Director Richard Cordray
Consumer Financial Protection Bureau
1700 G Street NW.
Washington, DC 20552

March 30, 2015

Re: Response by the Center for Responsible Lending and the National Consumer Law Center, on behalf of its low-income clients, to the Request for Information on the Safe Student Account Scorecard
Docket No. CFPB-2015-0001

Dear Director Cordray,

The Center for Responsible Lending and the National Consumer Law Center, on behalf of its low-income clients, write to enthusiastically support the Student Safe Account Scorecard. The Scorecard will help colleges and universities ensure that their students are offered safe banking products. It will also help protect students against especially abusive fees like overdraft, which recent research completed by the Center for Responsible Lending indicates is especially harmful for students.[1] The Scorecard complements the ongoing efforts by the Department of Education to reform bank-college partnerships; and the Bureau's efforts to regulate prepaid cards and overdraft fees.

I. College-Bank Partnerships Threaten Students with Unfair Marketing Practices and Harmful Fees

The Scorecard could help mitigate the ongoing harm created by marketing partnerships between schools and banks. As many reports and investigations have detailed, marketing agreements between colleges and financial institutions steer students into college-sponsored prepaid and checking accounts that may not be in the students' best interests.[2] The Scorecard would help ensure that students' interests are also protected in these deals.

School-bank partnerships allow financial institutions to get priority access to students' business rather than freely compete for it. The agreements often allow the financial institution

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[1] Leslie Parrish and Maura Dundon, Center for Responsible Lending, *Overdraft U: Student Bank Accounts Often Loaded with High Overdraft Fees* (March 2014), at http://www.responsiblelending.org/student-loans/research-policy/overdraft_u_final.pdf. The report has also been submitted as an appendix to this comment.

[2] *See, e.g.,* Government Accountability Office, *College debit cards: Actions needed to address ATM access, student choice, and transparency* (2014), *available at* http://www.gao.gov/assets/670/660919.pdf; Department of Education, Office of Inspector General, *Third-party servicer use of debit cards to deliver Title IV funds* (2014), *available at* http://www2.ed.gov/about/offices/list/oig/auditreports/fy2014/x09n0003.pdf; Consumer Financal Protection Bureau, *Perspectives on Financial Products Marketed to College Students*, Presentation to the Department of Education Negotiated Rulemaking Session 14 (Mar. 26, 2014) *available at* http://files.consumerfinance.gov/f/201403_cfpb_presentation-to-department-education-rulemaking-committee.pdf; Suzanne Martindale, Consumer Reports, *Campus banking products: College students face hurdles to accessing clear information and accounts that meet their needs* (2014), *available at* http://consumersunion.org/wp-content/uploads/2014/08/Campus_banking_products_report.pdf; Richard Williams and Edward Mierzwinski, U.S. PIRG, *The campus debit card trap: Are bank partnerships fair to students?* (2012), *available at* http://www.uspirg.org/sites/pirg/files/reports/thecampusdebitcardtrap_may2012_uspef.pdf.

exclusive marketing access to the student body at key moments in a student's financial life – like choosing how to receive their student loan money when they first enroll, or getting their first student ID card that can double as a debit card or prepaid account. The schools assist the financial institution by providing it with students' personal information and helping to market the card. The resulting lack of competition hurts students. As Director Cordray has noted, "Without consumer choice, a key element of market discipline is lacking. The result is to permit or even facilitate a distinct indifference to the interests of individual consumers."[3]

Financial institutions have been found to use deceptive tactics, such as designing websites and mailings that lead students to believe that their financial aid will be delayed if they do not chose the sponsored account, or even deliberately delaying disbursement to other, non-sponsored accounts.[4] Co-branding the cards with the school's logo and integrating it with student ID functionality also may push the student to select the account over other options.

In return for providing exclusive access to the student body and student personal information, schools receive discounted services or a share of the revenue. But revenue sharing could lead to students' being steered unknowingly into more expensive accounts. Students, who trust their college as a steward of their financial aid dollars, may also reasonably believe that the school is presenting them with the best deal on the market for the student – never realizing that the school's actual financial incentives align with increasing the account issuer's revenue by pushing students into more expensive accounts. This dynamic is very similar to other harmful revenue-sharing arrangements that Congress and regulators have taken steps to end: private student loan kickbacks; on-campus credit card marketing revenue sharing arrangements; and mortgage broker compensation arrangements that steered consumers into more expensive loans than they could have found on a level playing field.[5]

II. The Scorecard Helps Protect Students from Abusive Fees, but Schools Should Still End Revenue Sharing

The Scorecard will help schools identify and avoid harmful fees, as well as select accounts that are in their students' best interests. But the pitfalls of revenue sharing will still persist. As long as colleges are getting paid by banks to offer up their student bodies as a marketing channel, students may still get the short end of the stick. As the Bureau's research demonstrates, the vast majority of college students either already have bank accounts when they

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[3] Prepared Remarks by Richard Cordray, Director of the Consumer Financial Protection Bureau, Consumer Advisory Board Meeting, Feb. 20, 2013, *at* http://www.consumerfinance.gov/newsroom/prepared-remarks-by-richard-cordray-at-a-consumer-advisory-board-meeting/.

[4] Government Accountability Office, *College debit cards: Actions needed to address ATM access, student choice, and transparency* (2014) at 27-28, *available at* http://www.gao.gov/assets/670/660919.pdf; ; Department of Education, Office of Inspector General, *Third-party servicer use of debit cards to deliver Title IV funds* (2014) at 9-10, *available at* http://www2.ed.gov/about/offices/list/oig/auditreports/fy2014/x09n0003.pdf.

[5] Congress banned revenue sharing and other harmful practices between private student loan companies and colleges in the Higher Education Opportunity Act of 2008 and the Truth in Lending Act. 20 U.S.C. § 1094(e) and (a)(25); 20 U.S.C. § 1019a; 15 U.S.C. § 1650(b) and (c). The CARD Act limited the harmful impact of revenue sharing between colleges and credit card companies by imposing heightened underwriting standards and marketing restrictions. 15 U.S.C. §§ 1637(c)(8) and 1650(f). The Federal Reserve, and later the Bureau as directed by Congress, limited harmful mortgage broker compensation practices. Consumer Financial Protection Bureau, Final Rule, *Loan Originator Compensation Requirements Under the Truth in Lending Act (Regulation Z)*, 78 Fed. Reg. 11280, 11280 (Feb. 15, 2013).

enroll, or would be able to obtain a bank account on the open market.[6] Recent research by the Center for Responsible Lending indicates that revenue-sharing agreements do not appear to produce better deals for students, particularly for overdraft fees, and other options on the open market may be superior.

III. Overdraft Fees Should be a Dealbreaker

A. Overdraft Fee Programs are Unfair and Abusive

Overdraft fee programs have a long history of abuse, and schools should use their bargaining power to eliminate them from campus financial products. Banks' overdraft policies can result in very large fees for very small overdrafts. Among checking accounts generally, overdraft fees average $35 per incident, regardless of the amount by which the account is overdrawn.[7] Previous CRL research found that a significant share of overdraft fees were triggered by debit card transactions in which the amount of credit extended by the bank to cover the shortfall was often *substantially less* than the fee charged. This leads to the stereotypical "$35 cup of coffee" – where a very small overdraft of just a few dollars can have an outsized cost.[8] Banks and credit unions typically allow consumers to be charged several overdraft fees or more per day, and—if the account remains overdrawn for several days—often charge additional "sustained overdraft" fees that take the account farther into the red.

Banks can easily prevent overdrafts on debit card and ATM transactions. Banks are able to decline these transactions at no charge when the account lacks sufficient funds. Thus, banks reap these outsized fees without justification based on their own costs or technological limitations.

Some banks compound the unfairness by deliberately "reordering" transactions to ensure that the account overdrafts as many times as possible. Using software algorithms, these banks change the orders of transactions in a day to deduct the largest ones first, so that the rest of the transactions all overdraft.[9] Although some banks have stopped this practice, others still reserve the ability to engage in it.[10] For example, TCF Bank, a key player in the campus account market, notes that "The order in which we process transactions may result in more overdraft and returned item NSF fees than if we processed transactions in a different way." The bank also reserves the right to "change the way we process transactions at any time regardless of any request or instruction you give us. We may do so in our sole discretion without notifying you."[11]

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[6] Consumer Financial Protection Bureau, *Perspectives on Financial Products Marketed to College Students*, Presentation to the Department of Education Negotiated Rulemaking Session 8 (Mar. 26, 2014) *available at* http://files.consumerfinance.gov/f/201403_cfpb_presentation-to-department-education-rulemaking-committee.pdf

[7] Pew Charitable Trusts, *Overdrawn*: *Persistent Confusion and Concern About Bank Overdraft Practices* (Jun. 2014), *at* http://www.pewtrusts.org/~/media/Assets/2014/06/26/Safe_Checking_Overdraft_Survey_Report.pdf.

[8] *That $35 Cup of Coffee*, N.Y. Times, Nov. 13, 2009, at A22, *available at* http://www.nytimes.com/2009/11/14/opinion/14sat2.html?_r=0 .

[9] The Center for Responsible Lending, *Re-ordering Transactions: A Costly Overdraft Abuse*, *at* http://www.responsiblelending.org/overdraft-loans/tools-resources/re-ordering.html.

[10] Ann Carnns, *Customers Can Lose When Banks Shuffle Payments*, N.Y.Times, (Ap. 11, 2014), at B6, *available at* http://www.nytimes.com/2014/04/12/your-money/customers-can-lose-when-banks-shuffle-payments.html.

[11] TCF checking account contract at 20-21, *at* https://www.tcfbank.com/resources/images/4994.pdf.

In light of the abuses of overdraft fees, the Federal Reserve published a rule in 2009 requiring banks to obtain consumer consent ("opt-in") before allowing customers to overdraw their account through a debit card transaction or ATM withdrawal and assessing a fee. While the opt-in rule has reduced the incidence of overdraft fees charged, it has not fixed the problem. Indeed, as the Bureau notes in its 2013 white paper addressing overdraft fees, the problems identified in the market prior to the opt-in rule still persist, as even consumers with relatively moderate overdraft use may pay hundreds of dollars in fees annually.[12]

Further, our research indicates that banks engage in aggressive and misleading marketing to get consumers to opt-in.[13] We found that 60% of consumers who opted in to overdraft coverage had an exactly opposite understanding of what it did: they believed that overdraft coverage *protects* them from a fee for a declined debit card transaction. But, as noted above, there is typically no fee for a declined debit card transaction. Instead, opting in actually *permits fees* to be charged on transactions when the account lacks sufficient funds, but the bank allows the transaction to go through anyway.[14] In addition, 50% of consumers reported that they opted in simply to get banks to stop bombarding them with advertising.[15]

B. Students Are Especially Vulnerable to Overdraft, Which Can Lead to Lost Bank Accounts

Federal regulators report that young adults—who are often the least experienced and maintain relatively low balances—are at the greatest risk of overdrawing their bank accounts.[16] Because young adults also use debit cards more frequently than other accountholders, they are also more vulnerable to overdrafts that are most expensive relative to the size of the transaction but completely preventable if the bank declined the transaction, as it easily could.

Overdraft fees that cause vulnerable accountholders to quickly get in over their heads are a leading reason that consumers lose access to the banking system.[17] Thus, campus accounts with overdraft risk creating new unbanked consumers, instead of helping students start off their financial lives on strong footing.

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[12] CFPB, *CFPB Study of Overdraft Programs: A white paper of initial data findings* at 61 (Jun. 2013), *available at* http://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf.

[13] Center for Responsible *Lending, Banks Collect Overdraft Opt-Ins Through Misleading Marketing* (Ap. 2011), *available at* http://www.responsiblelending.org/overdraft-loans/policy-legislation/regulators/banks-misleading-marketing.html.

[14] *Id.*

[15] *Id.*

[16] Consumer Financial Protection Bureau, *Data point: Checking account overdraft* (2014), *at* http://www.consumerfinance.gov/reports/data-point-checking-account-overdraft/; Federal Deposit Insurance Corporation, FDIC study of bank overdraft programs, *at* https://www.fdic.gov/bank/analytical/overdraft/FDIC138_Report_Final_v508.pdf.

[17] M. Barr, *Financial services, savings and borrowing among low- and moderate-income households: Evidence from the Detroit area household financial services survey* (2008), *at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1121195; D. Campbell, A. Jerez, and P. Tufano, *Bouncing out of the banking system: An empirical analysis of involuntary bank account closures* (2008), at http://www.bostonfed.org/economic/cprc/conferences/2008/payment-choice/papers/ campbell_jerez_tufano.pdf; Federal Deposit Insurance Corporation, *National survey of unbanked and underbanked households* (2009), *at* https://www.fdic.gov/HOUSEHOLDSURVEY/2009/full_report.pdf.

C. Existing Sponsored Campus Account Overdraft Fees Can Cost Student More than Textbooks Every Year

Recent CRL research, submitted as an appendix to this comment, indicates that harmful overdraft fees are prevalent in current campus accounts.[18] Our analysis shows that these accounts can accrue overdraft fees of more than $100 per day. For the heaviest users, overdraft fees could amount to $700 a year – more than the average cost of textbooks.

Our analysis also finds that there are many examples of widely-available bank accounts with more consumer-friendly features than those currently available through school-bank partnerships. At best, many student bank accounts offered through these exclusive deals have no better overdraft policies than accounts that a student could obtain on their own.

Accordingly, there is no justification for schools to enter into marketing partnerships with banks that would include high-cost overdraft fees on their accounts. The Scorecard appropriately guides schools to select accounts that do not include overdraft fees.

IV. Responses to numbered RFI questions

1. How can institutions of higher education and students benefit from soliciting information on the features and cost of financial products marketed through a partnership with a financial institution?

Schools may not view themselves as experts in financial products, but if they are going to enter into marketing agreements with financial institutions to provide access to students, and take on a role similar to a broker or financial advisor, they have an obligation to ensure that the product is safe and top-of-the-market in consumer protections. Schools must fully understand the terms and conditions of the accounts that would be offered to students. The Scorecard would assist schools to solicit the most salient information, and help ensure that, at a minimum, the accounts do no harm through overdraft fees. Ideally, the Scorecard would also help schools find good deals for students by allowing them to compare overall costs of accounts.

2. How can the draft scorecard based on the FDIC Model Safe Accounts template be adapted to meet the needs of this specific market and to other types of products that institutions of higher education seek to offer to their students?

The Scorecard should be accompanied by guidance that helps schools better distinguish between "dealbreakers," such as overdraft fees, and accounts that are simply more expensive than other options. The guidance should also highlight fees that fall far outside the market norm, such as transaction fees on point-of-sale purchase. It should focus especially on fees that are likely to disproportionately affect college students, who may tend to make many small transactions with their debit card or are at higher risk of incurring overdrafts generally.

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[18] Leslie Parrish and Maura Dundon, Center for Responsible Lending, *Overdraft U: Student Bank Accounts Often Loaded with High Overdraft Fees* (March 2014), at http://www.responsiblelending.org/student-loans/research-policy/overdraft_u_final.pdf. The report has also been submitted as an appendix to this comment.

The Scorecard should also help schools understand how students actually use the accounts, and how this impacts the overall cost of the account. It should guide them to consumer comparison tools that will help them understand and compare the accounts already available to students. For example, Consumer Reports has developed a model to assess the overall fees of various student accounts.[19]

Schools should also be given additional background on the differences between prepaid and deposit accounts. Currently, one of the main differences between prepaid cards and deposit accounts is that prepaid cards lack the full Regulation E protection accorded to traditional deposit accounts, and do not come with periodic statements to help consumers monitor their accounts. Although the Scorecard currently includes a question about fraud and error resolution protection, schools will need more background to understand the specific distinctions between prepaid and deposit accounts.

The Scorecard should include several specific new elements to the basic safe template and the additional questions:

- The template should specify that paper statements should be available free or at low cost, in addition to free electronic statements.

- For prepaid cards, the safe template should ask specifically whether the prepaid card offers the same fraud and error resolution protections as Regulation E.

- The template should include a question about mandatory arbitration. Mandatory arbitration strips students of their right to address legal violations in open court, and instead forces them into a private, biased, and secret arbitration proceeding.[20] According to the Bureau's research, arbitration clauses are not inevitable in the checking account and prepaid card markets. For checking accounts, only 8% of banks, covering 44% of insured deposits, require mandatory arbitration.[21] Arbitration is much more prevalent in the prepaid card market, with 81% of cards in the Bureau's sample requiring it.[22] Accordingly, schools may have significant choice on the market to find an account without an arbitration clause.

- Schools should ask whether any terms and conditions will significantly change when students are no longer enrolled, and how any changes will be disclosed to students during the application process. and later after student status changes. The school should also ask whether the student will be advised, when student status ends, that the surcharge-free ATM network may be more limited once the student is no longer on campus. Student

[19] Consumer Reports, *Campus Banking Products: College Students Face Hurdles to Accessing Clear Information and Accounts that Meet Their Needs* (Aug. 2014), *at* https://consumersunion.org/wp-content/uploads/2014/08/Campus_banking_products_report.pdf.
[20] Public Citizen, *Mandatory Arbitration Clauses: Undermining the Rights of Consumers, Employees, and Small Businesses*, *at* https://www.citizen.org/congress/article_redirect.cfm?ID=7332.
[21] Consumer Financial Protection Bureau, *Arbitration Study Preliminary Results* at 12, (Dec. 12, 2013), *available at* http://files.consumerfinance.gov/f/201312_cfpb_arbitration-study-preliminary-results.pdf.
[22] *Id.*

accounts should not be a "bait and switch" tactic to get students into accounts that will have significantly worse terms later on.

- The questions on non-standard fees should include fees for declined ATM transactions;[23] account termination or mailing of check for the balance; "research" or "disputes," which can be as high as $100 for some prepaid cards; PIN changes; and automated customer service inquiries, and any other fees.

3. What are the potential advantages and disadvantages of separately negotiating arrangements with prospective financial institutions to market financial products to students, compared to including these arrangements as part of a broader relationship with a financial institution encompassing other services?

Including financial product marketing agreements within a broader relationship, such as Title IV federal financial aid servicing or the student ID card process, places students at risk of steering. A school has a great deal of power over students at the focal points of financial aid disbursement and issuing student IDs. They should be wary of using this power to steer students into particular accounts.

4. What factors would institutions of higher education consider when determining whether or not to include additional information on product features and cost as part of a Request for Proposal?

See response to 5 below.

5. What other information would be useful for institutions of higher education to solicit from potential marketing partners to assist them in determining whether financial product offerings are safe and affordable for their students?

Schools should include information requests tailored to their own student bodies' preferences and concerns. If schools intend to engage in financial partnerships to offer these products to students, then they have a responsibility to understand what students want and what challenges they face when using financial products, and to tailor their RFPs accordingly. Schools should survey students about their satisfaction with existing banking products, especially if they have been offered pursuant to a bank-school partnership, to determine if the students are satisfied or if they have serious complaints. This information should be incorporated into future RFPs. Frequent student complaints evincing unfair practices by the financial institution should be grounds for terminating the contract.

Schools should also require that financial institutions report (both in the RFP and on an ongoing basis during any contract term) whether they have been the subject of any state or federal law enforcement investigations, other regulatory oversight regarding unfair consumer practices, or private consumer protection lawsuits or arbitrations. Such actions would warrant additional scrutiny by the school and possible contract cancellation.

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[23] These fees are virtually unheard of in the checking account space, but some prepaid cards charge them.

6. What tools or information would be helpful for institutions of higher education when comparing proposals from potential marketing partners and selecting the proposal offering the safest, most affordable products for students?

Schools should understand the likely overall costs that will be incurred by their students based on typical student usage patterns and the account fee structure, as well as any specific and unusual costs of particular fees that are included. In this regard, models like the one developed by Consumers Union could be a useful tool for schools to understand and compare costs.[24]

Schools should also be educated about the difference between transparent, up-front fees, like monthly fees; and unfair, opaque, back-end, or otherwise unexpected fees like overdraft and point-of-sale transaction fees. They should understand that a "free" account with no monthly fee is not necessarily really "free" if it comes with these surprise fees.

7. For existing arrangements between institutions of higher education and financial institutions to market student checking accounts, prepaid cards, and other financial products, what fees do students most frequently incur? To what degree do transaction patterns and fees vary among different student populations? How does this compare to the frequency of fee assessments on accounts unrelated to these marketing arrangements?

As detailed above, overdraft fees on sponsored accounts pose a particular risk to students. According to our recent research, which we are submitting as an attachment to this comment, students currently using campus banking products may face overdraft fees of up to $700 a year – more than the cost of textbooks.[25]

Our analysis also finds that some accounts unrelated to these marketing arrangements, including ones at very large institutions, have accounts that charge no overdraft fees, particularly on debit card and ATM transactions. But the fact that many accounts outside of campus marketing agreements do still have overdraft fees should not affect the school's assessment of the potential sponsored account. Just because a bad practice exists on the larger market does not excuse a school's responsibility to ensure that any sponsored account does not include that practice. Schools should only sponsor accounts that are in students' best interests – and this means seeking out accounts that are at the top of the market for consumer protections, not accounts that conform to current bad practices.

ATM fees are also a very commonly-incurred fee on card-based accounts like prepaid cards. School-sponsored accounts offered by a nonbank that does not have a wide ATM network may impose significant ATM surcharges and out-of-network ATM fees on students.

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[24] Consumer Reports, *Campus Banking Products: College Students Face Hurdles to Accessing Clear Information and Accounts that Meet Their Needs* (Aug. 2014), *at* https://consumersunion.org/wp-content/uploads/2014/08/Campus_banking_products_report.pdf.

[25] Leslie Parrish and Maura Dundon, Center for Responsible Lending, *Overdraft U: Student Bank Accounts Often Loaded with High Overdraft Fees* (March 2014), at http://www.responsiblelending.org/student-loans/research-policy/overdraft_u_final.pdf. The report has also been submitted as an appendix to this comment.

8. For which student financial products would a *Safe Student Account Scorecard* be most useful to institutions of higher education?

The current Scorecard draft is tailored for accounts intended to be used as regular transaction accounts – i.e., traditional deposit accounts and prepaid cards. However, a Scorecard would also be very useful for any other financial product for which a school enters into any kind of agreement, including credit cards, private student loans, and any other form of credit. Although the CARD Act and the Higher Education Opportunity Act both imposed new requirements on credit card and private student loan marketing, schools do not have specific guidance on how to look for the best products for students.

Thank you for your efforts to protect students.

Sincerely,

The Center for Responsible Lending
National Consumer Law Center, on behalf of its low-income clients