

# Advance Payment

**Meaning:** BAföG can be claimed only insofar as the necessary funds for the cost of living and the education cannot be provided by the parents. If the parents do not provide the amount of their income as calculated, an advance payment of the financial educational support can be made. This also applies if the parents do not give the required information.

**Function:** The advance payment serves to make up for the financial support of the parents and thus to make a study financially possible. Furthermore it also gives an adjustment function to the maintenance law. If the parents are, for example, no longer obliged to provide maintenance because their child has already achieved a professional qualification and if only the formal conditions for a non-parent educational support are not fulfilled, advance payments will be provided without a claim being made later to the parents. The same is true insofar as the parents cannot provide support from the amount calculated for their income without endangering their own livelihood.

**Conditions and procedures:** Advance payments are rendered only if application ① is made, which must show that the education/training is endangered ②. The parents must first be heard ③ and there may be no deviating basis for maintenance of the parents ④.

## ① Application

An advance payment must be applied for separately in writing (form 8) and this must be done at the latest within two months of the notification. Thereafter advance payments can only be awarded from the month of the application and if the appropriation period has elapsed not at all. The application includes the guarantee that the maintenance support of the parents is less than the calculated amount of income or – if the parents did not submit the required documents for the calculation – is less than the total requirements.

## ② Education is endangered

The education is not considered endangered if the parents were not even asked to provide maintenance support or if their support falls less than € 10 short compared to the calculated income. If the trainee is married then it is also checked if the current income of the spouse or the registered partner would lead to a calculation. This is because the spouse/partner is obligated to provide support before the parents.

## ③ The parents' hearing

With their hearing the parents are given the opportunity to state their reasons for not providing the entire calculated amount of maintenance. They also have the chance to state their position about their child's declarations. Furthermore they are informed under which legal preconditions their claim is possible. The hearing can take place personally at the Office for Financial Study Assistance or in writing. This can delay the advance payment. The hearing can only be dispensed with if there are important reasons.

## Any questions?

### PERSONAL ADVICE

 Tue 9.00–12.00  
Thurs 1.00–3.00  
During the personal advice sessions we would ask you to refrain from calling us by telephone. We thank you for your understanding.

### TELEPHONE ADVICE

 Mon and Wed 10.00–12.00

### ZENTRALER INFO-POINT

Phone 0251 837-95 09  
 Mon to Thurs 9.00–12.00  
and 1.30–4.00  
Fri 9.00–12.00  
and 1.30–2.00

#### ④ The parents' determination of maintenance support

The parents have the right to determine the way of providing support for unmarried children in accordance with § 162 paragraph 2 of the German Civil Code (BGB). Insofar as they offer the trainee free board and accommodation in a declaration, an advance payment is therefore not possible. This applies even if the determination seems improper. In such a case, the entitlement to support must be settled in family court.

**Result of the transition of the maintenance claim:** Pursuant to civil law (§§ 1601 ff. BGB), an existing claim to maintenance is changed over to the state providing assistance with the advance payment. Up to the amount of the advance payment the trainee loses the claim to maintenance and cannot assert the claim or make agreements with his/her parents about the matter. This does not apply if only an interest-bearing bank loan was granted. Then the trainee retains his/her maintenance claim and can decide whether to assert his/her claim or not.

**Maintenance claim of the parents:** Because the state follows the trainee's maintenance claim, it cannot demand more from his/her parents as the trainee him/herself. In accordance with the relevant civil law regulations there may be a lower maintenance obligation than in accordance with BAföG. If the Office for Financial Study Assistance concludes that the advance payment is not or is only partially covered by a maintenance claim, it can in this respect refrain from demanding maintenance from the parents without judicial clarification.

If there is a transition, the parents will be informed about it and at the same time they will be called upon to provide the maintenance support. The result could be that they must pay. I THINK IT IS OK Possibly the parents will ask for a deferment of payment, and payment by instalments can be agreed upon. If an amicable solution cannot be achieved, then clarification will be reached by the family court that is responsible for the parents' place of residence.

**Effect on the educational support granted as a loan:** If maintenance support is not given, then what remains for the trainee is the loan provided from public funds insofar as the advance payment was granted as such. This is also the case if the parents' obligation has been stipulated by the court but the enforcement of the judgement achieved fails. If payments are made, the loan, on the other hand, is correspondingly decreased.

**Advantages and disadvantages of an advance payment:** Taking advantage of the advance payment offers one the chance to receive maintenance support comparatively quickly without having to sue one's parents and having to risk incurring high costs as a result. The advance payment can continue to establish a fair balance between the generalising regulations of the BAföG and the individual maintenance law and can therefore also be claimed in agreement with one's parents. However – except in the case when an interest-bearing loan is granted – the right to follow one's maintenance claim oneself and to make decisions regarding possible legal action no longer applies.

#### Legal reference

§ 36 and 37 BAföG, §§ 1601 ff. BGB (German Civil Code)