July 2, 2015

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The Honorable Arne Duncan
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Re: **Comment of Student, Consumer, and Civil Rights Groups on the Proposed Amendments to the Cash Management Rule, 34 C.F.R. Part 668**
Docket ID ED-2015-OPE-0020

Dear Secretary Duncan:

The undersigned student, consumer, education, labor, civil rights, and legal aid groups write in support of the Department of Education's proposed amendments to the Cash Management rule to protect students' financial aid from harmful college-bank marketing partnerships.

Although the proposed rule should be strengthened, it is a strong first step towards righting the intolerable use of the financial aid disbursement system as a marketing platform for high-fee bank accounts. These rules are essential to help ensure that federal grants and loans achieve their intended purpose: to help students complete college.

Congress has protected students from unfair marketing agreements between colleges, credit card companies, and private student loan companies. The Department has ample authority and reason to protect students equally from aggressive marketing of finanical accounts.

Although we believe the proposed rule is strong, we offer the following comments:

- The financial aid system should not be turned into a marketing opportunity for high-fee bank accounts.
- The proposed rule should extend full fee protection to all bank accounts.
- Student choice of bank accounts and neutrality must be protected.
- The rule should retain the requirement that colleges publicly disclose their bank marketing contracts online, as well as submit them to a central database. This is essential for transparency and informing students and parents about the accounts their college may offer.

The financial aid disbursement system has been turned into a marketing platform by banks and colleges

Under current law and regulations, colleges have the responsibility to draw down their students' aid funds from the Department, then distribute anything that remains after tuition to students to provide for their books and living expenses. However, many colleges have outsourced this function to third-party companies, and allowed the process to be used to heavily market high-fee bank accounts to students. Some colleges also allow banks to market accounts to students during the student ID card process, with the ID card doubling as a debit card for the account.

As many reports have detailed, these agreements between colleges and financial institutions steer students into college-sponsored prepaid and checking accounts that often are not in the students' best interests.[1] They 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.[2] 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 non-school sponsored options they might shop for on their own.

In return for providing exclusive access to the student body and student personal information, schools may receive discounted services or a share of the financial institution's revenue from the accounts. But revenue sharing provides the incentive for schools to steer students into more expensive accounts. Students, who trust their college as a steward of their financial aid dollars, may 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.

The proposed rule should extend full fee protections to all bank accounts

The Department's proposed rule would protect students from unfair banking fees on some accounts, but would leave them vulnerable to overdraft and other unfair fees on other accounts.

The rule divides accounts into two classes: those offered directly during financial aid disbursement ("Tier 1") pursuant to a contract with a third-party servicer that manages disbursement for the college; and those offered at other times, such as accounts linked to student ID cards that double as debit cards ("Tier 2") and are marketed to students by financial institutions that do not manage the disbursement process for the school. Tier 1 cards would be broadly protected from fees, including overdraft fees, and would have a total fees moratorium in the first 30 days. Tier 2 cards, however, would not have the same fee restrictions, although the college would have to ensure reasonable free ATM access and substantiate that a Tier 2 card was

[1] *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.govt/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 Financial 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.

[2] 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.

in the "best financial interests" of the student before entering into a marketing contract with the bank.

1) ***The Department's ban on Tier 1 overdraft fees is key to protect student loan dollars from abusive bank fees***

We applaud the Department for banning overdraft fees on Tier 1 accounts. Many student bank accounts today have overdraft policies that allow for hundreds of dollars in fees to be assessed in a single day, when the bank could simply decline these transactions at no cost to the student. Overdraft programs have a history of using predatory practices aimed at maximizing fee revenue from those least able to avoid these fees, and younger Americans are more likely to be charged overdraft fees than other age groups.[3]

We also applaud the ban on point-of-sale fees, and the requirement that students with Tier 1 accounts have reasonable access to free ATMs. Point-of-sale and ATM fees can also add up quickly for students who use their accounts on a regular basis.

2) ***Tier 2 cards should enjoy the same fee protections as Tier 1 cards***

We urge the Department to strengthen fee protections for Tier 2 cards, especially banning overdraft fees. Although these accounts are not initially offered directly in the course of the financial aid disbursement process, Tier 2 arrangements are equally motivated by the desire to access students' financial aid funds. The marketing agreements between colleges and banks sometimes obligate colleges to push students to deposit future aid money into the Tier 2 account during disbursement. In addition, colleges may receive an additional payment from the bank if the account remains active in later years, or they may receive a share of the interchange fees earned when students use their debit cards. Thus, colleges may have an incentive – and in some cases, a contractual obligation – to push students to deposit their federal aid into Tier 2 accounts.

At the very least, the Department should strengthen the "best financial interests" standard that applies to Tier 2 accounts. The current definition appears to define the term with reference to current market practices. But for fees widely considered to be unfair and harmful, like overdraft fees, colleges should be held to a higher standard.

The proposed rule's strong protections of student choice should be preserved

The proposed rule would strengthen students' ability to choose their own bank account, instead of being steered into the bank account marketed under a college-bank partnership. During financial aid disbursement, the choices would be present in a neutral manner, with the students' preexisting account as the prominent first option. This is a key improvement over current practices, which allow banks and their partners to discriminate against other kinds of accounts

[3] *See* Federal Deposit Insurance Corporation, Press Release, *FDIC Announces Settlements With Higher One, Inc., New Haven, Connecticut, and the Bancorp Bank, Wilmington, Delaware for Unfair and Deceptive Practices* (Aug. 12, 2012), *at* https://www.fdic.gov/news/news/press/2012/pr12092.html; Consumer Financial Protection Bureau, *Data Point: Checking Account Overdraft* at 5 (with 11 percent of account holders aged 18-25 incurring more than 10 overdraft/non-sufficient funds fees in a year) (July 2014), *available at* http://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf; Rebecca Borné and Peter Smith, Center for Responsible Lending, *The State of Lending: High-Cost Overdraft Fees* (2013), *available at* http://www.responsiblelending.org/state-of-lending/overdrafts/.

by, for example, delaying the deposits to students' existing accounts, but promising fast disbursal to their own accounts.

As the Consumer Financial Protection Bureau's research demonstrates, the vast majority of college students either already have bank accounts when they enroll, or would be able to obtain a bank account on the open market.[4] The neutrality provisions of the proposed rule encourage an open, free market, instead of steering students into a preselected account. This competition will result in better, more innovative financial products and accounts for students that are low-fee and meet their needs.

Transparency is key

Finally, the transparency provisions of the proposed rule are a key component to protect and inform students. The proposed rule would require that colleges publicly disclose on their websites any contracts they have with banks to market accounts to students, as well as the money earned by the colleges under the contracts, and the fees incurred by students using the accounts. They would also have to submit their contracts to a centralized database. These measures will allow colleges, students, and parents to better understand the accounts and enable them to better decide if the account meets their needs. It would also ensure that the public can exercise their right to know about the nature of these arrangements and their impact on the federal financial aid system.

Thank you for considering our comments and for your continued efforts to address important issues related to campus banking products.

Sincerely,

AFL-CIO
American Federation of Teachers
Americans for Financial Reform
California Reinvestment Coalition
California State Student Association
Center for Responsible Lending
Consumer Action
Consumer Federation of America
Consumers Union, policy and action from Consumer Reports
NAACP
National Association of Consumer Advocates
National Consumer Law Center, on behalf of its low income clients
New Jersey Citizen Action
Ohio Student Association
One Wisconsin Now
Oregon Student Association
Public Citizen
Project on Predatory Student Lending, Legal Services Center of Harvard Law School
Reinvestment Partners
Student Debt Crisis
Student Labor Action Project
The Institute for College Access and Success
United States Student Association
U.S. PIRG
Veterans Education Success
Woodstock Institute
Young Invincibles

[4] 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