suspicious activities.

12. **Can a school accept an overpayment and credit it for future semesters?**

As long as the amount of the overpayment is not exorbitantly higher (defined perhaps as anything beyond 20–25 percent of the amount due) than the required payment for future semesters, a school may accept overpayment and credit this amount for future semesters in accordance with institutional policies and procedures. Consistent with retention of credit balances involving federal student financial aid, the institution’s policies and procedures might address such issues as written authorization from the student to hold the overpayment, the amount of allowable overage (perhaps allowing overages that are less than 20–25 percent of the amount due), accounting for the overpayment, maintenance of funds to cover the amount of the overpayment, and protocols surrounding refunds (and refund disputes).

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6. Regardless of whether a payment is suspicious, a school must file a Form 8300 with the IRS on currency payments of more than $10,000. See question 14 below for additional details.

7. For more guidance on when a Form 8300 is required and how to fill it out, please refer to the “IRS Form 8300 Reference Guide”
13. Can a school accept an overpayment from or on behalf of a student and transfer it to other individuals or entities (e.g., the student’s landlord, bookstore, etc.)?

Such payments may be completely proper, especially where they directly relate to education (for instance, payment for books). But in taking on this role to forward overpayments to third parties, the institution places itself as a financial intermediary and perhaps a money transmitter, as described above, thus potentially subjecting the school to a series of regulatory requirements. In addition, if an overpayment is improper—either because the initial payment was illegal or the subsequent transfer went to an improper recipient—the institution may unwittingly put itself in the middle of a problematic transaction.

14. What should a school do with an overpayment if the student withdraws without completing the term?

If the school owes the student a refund based on its policies, the school would calculate the amount due. In order to avoid status as a money transmitter and the risk of money laundering, the school would return the refund to the payer in the same manner and to the same account that the payer used to make the initial payment.

15. Can a school accept an overpayment from a student to pay for other students?

Schools should have policies about whether students may pay for other students. In devising this policy, the school should consider potential risks in accepting these types of payments, such as:

- The student could be paying for a fraudulently created student account or could be seeking reimbursement for illicit purposes.
- The payment for or on behalf of another student may be for illicit purposes.
- If the students have a dispute between themselves, the school may find itself in the middle of this dispute.
- The paying student may request private information about the other student.
- In any event, if a school elects to allow one student to make a payment on behalf of another, it is prudent for the school to direct refunds to the payer only.
16. Should a school accept cash payment or an overpayment in cash?

A school may elect to accept cash payments, but it should have proper policies, recordkeeping procedures, and security protocols in place.

There are also additional governmental reporting requirements with cash transactions, which apply regardless of the nationality of the payer and whether the cash payments are overpayments. As mentioned in question 11 above, the IRS requires that institutions report any cash payments from a single payer exceeding $10,000. The IRS defines cash as the coins and currency of the United States or a foreign country. A cashier’s check, bank draft, traveler’s check, or money order with a face value of $10,000 or less is also considered cash if it is received in a circumstance involving a collectible such as a work of art, rug, antique, metal, gem, stamp, or coin or if the sale price of consumer durables or travel expenses exceeds $10,000. If a school suspects that the payer is breaking down a payment that exceeds $10,000 into multiple smaller transactions in order to avoid the reporting requirement, the school may also report this concern to the IRS. For more information, please see the IRS website.

17. Can another company handle these obligations?

Yes, another company, such as a wire remittance company or other third-party servicer, may handle accepting payments from or on behalf of students and refunding excess payments to payers. Outsourcing this function may avoid the institution’s involvement in overpayments, refunds, payment processing, and other actions beyond accepting payment of institutional charges for students.

18. What topics should a policy and procedure on overpayments address?

A policy on overpayments might address the following questions:

- Acceptance of overpayments
  - Does the school accept overpayments?
  - Does the school accept cash overpayments or tuition payment or overpayments on behalf of other students?
  - Are there countries from which the school will not accept overpayments?
  - Will the school accept payments from corporations or other legal entities rather than individuals?
  - Does the school accept a one-time payment for all years of study?
  - How much of an overpayment will the school accept?
  - What authorization will the school require to hold an overpayment?
  - How will the school account for the overpayment?
  - Will the school maintain funds sufficient to cover the amount of the overpayment?

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8. For more guidance on when a Form 8300 is required and how to fill it out, please refer to the “IRS Form 8300 Reference Guide”
• Refunds of overpayments
  • Will the school refund the amount of an overpayment?
  • To whom will the school refund an overpayment?
  • What will happen in the event of a refund dispute (e.g., between the payer and the institution)?
  • Will the school refund the amount immediately or hold the amount in an escrow account?
  • How will the school refund the amount (i.e., through the original method of payment or through another method)?
  • Will the school enlist the assistance of another company, such as a money wiring company, to facilitate refunds from overpayments?
  • Will the student have to take any action to initiate the refund?
  • Will the school deduct any fees when refunding the overpayment?
  • If a refund is required, is there a waiting period between accepting the payment and issuing a refund?
  • How long will it generally take for a school to issue a refund?
  • Is there a time period after which the school will not refund the overpayment?
  • How will the school process an overpayment refund if the original form of payment is no longer viable?

• How will the school convey this policy to incoming and current students?

It is also important to train employees who collect student payments on potential fraud and money laundering schemes so that they can more easily identify potentially fraudulent payments. Schools may want to consider technology to assist in flagging risky payments or outsourcing collection and refunds for students to a company with expertise in this area.

19. Who should be involved in developing such a policy?

School administrators need to work together to develop the school’s overpayment policy. The business office can provide insight into overpayments received in the past from or on behalf of international students as well as systems and processes in place to handle the accounts of international students and flag suspicious payments. The international students’ office can discuss financing issues pertaining to students from specific countries and how best to convey the policy on overpayments to incoming international students. The general counsel can advise on the types of policies, procedures, and practices that the school should adopt to minimize the risks of overpayment fraud, capital flight, or money laundering and to avoid treatment as, or to comply with applicable requirements for, a money transmitter under federal and/or state law.