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DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840-AD14

[Docket ID ED-2015-OPE-0020]

Program Integrity and Improvement

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the cash management regulations under subpart K and other sections of the Student Assistance General Provisions regulations issued under the Higher Education Act of 1965, as amended (HEA). These proposed regulations are intended to ensure that students have convenient access to their title IV, HEA program funds, do not incur unreasonable and uncommon financial account fees on their title IV funds, and are not led to believe they must open a particular financial account to receive their Federal student aid. In addition, these proposed regulations update other provisions in the cash management regulations under subpart K and otherwise amend the Student Assistance General Provisions. We also

propose to clarify how previously passed coursework is treated for title IV eligibility purposes and streamline the requirements for converting clock hours to credit hours.

DATES: We must receive your comments on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

If you are submitting comments electronically, we strongly encourage you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), we strongly encourage you to convert the PDF to print-to-PDF format or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the Department to electronically search and copy certain portions of your submissions.

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Are you new to the site?"

- Postal Mail, Commercial Delivery, or Hand Delivery: The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about the proposed regulations, address them to Jean-Didier Gaina, U.S. Department of Education, 1990 K Street, NW., room 8055, Washington, DC 20006.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For clock-to-credit-hour conversion: Amy Wilson, U.S. Department of Education, 1990 K Street, NW., room 8027, Washington, DC 20006-8502. Telephone: (202) 502-7689 or by email at: amy.wilson@ed.gov.

For repeat coursework: Vanessa Freeman, U.S. Department of Education, 1990 K Street, NW., room 8040, Washington, DC 20006-8502. Telephone: (202) 502-7523 or by email at: vanessa.freeman@ed.gov or Aaron Washington, U.S. Department of Education, 1990 K Street, NW., room 8033, Washington, DC 20006-8502. Telephone: (202) 502-7478 or by email at: aaron.washington@ed.gov.

For cash management: Ashley Higgins, U.S. Department of Education, 1990 K Street, NW., room 8037, Washington, DC 20006-8502. Telephone: (202) 219-7061 or by email at: ashley.higgins@ed.gov or Tony Gargano, U.S. Department of Education, 1990 K Street, NW., room 8020, Washington, DC 20006-8502. Telephone: (202) 502-7519 or by email at: anthony.gargano@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: Throughout this preamble, we refer to title IV, HEA program funds using naming conventions common to the student aid community, including "title IV student aid" and similar phrasing.

Executive Summary:

Purpose of This Regulatory Action:

Over the past decade, the student financial products marketplace has shifted and the budgets of postsecondary institutions have become increasingly strained, in part due to declining State funding. These changes have coincided with a proliferation of agreements between postsecondary institutions and financial account providers. Cards offered pursuant to these arrangements, usually in the form of debit or prepaid cards and sometimes cobranded with the institution's logo or combined with student IDs, are marketed as a way for students to receive their title IV credit balances via a more convenient electronic means. However, as we describe in more detail elsewhere in this preamble, a number of reports from government and consumer groups document troubling practices employed by some financial account providers. Legal actions, especially those initiated by the Federal Reserve and Federal Deposit Insurance Corporation (FDIC), against the sector's largest provider reinforce some of these concerns.

According to these reports, many of the following practices were found:

- Providers prioritizing disbursements to their own affiliated accounts over aid recipients' preexisting bank accounts;

- Providers and schools strongly implying to students that signing up for the college card account was required to receive Federal student aid;
- Private student information unrelated to the financial aid process being given to providers before aid recipients consented to opening accounts;
- Access to the funds on the college card was not always convenient; and
- Aid recipients being charged onerous, confusing, or unavoidable fees in order to access their student aid funds or to otherwise use the account.

As discussed in further detail under the heading "Fee provisions for T1 accounts," these practices indicate that many institutions have shifted costs of administering the title IV, student aid programs from institutions to students. Given that approximately nine million students attend schools with these agreements, that approximately $25 billion dollars in Pell Grant and Direct Loan program funds are disbursed to undergraduates at these institutions, that students are a captive audience subject to marketing from their institution, that the college card market is expanding, and given the concerns raised by existing practices, we believe regulatory action governing the disbursement of title IV, student aid is warranted.

In addition, we include in the proposed regulations a number of minor changes that reflect updated Office of Management and Budget (OMB) guidance for Federal awards, clarify some provisions to further safeguard title IV funds, and remove references to programs that are no longer authorized.

Finally, we address in the proposed regulations two issues unrelated to cash management--repeat coursework and clock-to-credit-hour conversion--that were identified by the higher education community as requiring review. We believe these proposed regulatory changes would result in more equitable treatment of student aid recipients.

Summary of the Major Provisions of This Regulatory Action:

The proposed regulations would--

- Explicitly reserve the right for the Secretary to establish a method for directly paying credit balances to student aid recipients;

- Establish two different types of arrangements between institutions and financial account providers, "tier one (T1) arrangement" and "tier two (T2) arrangement," respectively;

- Define a "T1 arrangement" as an arrangement between an institution and a third-party servicer that performs one

or more of the functions associated with processing direct payments of title IV funds on behalf of the institution and that offers one or more financial accounts to students and parents;

- Define a "T2 arrangement" as an arrangement between an institution and a financial institution or entity that offers financial accounts through a financial institution under which financial accounts are offered and marketed directly to students or their parents, with the regulatory consequences of T2 status to apply absent documentation from the institution that students or parents do not have credit balances at the institution;

- Require institutions that have T1 or T2 arrangements to establish a student choice process that: prohibits an institution from requiring students or parents to open an account into which their credit balances must be deposited; requires an institution to provide a list of account options that a student may choose from to receive credit balance funds, where each option is presented in a neutral manner and the student's preexisting bank account is listed as the first, most prominent, and default option; and ensures electronic payments made to a student's preexisting account are as timely as, and no more onerous, as payments

deposited to an account made available pursuant to a T1 or T2 arrangement;

- Require that the institution obtain consent from the student or parent to open an account under a T1 or T2 arrangement (1) before the institution shares personal information about that student or parent with the financial account provider, and (2) before the institution or account provider sends an access device to the student or parent or links the student's ID card with a financial account;

- Mitigate fees incurred by student aid recipients by requiring reasonable access to surcharge-free automated teller machines (ATMs), and, for accounts offered under a T1 arrangement, both prohibiting point-of-sale fees and overdraft fees charged to student and parent account holders, and providing students and parents with 30 days following a disbursement of title IV funds to access those funds without any fees;

- Require that contracts governing T1 or T2 arrangements and cost information related to those contracts are publicly disclosed; and

- Require that institutions that have T1 or T2 arrangements establish and evaluate the contracts governing those arrangements in light of the best financial interests of students.

The proposed regulations would also--

- Allow an institution offering term-based programs to count, for enrollment purposes, courses a student is retaking that the student previously passed, up to one repetition per course, including when a student is retaking a previously passed course due to the student failing other coursework; and

- Streamline the requirements governing clock-to-credit-hour conversion by removing the provisions under which a State or Federal approval or licensure action could cause a program to be measured in clock hours.

Please refer to the Significant Proposed Regulations section of this preamble for a detailed discussion of the major provisions contained in the proposed regulations.

Costs and Benefits: The benefits of these proposed regulations include providing information that will allow students and parents to make informed and beneficial decisions regarding the handling and distribution of their title IV funds. These disclosures will also help prevent students from being misled into believing that they are required to use a financial account or access device that has the apparent endorsement of their school.

These proposed regulations would also benefit students by guaranteeing the right to receive their title IV credit

balances at a financial institution and through an access device of their choice. Students who decide to choose accounts with lower fees, and who would have otherwise been steered toward a higher-cost account, will save money and be able to use more of their title IV aid for educational expenses. Students who open accounts covered by these regulations would benefit from having more surcharge-free ATMs from which to access their title IV credit balances. The proposed regulations also would help protect both students and parents from deceptive marketing practices aimed at encouraging them to do business with a particular financial institution in order to access title IV funds.

There would be costs incurred by postsecondary and financial institutions under these proposed regulations. Some postsecondary institutions and financial institutions that do not choose to price their products competitively or that do not justify higher prices (with, for example, superior customer service, better account features, free banking services, the elimination of certain fees) could lose future customers as students or parents decide to use lower-cost accounts as a result of fee disclosures. The T1 arrangement fee provisions will also have cost implications for affected financial institutions and for institutions that currently receive free- or reduced-price title IV

administrative services (or other remuneration), and will likely lower the revenue for schools when financial account providers' ability to pass costs on to title IV recipients is limited under these regulations. Some of these costs will include performing due diligence reviews to ensure that contracts are made in the best interests of students, the costs of providing surcharge-free ATM network access, and the costs of presenting credit balance recipients with a list of neutral account options. Other costs would depend upon aid recipient behavior, and the Department expects that many financial account providers may earn less from their student accounts under the proposed regulations. The provisions regarding convenient access benefit students and could also have cost implications for some financial account providers and institutions. Financial account providers could have to deploy additional ATMs or pay fees to ATM network providers to comply with these proposed requirements.

Some institutions with T1 or T2 arrangements could incur costs when establishing a student choice process that would allow students to select among a list of available accounts into which title IV credit balances would be disbursed. Institutions would also likely incur some paperwork burden related to making fee disclosures, and

students would incur an additional paperwork burden when selecting an option for how to receive their credit balance from a list of options.

Invitation to Comment: We invite you to submit comments regarding the proposed regulations. In particular, we request comment on:

- Whether proposed methods for prorating institutional charges under §668.164(c)(5) are appropriate;
- How an institution should disclose the costs of books and supplies that are included as part of tuition and fees under §668.164(c)(2) and frequency of those disclosures;
- Whether the option to receive a check should continue to be affirmatively offered to students as provided under proposed §668.164(d)(4)(i)(B)(4);
- Whether there is a need to establish a minimum number of credit balance recipients at an institution before the institution must comply with the provisions of proposed §668.164(f)(4);
- Whether the personal information that an institution may provide before a student or parent consents to open a financial account, as provided under §668.164(e)(2)(i)(A) and (f)(4)(i)(A), is sufficient to meet the needs of a servicer or financial institution;

- Whether the Department should take more proscriptive action than the one proposed in this NPRM to prevent abusive marketing practices with respect to institutional devices such as student IDs and associated financial accounts;

- Whether 30 days following a disbursement is an appropriate timeframe to allow a title IV aid recipient an opportunity to reasonably access aid dollars free of charge as provided under proposed §668.164(e)(2)(iii)(B)(4);

- Whether, as proposed in §668.164(e)(2)(vii) and (f)(4)(vii), it would be in the best financial interests of students to require institutions that have a T1 or T2 arrangement to periodically conduct reasonable due diligence reviews to ascertain whether the fees imposed under the arrangement are excessive; and

- Whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available. Please refer to the relevant portions of the Significant Proposed Regulations section of this preamble for more detail on each of the issues for which we specifically request comment.

To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify

clearly the specific section or sections of the proposed regulations that each of your comments addresses, and provide relevant information and data, as well as other supporting materials in the request for comment, even when there is no specific solicitation of data. We also urge you to arrange your comments in the same order as the proposed regulations. Please do not submit comments outside the scope of the specific proposals and proposed regulations in this notice of proposed rulemaking, as we are not required to respond to comments that are outside of the scope of the proposed rule. See "ADDRESSES" for instructions on how to submit comments.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from the proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about the proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in room 8055, 1990 K Street NW.,

Washington, DC, between 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. If you want to schedule time to inspect comments, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Public Participation

On May 1, 2012, we published a notice in the Federal Register (77 FR 25658) announcing our intent to establish a negotiated rulemaking committee under section 492 of the HEA to develop proposed regulations designed to prevent fraud and otherwise ensure proper use of title IV Federal Student Aid program funds, especially within the context of current technologies. In particular, we announced our intent to propose regulations to address the use of debit cards and other banking products for disbursing title IV

Federal Student Aid program funds, and to improve and streamline the campus-based Federal Student Aid programs. On April 16, 2013, we published a notice in the Federal Register (78 FR 2247), which we corrected on April 30, 2013 (78 FR 25235), announcing additional topics for consideration for action by a negotiated rulemaking committee. The following topics for consideration were identified: cash management of funds provided under the title IV Federal Student Aid programs; State authorization for programs offered through distance education or correspondence education; State authorization for foreign locations of institutions located in a State; clock-to-credit-hour conversion; gainful employment; changes to the campus safety and security reporting requirements in the Clery Act made by the Violence Against Women Act; and the definition of "adverse credit" for borrowers in the Federal Direct PLUS Loan program.

In that notice, we announced three public hearings at which interested parties could comment on the topics suggested by the Department and could suggest additional topics for consideration for action by a negotiated rulemaking committee. We also invited parties unable to attend a public hearing to submit written comments on the additional topics and to submit other topics for

consideration. On May 13, 2013, we announced in the Federal Register (78 FR 27880) the addition of a fourth hearing. The hearings were held on May 21, 2013, in Washington, DC; May 23, 2013, in Minneapolis, Minnesota; May 30, 2013, in San Francisco, California; and June 4, 2013, in Atlanta, Georgia. Transcripts from the public hearings are available at http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html. Written comments submitted in response to the April 16, 2013, notice may be viewed through the Federal eRulemaking Portal at www.regulations.gov, within docket ID ED-2012-OPE-0008. You can link to the ED-2012-OPE-0008 docket as a related docket inside the ED-2013-OPE-0124 docket associated with this notice of proposed rulemaking. Alternatively, individuals can enter docket ID ED-2012-OPE-0008 in the search box to locate the appropriate docket. Instructions for finding comments are also available on the site under "How to Use Regulations.gov" in the Help section.

Negotiated Rulemaking

Section 492 of the HEA, 20 U.S.C. 1098a, requires the Secretary to obtain public involvement in the development of proposed regulations affecting programs authorized by title IV of the HEA. After obtaining advice and

recommendations from the public, including individuals and representatives of groups involved in the title IV, HEA programs, in most cases the Secretary must subject the proposed regulations to a negotiated rulemaking process. If negotiators reach consensus on the proposed regulations, the Department agrees to publish without alteration a defined group of regulations on which the negotiators reached consensus unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreement reached during negotiations. Further information on the negotiated rulemaking process can be found at: http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html.

On November 20, 2013, we published a notice in the Federal Register (78 FR 69612) announcing our intent to establish a negotiated rulemaking committee to prepare proposed regulations to address program integrity and improvement issues for the Federal Student Aid programs authorized under title IV of the HEA. That notice set forth a schedule for the committee meetings and requested nominations for individual negotiators to serve on the negotiating committee.

The Department sought negotiators to represent the following groups: students; legal assistance organizations that represent students; consumer advocacy organizations; State higher education executive officers; State attorneys general and other appropriate State officials; business and industry; institutions of higher education eligible to receive Federal assistance under title III, parts A, B, and F and title V of the HEA, which include Historically Black Colleges and Universities (HBCUs), Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Predominantly Black Institutions, and other institutions with a substantial enrollment of needy students as defined in title III of the HEA; two-year public institutions of higher education; four-year public institutions of higher education; private, non-profit institutions of higher education; private, for-profit institutions of higher education; regional accrediting agencies; national accrediting agencies; specialized accrediting agencies; financial aid administrators at postsecondary institutions; business officers and bursars at postsecondary institutions; admissions officers at postsecondary institutions; institutional third-party servicers who perform functions related to the title IV

Federal Student Aid programs (including collection agencies); State approval agencies; and lenders, community banks, and credit unions. The Department considered the nominations submitted by the public and chose negotiators who would represent the various constituencies.

The negotiating committee included the following members:

Chris Lindstrom, U.S. Public Interest Research Group, and Maxwell John Love (alternate), United States Student Association, representing students.

Whitney Barkley, Mississippi Center for Justice, and Toby Merrill (alternate), Project on Predatory Student Lending, The Legal Services Center, Harvard Law School, representing legal assistance organizations that represent students.

Suzanne Martindale, Consumers Union, representing consumer advocacy organizations.

Carolyn Fast, Consumer Frauds and Protection Bureau, New York Attorney General's Office, and Jenny Wojewoda (alternate), Massachusetts Attorney General's Office, representing State attorneys general and other appropriate State officials.

David Sheridan, School of International & Public Affairs, Columbia University in the City of New York, and

Paula Luff (alternate), DePaul University, representing financial aid administrators.

Gloria Kobus, Youngstown State University, and Joan Piscitello (alternate), Iowa State University, representing business officers and bursars at postsecondary institutions.

David Swinton, Benedict College, and George French (alternate), Miles College, representing minority serving institutions.

Brad Hardison, Santa Barbara City College, and Melissa Gregory (alternate), Montgomery College, representing two-year public institutions.

Chuck Knepfle, Clemson University, and J. Goodlett McDaniel (alternate), George Mason University, representing four-year public institutions.

Elizabeth Hicks, Massachusetts Institute of Technology, and Joe Weglarz (alternate), Marist College, representing private, non-profit institutions.

Deborah Bushway, Capella University, and Valerie Mendelsohn (alternate), American Career College, representing private, for-profit institutions.

Casey McGuane, Higher One, and Bill Norwood (alternate), Heartland Payment Systems, representing institutional third-party servicers.

Russ Poulin, WICHE Cooperative for Educational Technologies, and Marshall Hill (alternate), National Council for State Authorization Reciprocity Agreements, representing distance education providers.

Dan Toughey, TouchNet, and Michael Gradisher (alternate), Pearson Embanet, representing business and industry.

Paul Kundert, University of Wisconsin Credit Union, and Tom Levandowski (alternate), Wells Fargo Bank Law Department, Consumer Lending & Corporate Regulatory Division, representing lenders, community banks, and credit unions.

Leah Matthews, Distance Education and Training Council, and Elizabeth Sibolski (alternate), Middle States Commission on Higher Education, representing accrediting agencies.

Carney McCullough, U.S. Department of Education, representing the Department.

Pamela Moran, U.S. Department of Education, representing the Department.

The negotiated rulemaking committee met to develop proposed regulations on February 19–21, 2014, March 26–28, 2014, and April 23–25, 2014. During the March session, the Department proposed adding a negotiated rulemaking session

to the schedule to give the negotiators more time to consider the issues and reach consensus on proposed regulatory language. The negotiators agreed to add a fourth and final session. On April 11, 2014, we published in the Federal Register (79 FR 20139) a notice announcing the addition of a fourth session. That final session was held on May 19-20, 2014.

At its first meeting, the negotiating committee reached agreement on its protocols and proposed agenda. These protocols provided, among other things, that the committee would operate by consensus. Consensus means that there must be no dissent by any member in order for the committee to have reached agreement. Under the protocols, if the committee reached a final consensus on all issues, the Department would use the consensus-based language in its proposed regulations. Furthermore, the Department would not alter the consensus-based language of its proposed regulations unless the Department reopened the negotiated rulemaking process or provided a written explanation to the committee members regarding why it decided to depart from that language.

During the first meeting, the negotiating committee agreed to negotiate an agenda of six issues related to student financial aid. These six issues were: clock-to-

credit-hour conversion; State authorization of distance education; State authorization of foreign locations of domestic institutions; cash management; retaking coursework; and PLUS loan adverse credit history. Under the protocols, a final consensus would have to include consensus on all six issues.

During the meeting, the Department explained that it planned to include the proposed regulations that would be published after completion of the negotiated rulemaking process in two separate notices of proposed rulemaking (NPRMs). One NPRM would contain the proposed regulations regarding the definition of adverse credit history for PLUS loans. The second NPRM would contain the remaining topics. The Department has already published an NPRM and final regulations regarding the PLUS loan issues. This NPRM addresses the remaining issues, except for State authorization of distance education and State authorization of foreign locations of domestic institutions. While the Department continues to examine these two issues and work with the higher education community to explore how to address these important topics, we do not want those deliberations to delay the publication of regulations necessary to address cash management, clock-to-credit-hour conversion, and retaking coursework.

For more information on the negotiated rulemaking sessions, please visit: http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html#info.

Summary of Proposed Changes

The proposed regulations would--

- Establish and modify the definitions of key terms applicable to subpart K;
- Remove outdated references to programs no longer authorized, especially with respect to the Federal Family Education Loan (FFEL) program;
- Require that an institution exercise the level of care and diligence required of a fiduciary with regard to managing title IV, HEA program funds;
- Remove the reference to the just-in-time payment method, and rename the "cash monitoring payment method" as the "heightened cash monitoring payment method";
- Require institutions placed on the reimbursement or heightened cash monitoring payment methods to credit a student ledger account for the amount of title IV funds the student is eligible to receive, and pay any credit balance due to that student before seeking reimbursement from the Department;

- Require institutions to maintain title IV funds in an insured depository account consistent with guidance issued by OMB on December 26, 2013, codified at 2 CFR chapter I, 200, et al., Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;

- Provide that, with limited exceptions, an institution must disburse during a payment period the amount of title IV funds that a student or parent is eligible to receive for that payment period;

- Provide that an institution may credit a student's ledger account to pay for allowable charges associated with a payment period;

- Provide that an institution may include the cost of books and supplies as part of tuition and fees;

- Reserve the Secretary's right to establish a method for directly paying credit balances to student aid recipients;

- Establish two different types of arrangements between institutions and financial account providers, "tier one (T1) arrangements" and "tier two (T2) arrangements," respectively;

- Define a "T1 arrangement" as an arrangement between an institution and a third-party servicer that performs one or more of the functions associated with processing direct payments of title IV funds on behalf of the institution and that offers one or more financial accounts to students and parents;

- Define a "T2 arrangement" as an arrangement between an institution and a financial institution or entity that offers financial accounts through a financial institution, under which financial accounts are offered and marketed directly to students or their parents, with the regulatory consequences of T2 status to apply absent documentation from the institution that students or parents do not have credit balances at the institution;

- Require institutions that have T1 or T2 arrangements to establish a student choice process that: prohibits an institution from requiring students or parents to open a certain account into which their credit balances are deposited; requires an institution to provide a list of account options that a student may choose from to receive credit balance funds, where each option is presented in a neutral manner and the student's preexisting bank account is listed as the first, most prominent, and default option; and ensures electronic payments made to a student's

preexisting account are as timely as, and no more onerous to the student than, payments deposited to an account made available pursuant to a T1 or T2 arrangement;

- Require that the institution obtain consent from the student or parent to open an account under a T1 or T2 arrangement (1) before the institution shares personal information about that student or parent with the financial account provider, and (2) before the institution or provider sends an access device to the student or parent or links the student's ID card with a financial account;

- Mitigate fees incurred by student aid recipients by requiring reasonable access to surcharge-free ATMs, and, for accounts offered under a T1 arrangement, both prohibiting point-of-sale fees and overdraft fees charged to students and parents, and providing students and parents with 30 days following a disbursement of title IV funds to access those funds without any fees;

- Require that contracts governing T1 or T2 arrangements and cost information related to those contracts are publicly disclosed;

- Require that institutions that have T1 or T2 arrangements establish and evaluate the contracts governing those arrangements in light of the best financial interests of students; and

- Prohibit an institution under the reimbursement or heightened cash monitoring payment methods from holding credit balance funds on behalf of a student or parent.

The proposed regulations would also--

- Allow an institution offering term-based programs to count, for enrollment purposes, courses a student is retaking that the student previously passed, up to one repetition per course; and
- Streamline the requirements governing clock-to-credit-hour conversion by removing the provisions under which a State or Federal approval or licensure action could cause a program to be measured in clock hours.

Significant Proposed Regulations

Background

Over the past several years, a confluence of factors has significantly altered the landscape of financial products offered to students on college campuses.

In 2009, due largely to concerns raised by consumer advocates and students related to the marketing practices and financial incentives contained in contractual relationships between institutions and credit card

providers,[1] Congress passed, and the President signed, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act).[2] The CARD Act made a number of significant changes to the consumer protections available to college students by authorizing new rules to curtail overzealous credit card marketing practices on campus, impose transparency requirements (the contract must be annually sent to the Consumer Financial Protection Bureau (CFPB)), ban "free" gifts for signing up for an account, and require consumers under the age of 21 to show ability to pay or get a co-signer in order to get a credit card.[3]

A second product widely offered to students was a recommended or "preferred" student loan. In 2007, then-Attorney General for New York Andrew Cuomo led an investigation into financial incentives provided to colleges for steering students into certain types of student loans. As a result, Congress, as a part of the Higher Education Opportunity Act of 2008, banned gifts and revenue sharing as part of the so-called "preferred lender

[1] USPIRG. "The Campus Debit Card Trap." [Pages 4-5] (2012), available at www.uspirg.org/sites/pirg/files/reports/thecampusdebitcardtrap_may2012_uspef.pdf. With subsequent references "USPIRG at [page number]."
[2] Public Law 111-24.
[3] United States Government Accountability Office. "College Debit Cards: Actions Needed to Address ATM Access, Student Choice, and Transparency." [Page 32] (2014), available at www.gao.gov/assets/670/660919.pdf. With subsequent references "GAO at [page number]."

list" reforms. In 2010, Congress passed the President's student loan reform, moving to a 100 percent Direct Loan program for Federal student loans.

Finally, over the past several years, States have made significant cuts to higher education funding, resulting in budget shortfalls that have fostered an environment of tuition increases and other measures shifting costs to students which has coincided with the proliferation of college debit and prepaid card agreements between institutions and financial account providers.[4]

The combination of funding cuts and limitations on cost-shifting to students through the CARD Act and preferred lender list reforms has created an environment where some colleges are increasingly searching for revenue-increasing strategies, especially those that can be borne by students. This has led to what the United States Public Interest Research Group (USPIRG) referred to as "the next financial frontier for banks and financial firms" that affects students, especially those receiving aid--the proliferation of marketing of campus debit and prepaid cards to students in exchange for monetary benefits to schools, often in the form of significant remuneration or

[4] Center on Budget and Policy Priorities. "Recent Deep State Higher Education Cuts May Harm Students and the Economy for Years to Come." [Page 13](2013), available at: www.cbpp.org/files/3-19-13sfp.pdf.

the low- or no-cost administration of financial aid disbursement services.[5] Consumers Union stated "as regulations around the marketing of private student loans and school-branded credit cards have tightened in recent years, financial firms have increasingly marketed campus banking products to colleges, universities, and their students." [6] CFPB has recognized this market transformation as well, stating that, "financial product marketing partnerships have shifted from credit cards and student loans to student checking, debit, and prepaid card products."[7] Schools officials have admitted that "outsourcing eliminated a school process that consumed significant resources, which has been especially important in recent years as schools have faced difficult fiscal conditions and staffing reductions."[8]

Credit Balances

[5] USPIRG at 5.
[6] Consumers Union. "Campus Banking Products: College Students Face Hurdles to Accessing Clear Information and Accounts that Meet Their Needs." [Page 1](2014), available at: consumersunion.org/wp-content/uploads/2014/08/Campus_banking_products_report.pdf. With subsequent references "Consumers Union at [page number]."
[7] Consumer Financial Protection Bureau presentation. "Perspectives on Financial Products Marketed to College Students." [Page 5] (2014), available at: www2.ed.gov/policy/highered/reg/hearulemaking/2014/pii2-cfpb-presentation.pdf. With subsequent references "CFPB Presentation at [Page number]."
[8] Office of the Inspector General. "Third-Party Servicer Use of Debit Cards to Deliver Title IV Funds." [Page 3] (2014), available at www2.ed.gov/about/offices/list/oig/auditreports/fy2014/x09n0003.pdf. With subsequent references "OIG at [Page number]."

As the House report on the Higher Education Opportunity Act of 2008 stated, "[t]he nation's financial aid system exists for a single purpose: to serve students and their families."[9] The title IV, HEA programs, most prominently Pell Grants and Direct Loans, are designed to help students pay for the costs of attending college.

The amount of Federal financial aid awarded to students and parents is determined, in part, on the basis of an enrolled student's cost of attendance. This includes charges typically paid directly to the school (such as tuition, fees, and on-campus room and board), as well as other costs such as books and supplies, housing, transportation, and dependent care. Typically, an institution applies the total amount of a student's aid against institutional charges, then releases a "credit balance" to the student in cases where the amount of aid exceeds the amount of charges.

When we refer to a credit balance in this document, we are referring to the remaining amount of title IV aid after all allowable charges, including tuition and fees, have been paid to the institution. At lower cost institutions,

[9] Committee on Education and Labor. "House Report Accompanying HR 4137, the College Opportunity and Affordability Act of 2007." [Page 240] (2007), available at https://www.congress.gov/110/crpt/hrpt500/CRPT-110hrpt500.pdf.

like community colleges, that enroll lower-income and historically underrepresented students, a higher percentage of students receive credit balances.[10]

The College Banking Market

In the past several years, especially in light of tightening budgets and fewer revenue-generating credit card partnerships and student loans, "a growing number of schools have begun offering banking products to their students in the form of debit and prepaid cards issued through agreements with financial services providers."[11] The Government Accountability Office (GAO) found that about 11 percent of colleges and universities participating in the Federal Student Aid programs had agreements with financial account providers.[12] While this percentage is relatively low, the size of the institutions that have such agreements are generally large; specifically, about 40 percent of all postsecondary students are enrolled in institutions with these agreements, although not all students at such institutions use the cards.[13] [14]

The agreements are more typical at public institutions--29 percent of public schools had such

[10] GAO at 12.
[11] GAO at 1.
[12] Ibid. at 8.
[13] Ibid.
[14] USPIRG at 11.

agreements, compared to 6.5 percent of nonprofit not-for-profit schools and 3.5 percent of for-profit schools.[15] Almost half of all schools that use college-affiliated debit or prepaid cards to disburse financial aid and other payments to students are community colleges.[16] According to a USPIRG analysis, "32 of the 50 largest public 4-year universities and 26 of the [largest] 50 community colleges" had a campus debit or prepaid card contract with a bank or financial firm.[17]

As these agreements have begun to proliferate, one provider in particular has become the predominant actor in the market. "As of July 2013, one provider, Higher One Holdings, Inc., held about a 57 percent share of the college card market, as measured by number of agreements between schools and card providers, as well as number of students at schools with agreements," according to a GAO analysis.[18] This represents more than 800 campuses that use its services to disburse aid dollars.[19] The balance of the market is comprised mainly of seven other bank and nonbank

[15] GAO at 10.
[16] GAO at 12.
[17] USPIRG at 6.
[18] GAO at 13.
[19] Consumers Union at 4.

providers, including U.S. Bank, Citibank, PNC, and Wells Fargo.[20] [21]

According to a National Association of College and University Business Officers (NACUBO) survey polling roughly 400 institutional respondents, "19 [percent] of surveyed institutions offer a credit balance on a stored value or debit card, 58 [percent] offer an [electronic funds transfer (EFT)] to a student's preexisting bank account, and 10 [percent] offer an EFT to a bank account at a school-selected bank or vendor."[22] The survey found that "26 [percent] [of institutions] reported that they contract with a third-party vendor to process credit balance refunds; a third of those that do not are considering doing so in the future."[23]

Troubling Practices

The proliferation of these agreements has coincided with a number of troubling practices that were first reported by USPIRG and reiterated and expanded upon in reports from GAO, the Department's Office of Inspector

[20] GAO at 13.
[21] Consumers Union at 10.
[22] National Association of College and University Business Officers. "Student Refunds and Personal Banking at Colleges and Universities." [Page 1] (2014), available at www.nacubo.org/Documents/BusinessPolicyAreas/NACUBOSURVEY.pdf. With subsequent references "NACUBO at [Page number]."
[23] NACUBO at 2.

General (OIG), Consumers Union, and in inquiries from members of Congress. These practices have also resulted in adverse legal actions, especially against the largest financial account provider, Higher One. Each practice is discussed in detail in the relevant section of the preamble.

These reports made several recommendations, which include: ensuring timely delivery of credit balances to students regardless of account sponsorship; providing a meaningful choice of how to receive title IV dollars, especially when a student has a preexisting bank or prepaid account; clarifying the nature of implied institutional endorsement of certain accounts; ensuring that private student information is not released prior to receiving students' consent to do so; providing neutral account disclosures to enable students to make informed choices about account selection; and giving aid recipients the ability to access their student aid balances conveniently and without onerous, confusing, or unavoidable fees.

In view of the reports from consumer groups and government organizations, the feedback we received from the public through hearings and negotiated rulemaking, and after meeting with staff from the FDIC, Office of the Comptroller of the Currency and Bureau of the Fiscal

Service at the U.S. Department of the Treasury (Treasury), and CFPB, we believe it is critical to address the troubling practices arising from college card agreements. Moreover, given the number of students affected by these agreements, the amount of taxpayer-funded title IV aid at stake, and the expanding breadth of the college card market, we believe this regulatory action is necessary. The provisions in this NPRM regulate institutions and third-party servicers that administer the title IV, HEA programs, and do not regulate banking entities. To the extent that these regulations have a material impact on financial account providers, they do so indirectly and only for those providers that choose to engage with institutions that disburse title IV credit balances electronically.

Other Provisions

We are proposing a number of more minor changes in subpart K related to the management of title IV, HEA program funds generally. In addition, we have also removed outdated cross references and references to programs that are no longer authorized, the most prominent of which is the FFEL program.

There are two additional issues that were raised as part of the program integrity and improvement negotiated rulemaking that are addressed in the proposed regulations:

(1) retaking coursework and (2) clock-to-credit-hour conversion rules. These issues, which are distinct from the cash management topics that comprise the majority of the proposed regulations, are discussed in the final portion of this preamble.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address regulatory provisions that are technical or otherwise minor in effect.

PART 668--STUDENT ASSISTANCE GENERAL PROVISIONS

Statutory Authority:[24]

Section 401(e) of the HEA, regarding Pell Grants, provides that "[p]ayments under this section shall be made in accordance with regulations promulgated by the Secretary for such purpose, in such manner as will best accomplish the purpose of this section." It adds that "[a]ny disbursement allowed to be made by crediting the student's account shall be limited to tuition and fees and, in the case of institutionally owned housing, room and board. . . ."

Section 401(a)(1) of the HEA provides that the Secretary shall pay "to each institution such sums as may

[24] The statutory authority cited in the following paragraphs is relevant to all of the current regulations and proposed regulations described in this preamble except where otherwise noted.

be necessary to pay each eligible student . . . a Pell Grant." It also provides for the Department to pay institutions the necessary sums prior to the start of each payment period; but, in addition, authorizes the Secretary to "determine[] and publish in the Federal Register with an opportunity for comment, an alternative payment system that provides payments to institutions in an accurate and timely manner, except that this sentence shall not be construed to limit the authority of the Secretary to place an institution on a reimbursement system of payment."

Section 452(c) of the HEA, regarding Direct Loans, states that loan funds "shall be paid and delivered to an institution by the Secretary prior to the beginning of the payment period established by the Secretary in a manner that is consistent with payment and delivery of Federal Pell Grants. . . ."

Section 487 of the HEA requires, as a prerequisite to title IV participation, that an otherwise eligible institution enter into a program participation agreement with the Secretary conditioning its initial and continuing participation upon compliance with requirements that, among other things, the institution "use funds received by it for any program under this title and any interest or other earnings thereon solely for the purpose specified in and in

accordance with the provision of that program," and it "not charge any student a fee for processing or handing any application, form, or data required to determine the student's eligibility for assistance under this title or the amount of such assistance."

The HEA also contains numerous provisions to ensure that students receive the title IV awards for which they are eligible for under the statute. For example, section 401(f)(1) of the HEA provides that "Each student financial aid administrator [at each institution] shall . . . (C) make the award to the student in the correct amount." Under section 454(j) of the HEA, "proceeds of loans to students under [the Direct Loan program] shall be applied to the student's account for tuition and fees, and, in the case of institutionally owned housing, to room and board. Loan proceeds that remain after the application of the previous sentence shall be delivered to the borrower by check or other means that is payable to and requires the endorsement or other certification by such borrower." Section 454(a)(3) of the HEA requires Direct Loan program participation agreements to provide that the institution "accepts responsibility and financial liability stemming from its failure to perform its functions pursuant to the agreement." Section 454(a)(5) of the HEA provides that the

Direct Loan program participation agreement shall "provide that the institution will not charge fees of any kind, however described, to student or parent borrowers for origination activities or the provision of any information necessary for a student or parent to receive a loan under this part, or any benefits associated with such loan."

Under section 455(a)(1) of the HEA, the Secretary may prescribe such regulations as may be necessary to carry out the purposes of the Direct Loan program, including regulations applicable to third-party servicers and for the assessment against such servicers of liabilities for program violations of the program regulations against such servicers, to establish minimum standards with respect to sound management and accountability of those the Direct Loan programs.

More broadly, section 487(c)(1)(B) of the HEA provides that the Secretary "shall prescribe such regulations as may be necessary to provide for" reasonable standards of financial responsibility, and appropriate institutional administrative capability to administer the title IV programs, in matters not governed by specific program provisions, "including any matter the Secretary deems necessary to the sound administration of the financial aid programs." Third-party servicers are likewise by statute

subject to the Department's oversight, including under HEA sections 481(c) and 487(c)(1)(C), (H), and (I) of the HEA.

The Department has consistently interpreted the HEA as authorizing regulation of the matters addressed in the proposed regulations,[25] including the 2007 cash management regulations[26] prohibiting account opening fees, requiring reasonable free ATM access, and requiring prior consent from a student before opening a financial account, and the 1994 regulations relating to third-party servicers.[27]

Definitions (§668.161(a))

PART 668--STUDENT ASSISTANCE GENERAL PROVISIONS

Definitions (§668.161(a))

Current Regulations: Section 668.161(a) provides definitions for key terms used in subpart K of the General Provisions Regulations. It does not currently include definitions for the terms "access device," "depository account," "electronic funds transfer," "financial account," "financial institution," "or a "student ledger account."

Access Device

Proposed Regulations: We propose to add the term "access device" to §668.161(a) and define an access device as "a

[25] 61 Fed. Reg. 60603 (November 29, 1996).
[26] 72 Fed. Reg. 62028 (November 1, 2007).
[27] 59 Fed. Reg. 22441 (April 29, 1994).

card, code, or other means of access to a financial account, or any combination thereof, that may be used by the student or parent to initiate electronic fund transfers."

Reasons: The proposed definition of "access device" borrows from the definition of the term in Consumer Financial Protection Bureau regulations at 12 CFR 1005.2(a)(1), except that we propose to substitute "financial account" for "consumer account," and "student or parent" for "consumer." The inclusion of "financial account," which would be a defined term under these proposed regulations, not only tailors the definition of "access device" to the current context, but, like the definition of "financial account," is inclusive, and therefore, unlike current CFPB rules, includes all prepaid card accounts.[28] Our intent is to capture all types of access devices to all types of accounts into which a student or parent may wish to deposit his or her title IV credit balance.

Furthermore, the proposed definition of "access device" has the advantage of providing a concise way of referring to the different types of current and future

[28] As discussed elsewhere, the CFPB has proposed amending its definition of "access device" at 12 CFR 1005.2 to include prepaid accounts, but a final rule has not yet been issued.

tools students could use to access their financial accounts. During negotiated rulemaking, negotiators expressed concerns that our current terminology might not include new technologies students could use to access their funds. Since technology in this field is advancing rapidly, we were also concerned that the terminology could become outdated unless it referred to financial tools broadly. To address these concerns, the proposals that we circulated during negotiated rulemaking referred to "access devices" in conjunction with a prepaid card or debit card. However, to simplify the regulations, we simply define and use the term access device to mean both prepaid cards and debit cards. It is our intent to include new technologies in this definition, such as digital wallets and other technological advances that may emerge, so that we do not need to amend the regulations by listing the specific types of tools students may use to access their accounts.

Depository Account

Proposed Regulations: We propose to add the term "depository account" and to define it as "an account at a depository institution described in 12 U.S.C. §461(b)(1)(A),[29] or an account maintained by a

[29] Section 19(b)(1)(A) of the Federal Reserve Act.

foreign institution at a comparable depository institution that meets the requirements of §668.163(a)(1)."

Reasons: If used alone in these proposed regulations, the term "account" could refer to a student's or parent's account at a financial institution, a student's account at an institution of higher education, or an institutional bank account into which the Secretary transfers title IV funds. For clarity, we qualify the term to differentiate these uses. The term "depository account" refers to an account maintained by the institution into which the Secretary deposits title IV funds requested by the school. During the second session of negotiations, some of the non-Federal negotiators suggested including the term "depository account" to clarify that an account does not need to be held at an institution organized as a "bank."[30] We agreed with these negotiators, and added this definition to clarify that we are referring accounts held at banks, credit unions, and other institutions that meet the statutory definition of a "depository institution." The proposal in these regulations contains the same definition

[30] Kundert and Levandowski. Memo to Negotiated Rulemaking Committee. [Page 2] (2014), available at www2.ed.gov/policy/highered/reg/hearulemaking/2014/pii2-kl4-draftlanguagechgs.pdf.

that was presented during the fourth session of negotiations.

EFT (Electronic Funds Transfer (EFT))

Proposed Regulations: We propose to add the term "EFT" and to define it as "a transaction initiated electronically instructing the crediting or debiting of a financial account, or an institution's depository account. For purposes of transactions initiated by the Secretary, the term "EFT" includes all transactions covered by 31 CFR 208.2(f). For purposes of transactions initiated by or on behalf of an institution, the term "EFT" includes, from among the transactions covered by 31 CFR 208.2(f), only Automated Clearinghouse transactions."

Reasons: In general, the Department is required to make payments by EFT. See 31 CFR 208.1. For purposes of that requirement, the definition of EFT is "any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account," and it provides a non-exhaustive list of the types of transactions covered, including, but not limited to, Automated Clearing House transactions. See 31 CFR

208.2(f). The proposed definition adopts 31 CFR 208.2(f) for purposes of transactions initiated by the Secretary, but in order to facilitate compliance with other applicable Treasury regulations, including 31 CFR 210.5,[31] authorizes only Automated Clearing House transactions for payments initiated by or on behalf of institutions.

Financial Account

Proposed Regulations: We propose to add the term "financial account" and to define a financial account as "a student's or parent's checking or savings account, prepaid card account, or other consumer asset account held directly or indirectly by a financial institution."

Reasons: Instead of delineating all of the different account types of accounts that a student or parent may open to receive title IV, HEA program funds, we believe that using a single term simplifies the regulations.

Financial Institution

Proposed Regulations: We propose to add the term "financial institution" and to define it as "a bank, savings association, credit union, or any other person or entity that directly or indirectly holds a financial

[31] 31 CFR 210.5 includes requirements for accounts into which Federal payments are made and includes provisions relating to account insurance and compliance with the Electronic Funds Transfer Act, among other requirements.

account belonging to a student or parent that issues an access device associated with a financial account and agrees with a student or parent to provide EFT services."

Reasons: By defining this term, we will clarify that when we refer to a "financial institution," we mean the entity or entities that directly or indirectly hold, offer or manage the student's or parent's Title IV funds. The term is used in proposed §668.164(d), (e) and (f) to refer to the entity or entities that enter into card agreements with postsecondary institutions and hold the title IV funds of students and parents who open accounts offered under T1 or T2 arrangements.

Student Ledger Account

Proposed Regulations: We propose to add the term "student ledger account" and to define a student ledger account as "a bookkeeping account maintained by an institution to record the financial transactions pertaining to a student's enrollment at the institution."

Reasons: As discussed previously, we qualify the term "account" to refer to its intended use. For this definition we refer to student accounts maintained on the institution's books reflecting the institution's charges and the students' payments. We note that crediting the student's ledger account marks the date on which a

disbursement is made and in cases where the ledger account is credited on or after the first day of class, marks the beginning of the 14-day period for paying credit balances specified in §668.164 (h)(2).

Federal interest in title IV, HEA program funds and standard of conduct (§668.161(b)-(c))

Current Regulations: Current §668.161(b) provides that title IV, HEA program funds received by an institution are held in trust for the intended student beneficiaries, the Secretary, or lender or guaranty agency under the FFEL programs. The institution, as a trustee of Federal funds, may not use or hypothecate title IV, HEA program funds for any other purpose.

Under current §668.163(e), an institution must exercise the level of care and diligence required of a fiduciary with regard to maintaining and investing title IV, HEA program funds.

Proposed Regulations: Proposed §668.161(b) removes the reference to a lender or guaranty agency under the FFEL programs and provides that an institution may not engage in any practice that risks the loss of title IV, HEA program funds.

We relocate the current standard of conduct provisions in §668.163(e) to proposed §668.161(c), and revise

§668.161(b) of these regulations to specify that an institution must exercise the level of care and diligence required of a fiduciary with regard to managing title IV, HEA program funds.

Reasons: Currently, institutions that seek to maximize the earnings on funds that would otherwise remain idle in one or more of their operating or depository accounts enter into arrangements where all or part of the funds in those accounts are swept overnight into savings accounts, money market mutual funds, or other securities. While it is outside of the scope of these regulations to limit how an institution chooses to invest or manage its own funds, we do not believe that an institution should sweep title IV, HEA program funds. [32] So, to the extent that an institution's operating or depository accounts contain title IV, HEA program funds, the institution must ensure that those funds are not swept or otherwise placed at risk of financial loss. By removing the provision for investing title IV funds, and prohibiting practices that risk loss of those funds, the Department intends to preclude risky

[32] The term "sweep" as customarily used in the financial services sector refers to the practice of automatically transferring funds in excess of a preset amount into an account or other investment vehicle with the potential to earn a higher rate of return. This practice is designed to earn higher returns on otherwise idle funds, but may subject those funds to a higher risk of investment loss.

management practices, including sweeps containing title IV funds.

We acknowledge that some sweep accounts are relatively risk free; however, other sweep accounts or investment vehicles may subject funds to losses, liens, or other attachments. Although we could attempt to differentiate between the two or define a safe investment account, we see no reason to do so. Under the current §668.163(c)(4) that governs interest-bearing accounts, an institution must return to the Secretary any interest earnings over $250. Under proposed §668.163(c), an institution must return any interest earnings over $500. Therefore, unlike the situation where an institution invests its own funds, there is no incentive to maximize earnings because the amount of earnings that an institution may retain is insignificant. As a trustee of Federal funds, the institution must ensure that all of the title IV, HEA program funds it receives from the Secretary remain unencumbered and delivered timely to students and parents that qualify for those funds.

We believe that relocating the standard of conduct provisions to the scope and institutional responsibility section of the proposed regulations is appropriate because an institution must exercise the level of care and

diligence required of a fiduciary in managing title IV, HEA program funds under these proposed regulations.

Payment methods generally (§668.162)

Current Regulations: Current §668.162(a) specifies that the Secretary may provide title IV, HEA program funds to an institution under one of the following payment methods: advance, reimbursement, just-in-time, or cash monitoring. Section 668.162(c) describes the just-in-time payment method.

Under §668.166(a)(2), the provisions governing excess cash do not apply to an institution that receives title IV, HEA program funds under the just-in-time payment method.

Proposed Regulations: Proposed §668.162(a) removes the reference to the just-in-time payment method, and changes the name of the cash monitoring payment method to the "heightened cash monitoring payment method." We are also proposing to remove current §668.162(c), which describes the just-in-time payment method. In addition, we propose to make a corresponding change to the excess cash regulations in §668.166(a) by removing the reference to the just-in-time payment method.

Reasons: Other than a few institutions that last piloted the just-in-time payment method in 2010, the Department does not use this payment method, and does not intend to do

so because the advance payment method, as currently implemented, is sufficient to meet institutional and Department needs.

Reimbursement and cash monitoring payment methods (§668.162(c)-(d))

Current Regulations: Current §668.162(d)(1) specifies that under the reimbursement payment method an institution must first make disbursements to students and parents for the amount those students and parents are eligible to receive under the Federal Pell Grant, TEACH Grant, Direct Loan, and campus-based programs before the institution may seek reimbursement from the Secretary for those disbursements. The Secretary considers an institution to have made a disbursement once it has credited the student's account or paid the student or parent directly with its own funds. Paragraphs (d)(2) through (d)(4) of this section describe the procedures an institution must follow and the documentation the institution must provide in submitting a reimbursement request, as well as the conditions the documentation must satisfy to support the request.

Similarly, the current provisions governing the cash monitoring payment method under §668.162(e) specify that an institution must first make disbursements to students and parents for the amount of title IV, HEA program funds those

students and parents are eligible to receive before the institution seeks reimbursement from the Secretary for those funds. Under paragraph (e)(2) of this section, an institution seeks reimbursement by following the procedures under the reimbursement payment method, except that the Secretary may modify the documentation requirements and review procedures used to approve the reimbursement request.

Current §668.164(e) requires that whenever the amount of title IV, HEA program funds credited to a student's account exceeds the amount of tuition and fees, room and board, and other authorized charges assessed the student, the institution must pay the resulting credit balance directly to the student or parent within a 14-day timeframe.

Proposed Regulations: Proposed §668.162(c) specifies that an institution must first credit a student's ledger account for the amount of title IV, HEA program funds the student or parent is eligible to receive, and pay the amount of any credit balance due under proposed §668.164(h), before the institution seeks reimbursement from the Secretary for those funds. In addition, proposed §668.164(c)(3) requires an institution to submit, with its request for reimbursement, documentation that the institution paid

directly to students or parents any credit balances that were due under proposed §668.164(h).

Similarly, under the heightened cash monitoring payment method in proposed §668.162(d), an institution must first credit a student's ledger account for the amount of title IV, HEA program funds the student or parent is eligible to receive, and pay any credit balance due under proposed §668.164(h), before the institution seeks reimbursement from the Secretary for those funds.

Reasons: The credit balance provisions in the current regulations and these proposed regulations specify a 14-day timeframe within which an institution must pay a credit balance directly to a student or parent. The 14-day timeframe applies regardless of the payment method under which the Secretary provides title IV, HEA program funds to an institution. However, under the reimbursement and heightened cash monitoring payment methods, an institution must first pay title IV, HEA program funds for the amount that a student or parent is eligible to receive before the institution seeks reimbursement from the Department for those funds. Therefore, the institution may not include in its reimbursement request any student or parent for whom a credit balance was due but not yet paid. In the context of a program review, audit, or other enforcement action, the

issue of whether the institution complied with the 14-day timeframe depends on the date the institution credits the student's ledger account with title IV, HEA program funds and the date it pays the credit balance; however, for seeking reimbursement, it does not matter when the credit balance was paid, only that it was paid.

The current provisions under which the Department determines whether to approve a reimbursement request do not specify that an institution must submit documentation showing that it paid the credit balances that are due to students and parents. These proposed regulations make explicit that an institution placed on the reimbursement payment method or heightened cash monitoring payment method under §668.162(d)(2) must demonstrate in accordance with procedures established by the Secretary that it paid directly to students and parents the credit balances that are included in its request for reimbursement before the Department will consider that request. For an institution placed on the heightened cash monitoring payment method under §668.162(b)(1), the institution must maintain documentation showing that it paid any required credit balances directly to students and parents before it initiates a request for funds that includes those students and parents.

Maintaining title IV, HEA program funds in an institutional depository account (§668.163(a))

Current Regulations: Current §668.163(a)(1) specifies that an institution must maintain title IV, HEA program funds in a bank or investment account that is Federally insured or secured by collateral of value reasonably equivalent to the amount of those funds.

Proposed Regulations: Proposed §668.163(a)(1) requires an institution to maintain title IV, HEA program funds in a depository account. For an institution located in a State, the depository account must be insured by the FDIC or National Credit Union Administration (NCUA). For a foreign institution, the depository account may be insured by the FDIC or NCUA, or by an equivalent agency of the government of the country in which the institution is located. If there is no equivalent agency, the Secretary may approve a depository account designated by the foreign institution.

Reasons: We do not see any value in continuing to allow institutions located in a State to maintain title IV, HEA program funds in non-insured accounts. As discussed more fully under the heading "Interest-bearing accounts" this proposal is consistent with OMB guidance in 2 CFR 200.305(b)(7)(ii), which provides that "advance payments of Federal funds must be deposited and maintained in insured

accounts whenever possible." In view of the rigorous regulatory requirements that financial institutions must satisfy before their depository accounts are insured by the FDIC or NCUA, and the FDIC and NCUA oversight over those financial institutions, we believe this requirement will help ensure that Federal funds are not put at undue risk of loss.

In addition, because the current regulations do not address the accounts into which foreign institutions must maintain Direct Loan program funds, we propose to apply the same requirements, to the extent possible, to those institutions--a depository account that is insured by the FDIC, NCUA, or by an equivalent agency of the government where the institution is located. We recognize, however, that there may be instances where there is no equivalent agency, so these proposed regulations would permit the Secretary to approve a bank account designated by the foreign institution.

Interest-bearing bank account (§668.163(c))

Current Regulations: Current §668.163(c)(1) requires an institution to maintain the fund described in §674.8(a) of the Federal Perkins Loan program regulations (the Fund) in an interest-bearing bank account or investment account consisting predominately of low-risk, income-producing

securities, such as obligations issued or guaranteed by the United States.[33] Any interest or income earned on Federal Perkins Loan funds are retained by the institution as part of the Fund. Under paragraph (c)(3) of this section, an institution does not have to maintain other title IV, HEA program funds in an interest-bearing account if (1) the institution drew down less than $3 million in the prior award year and anticipates that it will not draw down more than that amount in the current award year, (2) the institution demonstrates by its cash management practices that it will not earn over $250 on those funds during the award year, or (3) the institution requests funds under the just-in-time payment method. In addition, except for interest earned on Federal Perkins Loan funds and retained in the Fund, an institution may keep up to $250 in interest earnings, but must remit to the Secretary by June 30 of the award year any interest earnings over $250.

Proposed Regulations: Proposed §668.163(c) adopts by reference the guidance in 2 CFR part 200, issued by OMB on December 26, 2013, entitled Uniform Administrative

[33] We note that under section 461(b)(1) of the HEA, the authority for schools to make a Federal Perkins Loan ended on September 30, 2014, with an automatic one-year extension pursuant to section 422(a) of the General Education Provisions Act. Absent congressional action, the program will be wound down, and the Department will provide instructions to institutions currently participating in the program as to, for example, the disposition of Perkins Loan Program revolving funds.

Requirements, Cost Principles, and Audit Requirements for Federal Awards. Section 200.305(b)(8) states:

(8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply.

(i) The non-Federal entity receives less than $120,000 in Federal awards per year.

(ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of $500 per year on Federal cash balances.

(iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(iv) A foreign government or banking system prohibits or precludes interest-bearing accounts.

Section 200.305(b)(9) states:

(9) Interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to $500 per year may be retained by the non-Federal entity for administrative expenses.

Reasons: The current interest-bearing account provisions were largely based on OMB guidance in effect at the time we

published the initial cash management regulations in November 1996. These proposed regulations are consistent with updated OMB guidance.

Disbursements by payment period (§668.164(b))

Current Regulations: In general, current §668.164(b)(1) and (2) provide that, except for paying a student under the Federal Work Study (FWS) program, an institution must disburse title IV, HEA program funds on a payment-period basis. More specifically, unless any of the disbursement provisions governing the Direct Loan program now found under 34 CFR 685.303(d) apply, or the institution chooses to make more than one disbursement in a payment period for Federal Perkins Loan, Federal Pell Grant, the institution must disburse the title IV, HEA program funds that a student or parent is eligible to receive at least once each payment period.

Current §668.164(b)(3) provides that except for late disbursements, an institution may disburse title IV, HEA program funds to a student or parent for a payment period only if the student is enrolled for classes for that payment period and is eligible to receive those funds.

Under §668.2, a third-party servicer is defined as an organization, person, or State that enters into a contract with an eligible institution to administer any aspect of

the institution's participation in any title IV, HEA program. This includes performing any function required by statute or regulation, or any arrangement, agreement, or limitation entered into under the authority of statutes applicable to title IV of the HEA, such as, but not limited to, e.g., receiving, disbursing, or delivering title IV, HEA program funds, preparing and certifying requests for funds under the advance or reimbursement payment methods, determining student eligibility and related activities, preparing applications, and other functions noted in paragraph (i) of the definition.

Current §668.25 provides, in part, that in a contract with an institution, a third-party servicer must (1) comply with all statutory provisions of or applicable to title IV of the HEA, and all regulatory provisions prescribed under that statutory authority; (2) report to the OIG for investigation any information indicating there is a reasonable cause to believe that the institution may have engaged in fraud or other criminal misconduct in connection with administering the title IV, HEA programs, (3) be jointly and severally liable with the institution to the Secretary for any violation by the servicer of any statutory or regulatory provision of or applicable to title IV of the HEA, and (4) if the servicer disburses title IV,

HEA program funds to a student, confirm the eligibility of the student before making that disbursement, where the confirmation must include but is not limited to any applicable information contained in the records required under §668.24.

Proposed Regulations: Proposed §668.164(b)(1) and (2) specify that, except for paying a student under the FWS program, for making prior-year, late, or retroactive disbursements, or unless any of the disbursement provisions governing the Direct Loan program now found under 34 CFR 685.303(d) apply, an institution must disburse during a payment period the amount of title IV, HEA program funds that an enrolled student, or the student's parent, is eligible to receive for that payment period.

Proposed §668.164(b)(3) provides that at the time that a disbursement is made for a payment period, the institution, along with the third-party servicer engaged by the institution to draw down title IV, HEA program funds or otherwise perform activities leading to or supporting that disbursement, must confirm that the student is enrolled at the institution, and that the student, or the student's parent, is eligible for that disbursement.

Reasons: We wish to clarify the current requirement that, except for the cited circumstances, an institution must

disburse title IV, HEA program funds on a payment-period basis by specifying that the institution must disburse during a payment period all of the funds that a student or parent is eligible to receive for that payment period. This requirement, along with the proposed provisions under §668.164(c) and (h) that require an institution to credit a student's ledger account to pay only for charges associated with a payment period, helps ensure that students and parents receive their credit balance funds on a timely basis.

In program reviews of several institutions and third-party servicers, the Department found that neither the institution nor the servicer confirmed that students were eligible to receive title IV, HEA program funds before disbursements were made to those students. Under the contracts between these institutions and servicers, the servicers would perform a wide range of activities on behalf of the institutions including packaging aid awards, drawing down or requesting title IV funds, accounting for funds, and submitting data or reports to the Department. However, the contracts used the phrases "make arrangements for disbursements," "intercept disbursement requests," and "process awards including [the] preparation of disbursement journals" to apparently refer to a process where the

servicer would provide the institution a list of the students and the amounts of their aid awards, and the institution would then credit the students' ledger accounts for those amounts, presumably after confirming the eligibility of those students. But those confirmations were either not performed or not performed adequately, in part, because the procedures under which the institution was expected to confirm the eligibility of its students were lacking or not documented. Nevertheless, the servicers accepted at face value that the institution confirmed eligibility when it disbursed title IV, HEA program funds by crediting the students' ledger accounts, and reported those disbursements to the Department as valid payments made to those students.

The Department finds it incongruous that a servicer who essentially controls the entire process for making awards to students would carve out in its contract with an institution the most fundamental aspect of the administering the title IV aid programs--that disbursements are made only to eligible students. Nevertheless, because the third-party servicer is bound by the same provisions that apply to an institution, the servicer must carry out its contracted activities in a manner keeping with a fiduciary under the title IV, HEA programs. In this

regard, the servicer cannot feign ignorance over what the institution did or did not do in confirming eligibility. To the extent that the servicer relies on information provided by the institution that leads to or supports a disbursement, is used in determining the amount of funds to draw down for eligible students, or subsequently used for reporting valid disbursements to the Department, the servicer, along with the institution, is responsible for the veracity of that information. In the program reviews, the findings could have been ameliorated if the parties established and agreed to a documented process under which the institution would confirm eligibility and the servicer would verify periodically that the confirmations were made in accordance with that process.

We wish to emphasize that our proposed language holding an institution and its third-party servicer responsible for confirming a student's eligibility is not new policy or a change in policy – it merely emphasizes current requirements and reiterates institutional and servicer responsibilities.

Crediting a student's ledger account (§668.164(c), (h))

Current Regulations: Under current §668.164(d), an institution may, without obtaining the student's or parent's authorization, use title IV, HEA program funds to

credit a student's account at the institution to satisfy (1) current year charges for tuition and fees and, if the student contracts with the institution for those services, for room and board, and (2) prior year charges for tuition, fees, room, or board. In addition, if the institution obtains the student's or parent's authorization, it may credit the student's account with title IV, HEA program funds to satisfy other current year and prior-year educational charges incurred by the student at the institution. However, §668.164(d)(2) limits the amount of current year title IV, HEA program funds that may be used to satisfy prior-year charges to $200.

Current §668.164(e) provides that whenever an institution disburses title IV, HEA program funds by crediting a student's account and the total amount of those funds exceeds the amount of tuition and fees, room and board, and other authorized charges the institution assessed the student, the institution must pay the resulting credit balance directly to the student or parent as soon as possible but no later than (1) 14 days after the balance occurred, if the credit balance occurred after the first day of class of a payment period, or (2) 14 days after the first day of class of a payment period, if the

credit balance occurred on or before the first day of class of that payment period.

Proposed Regulations: Proposed §668.164(c)(1) specifies that an institution may credit a student's ledger account with title IV, HEA program funds to pay for allowable charges associated with the current payment period. Allowable charges are (1) the amount of tuition, fees, and institutionally-provided room and board charges assessed the student for the payment period, or the prorated amount of those charges if the institution debits the student's ledger account for more than charges associated with the payment period, and (2) the costs incurred by the student for the payment period for purchasing book, supplies, and other educationally-related goods and services provided by the institution for which the institution obtains the student's or parent's authorization.

Proposed §668.164(c)(2) provides that, if an institution includes the cost of books and supplies as part of the amount it charges for tuition and fees, the institution must disclose those costs separately and explain why including them is in the student's best financial interests.

Proposed §668.164(c)(3) specifies that an institution may include, in a payment period for the current year,

prior-year charges of not more than $200 for (1) tuition, fees, and institutionally-provided room and board without obtaining a student's or parent's authorization, and (2) educationally related goods and services provided by the institution for which the institution obtains the student's or parent's authorization. The "current year" is defined as the current loan period for a student or parent who receives a Direct Loan, or the current award year for a student who does not receive a Direct Loan. A "prior year" is defined as any loan period or award year prior to the current loan period or award year, as applicable.

Under proposed §668.164(c)(4), an institution may include in the current payment period allowable charges stemming from any previous payment period in the current year for which the student is eligible, if the student was not already paid for that previous payment period.

If an institution debits a student's ledger account for the entire cost of a program or otherwise debits the ledger account for more than the charges associated with the payment period, proposed §668.164(c)(5) requires the institution to determine the prorated amount of charges for the payment period by (1) for a program that has substantially equal payment periods, dividing the total amount of institutional charges for the program by the

number of payment periods in the program, or (2) for any other program, dividing the number of credit or clock hours the student enrolls in or is expected to complete in the current payment period by the total number of credit or clock hours in the program and multiplying that result by the total institutional charges for the program.

Under proposed §668.164(h)(1), a title IV, HEA program credit balance occurs whenever the amount of title IV, HEA program funds credited to a student's ledger account for a payment period exceeds the amount of allowable charges associated with that payment period. Proposed §668.164(h)(2) maintains the same 14-day credit balance payment timeframes as the current regulations.

Reasons: By prorating institutional charges to the amount associated with a payment period, and specifying that a credit balance occurs whenever the amount of title IV, HEA program funds exceeds the prorated amount of charges, the Department aims to correct a situation where credit balance funds that would be used to pay for living expenses and other education-related costs are not paid to the student or parent until after the first payment period. For example, a student who attends an institution that charges $8,000 for a year-long program (which includes two payment periods) receives $5,000 of title IV, HEA program funds per

payment period, or $10,000 per year. Currently the institution may debit the student's ledger account for $8,000 in the first payment period, the full cost of the program, and then credit the account for only $5,000, the amount of title IV, HEA program funds the student is eligible to receive for the first payment period. The student would not receive a credit balance until several months later when the institution credits the student's ledger account during the second payment period with another $5,000, because only at that point the total amount of title IV, HEA program funds exceed institutional charges (by $2,000). Under this proposal, the institution would only be able to charge a prorated amount of $4,000 during each payment period, so the student or parent would receive a credit balance of $1,000 during the first payment period and another $1,000 during the second payment period. In this example, the prorated amount of institutional charges associated with a payment period is $4,000 (the total amount of institutional charges of $8,000 is divided by two, the number of payment periods in the program). We note that the vast majority of institutions, particularly those that are term-based, already charge on a term or payment period basis, so this proposed change in the regulations will have no impact on those institutions. The

Department seeks comment on whether the proposed methods for prorating institutional charges under §668.164(c)(5) are appropriate.

With regard to the definitions in proposed §668.164(c)(3), we seek to codify in regulations the meaning of the terms "current year" and "prior year" that were previously used in guidance issued on September 8, 2009, in Dear Colleague Letter GEN-09-11.

In cases where institutions include the costs of required books and supplies as part of the total amount of tuition and fee charges, relevant information about those materials and the cost charged by institutions for those materials is not frequently provided to students. This practice effectively prevents students from purchasing required materials elsewhere for a lower price. For this reason, and based on findings by State attorneys general that some institutions required students to purchase books and supplies directly from them at grossly inflated prices, we proposed during negotiated rulemaking to prohibit institutions from including books and supplies as part of tuition and fees. However, some of the non-Federal negotiators noted that institutions are increasingly developing course-specific or course-embedded materials for

pedagogical or safety reasons.[34] The negotiators argued that because these materials are part and parcel of the course, they would typically not be available as separate items in the public domain. For this reason, the non-Federal negotiators believed the Department's proposal would dampen innovative or safety-related efforts by institutions.

The Department is persuaded there are valid reasons for including some books and supplies as part of tuition and fees. While we acknowledge that course-embedded materials blur the distinction between tuition and fees and books and supplies, we continue to believe that where required books and supplies are separate items available for purchase in the marketplace, those books and supplies should generally not be included as part of tuition and fees. Indeed, section 472 of the HEA, regarding "costs of attendance," treats books and supplies as separate from tuition and fees; and under other provisions (e.g., section 401(e) of the HEA), payments made by crediting the student's account are limited to tuition and fees and room and board, absent student consent. However, under the

[34] During negotiations, non-Federal negotiators cited various examples of these types of materials, especially in cases where uniformity was required for learning or safety and health reasons, such as the type of instruments used in a cosmetology or culinary program.

proposed regulations, an institution may include the costs of books and supplies as part of tuition and fees only if it separately discloses the costs of those items and explains why including them is in the student's best financial interest; that is, the institution is providing the books and supplies at or below market costs, or providing materials not otherwise generally available for purchase by the public. To the extent that an institution includes course-embedded materials as part of tuition and fees, the institution must separately disclose the cost of accessing those materials and explain why it is in the student's best financial interest to do so. For example, an institution may disclose that it charges students a $100 fee for accessing course material that replaces a book that typically sells for $400. We specifically invite comment on how and when an institution should make these disclosures.

Payments by the Secretary (§668.164(d)(3))

Current Regulations: Under current §668.164(a)(1), an institution is responsible for disbursing title IV, HEA program funds to a student or parent, including paying a credit balance directly to the student or parent.

Proposed Regulations: Proposed §668.164(d)(3) specifies that the Secretary may pay directly to students and parents

any credit balances due under §668.164(h), and the disbursement of title IV funds (up to the credit balance amount) for books and supplies under §668.164(m), using an alternative method established or authorized by the Secretary and published in the Federal Register. Alternative methods include making direct payments to prepaid or debit cards sponsored by the Department or another Federal agency.

Reasons: We recognize the growing popularity of electronic banking as evidenced by the increasing numbers of students and their parents who receive their title IV, HEA credit balances via direct deposit to their financial accounts. We are also aware that a number of government benefits are distributed to recipients via prepaid government debit cards. For example, Treasury's Direct Express® prepaid debit card program is used to distribute Social Security and other Federal benefits to over 5 million beneficiaries. At this time, the Department is not establishing a debit or prepaid card for direct payments of title IV, HEA funds; however, we will continue to explore whether such a card would be beneficial to students and parents. If the use of a government-issued debit or prepaid card shows the potential of savings in costs and other efficiencies for students, their parents, and the government, the Secretary

may wish to establish such a card and make it available for the direct payments of title IV, HEA credit balances.

Designation as a Tier One (T1) Arrangement or a Tier Two (T2) Arrangement (§668.164(e)(1) and §668.164(f)(1)-(3))[35]

Current Regulations: Current §668.164(c)(3) states that an institution may establish a policy requiring its students to provide bank account information or open an account at a bank of their choosing as long as this policy does not delay disbursement of title IV, HEA program funds to students. If the institution opens a bank account on behalf of a student or parent, establishes a process the student or parent follows to open a bank account, or similarly assists the student or parent in opening a bank account, the institution must comply with the bank account provisions specified in §668.164(c)(2)(i) through (vii).

Proposed Regulations: The provisions of §668.164(d)(4), (e), and (f) apply to arrangements between an institution and a third-party servicer, and between an institution and a financial institution.

[35] These sections appear in the proposed regulations after §668.164(d)(4), which primarily discusses direct payments made pursuant to a student choice process established for institutions with T1 or T2 arrangements. We have elected to discuss §668.164(e)(1) and §668.164(f)(1)-(3) first, to detail what T1 and T2 arrangements are and our reasons for designating them as such. We believe ordering the preamble in this way will make the discussion of §668.164(d)(4) easier to understand.

Proposed §668.164(e)(1) specifies that in a T1 arrangement, an institution has a contract with a third-party servicer under which the servicer performs one or more of the functions associated with processing direct payments of title IV, HEA program funds on behalf of the institution to one or more financial accounts that are offered under the contract or by the third-party servicer, or by an entity contracting with or affiliated with the third party servicer to students and their parents.

Proposed §668.164(f)(1) specifies that in a T2 arrangement, an institution has a contract with a financial institution or entity that offers financial accounts through a financial institution, under which financial accounts are offered and marketed directly to students or their parents.

Proposed §668.164(f)(2) provides that the Secretary presumes that title IV, HEA program funds are deposited or transferred into the financial accounts offered and marketed under §668.164(f)(1). However, the institution does not have to comply with the requirements described in §668.164(f)(4) if it documents that, for the most recently completed award year, no student or parent received a credit balance.

Proposed §668.164(f)(3) explains that a financial account is "directly marketed to students and their parents" in three situations: (1) the institution communicates information directly to its students or their parents about the financial account and how it may be opened; (2) the financial account or access device is co-branded with the institution's name, logo, mascot, or other affiliation; and (3) a card or tool that is provided to the student or parent for institutional purposes, such as a student ID card, is linked with the financial account or access device.

Reasons: Over the past several years, institutions of higher education have entered into arrangements with financial institutions and nonbank entities to offer students a variety of debit and prepaid cards to receive title IV credit balance disbursements. Institutions have also begun to rely on third-party servicers to handle the administrative operations of their aid disbursement processes. In many cases, these third-party servicers provide both student financial and institutional administrative services. The institution benefits from these arrangements, either in the form of remuneration, receiving reduced-price or free administrative services, or in reduced institutional costs.

As the incidence of these types of agreements has increased, so too has the scrutiny of the practices associated with them. In the past few years, USPIRG, Consumers Union, GAO, and OIG have conducted reviews into the college card marketplace and released reports detailing their findings and recommendations. A number of the findings in these reports are troubling, and the reports lay out recommendations for Department action that are explained in more fully in each of the relevant sections of this preamble, along with explanations of the provisions designed to address these findings. This section discusses a threshold issue--the types of arrangements that are subject to the proposed regulations.

During negotiated rulemaking, the committee spent a significant amount of time trying to identify which financial accounts would be considered "sponsored," or endorsed by the institution. After multiple negotiating sessions, the Department's final proposal in the negotiations included the term "sponsored account," which was defined as an account, access device, card (including student ID), or other tool that:

(1) Is specified or included in a contract between the institution and an entity,

(2) Is offered to a student (or parent) enrolled at the institution, and

(3) May be used by the student (or parent) to receive title IV funds.

This definition encompasses a variety of possible accounts. While the student advocates supported this definition, banking sector representatives opposed the definition, arguing that it was (1) overly broad and applicable to accounts that are outside the scope of the Department's interest in regulating the delivery of title IV aid, and (2) too vague as to what which accounts would fall under the definition. We acknowledge the concerns raised by banking industry representatives, so have tailored the proposed rules based on the circumstances in which the troubling practices have occurred.

In describing the questionable practices of the college card market, a consensus emerged from the consumer and government reports: not all arrangements resulted in equivalent levels of troubling behavior, largely because the financial entities and third-party servicers with which institutions contract face divergent monetary incentives.

Banks and credit unions have an incentive to create long-term relationships with college students--a potentially lucrative future cohort--at the time when those

students have not yet established a relationship with a bank.[36] Banks may not necessarily rely on short-term fee income when providing products to students, because banks may be seeking to establish a customer base that will be profitable over the long term when those students secure mortgages, auto loans, or other types of consumer credit.

Other financial institutions, including, but not necessarily limited to, non-bank firms (such as third-party servicers), "may have different incentives for pursuing relationships with students."[37] These entities have a different type of business model, and are more likely to "seek to partner with schools to provide fee-based services to both the institution and the student."[38] This is primarily a relationship with the student that ends once the student is no longer enrolled, and "the nature of this short-term interaction creates an incentive to increase fee revenue over what traditional banks might charge."[39] As a result, there has been a proliferation of uncommon, difficult to understand, and oftentimes unreasonable fees assessed by such providers against accounts with credit balances. Moreover, by their nature as servicers handling

[36] Consumers Union at 5.
[37] Ibid.
[38] USPIRG at 13.
[39] Ibid.

the duties of the institutions, they "can take over all aspects of the disbursement process from schools."[40] As a result, these third-party servicers can determine the way that the college card is portrayed to students, establish different timeframes for electronic delivery of credit balances based on how the student electronically receives funds, and access personal student information for targeted marketing purposes.

Ordinarily, an institution's incentive to agree to assessing high fees against students might be offset by its interest in protecting its students from the loss of significant financial assistance. However, colleges also have strong incentives to establish arrangements that provide for fee revenue (which ultimately benefits the institution in the form of remuneration or reduced-cost services from the third-party servicer). "Schools are searching for ways to make their services more cost effective and increase revenues," and one increasingly common way of reducing costs is by hiring a third-party servicer to handle the administration of the student aid disbursement process.[41] Institutions have stated that employing a third-party servicer provides a more efficient

[40] USPIRG at 13.
[41] Ibid.

credit balance delivery method than delivering checks; they have also acknowledged that, "during difficult budget times, this option was cost effective."[42] By valuing agreements that are more likely to prioritize short-term fee-based revenue, many institutions have created a situation where the best financial interests of students may not be the primary consideration.

These incentive structures have led to a number of troubling practices. OIG found that schools relinquished "significant control" over the title IV aid disbursement process and relied on servicer compliance to meet title IV regulations. "However, the schools did not appear to routinely monitor all servicer activities related to this contracted function, including compliance with all title IV regulations and student complaints."[43] OIG also determined that, after student identifiers and credit balance disbursement figures were provided to servicers, "the schools did not adequately oversee the servicers' activities to ensure that policies were followed, continued to be in the best interests of students, and complied with program requirements."[44] OIG determined that "the Department should take action to better ensure that student

[42] NACUBO at 2.
[43] OIG at 5.
[44] Ibid. at 7.

interests are served when schools use servicers to deliver credit balances."[45]

Third-party servicers' practices have also led to legal action. In August 2012, FDIC announced settlements with Higher One and one of its former bank partners, Bancorp Bank, after alleging "unfair and deceptive practices" relating to the manner in which it charged fees and other practices. Specifically, the FDIC alleged that the two firms violated the Federal Trade Commission Act by "charging student account holders multiple insufficient funds fees from a single transaction; allowing accounts to remain in overdrawn status for long periods and allowing these insufficient funds fees to continue accruing; and collecting the fees from subsequent deposits to the students' accounts, typically funds for tuition and other college expenses."[46] [47] Furthermore, in November 2013, Higher One announced it had agreed in principle to settle a class action lawsuit for $15 million. In that action, student plaintiffs claimed that Higher One misled them "by marketing its debit card as schools' preferred method for

[45] Ibid. at 5.
[46] GAO at 24.
[47] FDIC. "FDIC Announces Settlements With Higher One, Inc., New Haven, Connecticut, and the Bancorp Bank, Wilmington, Delaware for Unfair and Deceptive Practices." [Page 1] (2012), available at www.fdic.gov/news/news/press/2012/pr12092.html. With subsequent references "FDIC at [page number]."

making financial aid and other payments, improperly steered them into depositing funds into Higher One accounts, and charged excessive and inadequately disclosed ATM and PIN fees." Higher One and its banking partners (Bancorp Bank and Wright Express Financial Services Corporation) that were named as co-defendants disclaimed wrongdoing.[48]

We believe that absent targeted provisions addressing specific concerns, and especially because students are a captive audience to institutional marketing, students will continue to be subject to the troubling practices identified by government agencies and consumer groups. For these reasons, we propose to designate as "tier 1" those arrangements between an institution and a third-party servicer under which the servicer performs one or more of the functions associated with processing direct payments of title IV, HEA program funds for the institution, and offers accounts to students and parents. Institutions entering into such arrangements would be responsible for ensuring that accounts offered by third-party servicers comply with both the fee requirements and disclosure requirements of the regulations.

[48] GAO at 25.

As explained above, in contrast to third-party servicers, traditional financial institutions and entities that offer financial accounts through a financial institution that do not engage in third-party servicing functions have stronger incentives to provide student-friendly accounts and convince students to become long-term customers.[49] Many such providers of student bank accounts or campus cards do not charge fees "higher than those associated with other banking products available to students."[50] While financial institutions not employed in a third-party servicer role were cited in some instances, practices by those firms are generally not as troubling, the agreements generally impose fewer fees on students, and, in some cases, students actually receive better-than-market rates on such accounts. Based on these findings, in the proposed regulations, the fee-related provisions for T1 arrangements do not extend to arrangements not involving a third-party servicer.

However, arrangements between institutions and financial institutions that are not third-party servicers are not without the potential for harm to students. The biggest concern involving these accounts is that the

[49] Consumers Union at 5.
[50] GAO at 15.

apparent institutional endorsement of a particular financial account has the potential to lead aid recipients to believe that the account in question is required for aid receipt, has been competitively bid and negotiated by the school, or, at a minimum, represents a good deal because it has been endorsed by the institution.

There are multiple ways institutions convey this impression to students.

The most obvious way this occurs is with student IDs. In one-third of schools surveyed by GAO, student IDs, which are distributed to all students, have the capacity to be activated as either a debit or prepaid card.[51] While activating the financial functions of the card is not required, the card itself typically is. In the most troubling circumstances, students are led to believe that activating the financial functions is required.[52] Even in cases where this does not occur, students still must carry a student ID that is effectively an institutionally-sponsored advertisement for the financial provider and may misunderstand which functions are required.[53]

More general co-branding can cause similar confusion. "Schools can appear to implicitly or explicitly endorse

[51] GAO at 9.
[52] OIG at 11.
[53] USPIRG at 21.

their college cards, by virtue of the relationship with the provider and co-branding of the card. Many students trust their schools and, as a result, may view co-branding as an endorsement and an indication their school has negotiated the best terms for them."[54] USPIRG echoed this concern, stating that, "Many students trust their schools and often think of co-branding as an endorsement. This causes many students to drop their guard, expecting their school has negotiated the best deal for them."[55]

Finally, when schools convey the information about a contracted-for financial account directly to students, students listen. "Card providers and schools market college cards directly to students through various methods, including mailings, on-campus presentations, and co-branded websites. Some card providers offer marketing assistance or materials to schools. For example, one provider told us it prefers assisting the school in developing messages, because students pay more attention to the information if it comes from the schools."[56]

These direct marketing methods appear to be especially effective. As Rohit Chopra, Student Loan Ombudsman at the CFPB, stated in his presentation to the negotiated

[54] GAO at 26.
[55] USPIRG at 21.
[56] GAO at 27.

rulemaking committee, "If a certain financial product where the school has a financial interest is chosen as the 'default' choice or implies endorsement of the school, this can lead to mismatched incentives ... [and] school incentives may impact financial product adoption rates."[57]

As GAO has recognized, there are no comprehensive data on the number of students who elect to receive their credit balances on a college card. However, "the largest provider reported that overall, 43 percent of students receiving financial aid payments at its client schools opened debit accounts."[58] Furthermore, GAO found that take-up rates ranged from 20 to 75 percent of participating students at schools that were examined.[59] CFPB, in its request for information relating to college cards, similarly found that adoption rates in such circumstances were high.[60] For many card providers, adoption rates were close to 50 percent of students; some providers' rates exceeded 80 percent.[61] At a minimum, these adoption rates demonstrate that the method of direct marketing employed by institutions, their associated financial institutions, and third-party

[57] CFPB presentation at 14-15.
[58] GAO at 12.
[59] Ibid.
[60] Consumer Financial Protection Bureau, Request for Information Regarding Financial Products to Students Enrolled in Institutions of Higher Education (Feb. 2013). With subsequent references "CFPB RFI."
[61] Ibid.

servicers is particularly effective, but also suggest that students may misunderstand that receiving their financial aid this way is optional. Because institutions are currently not explicitly required to put student and parent interests first in negotiating their marketing agreements, the financial accounts marketed may not have particularly favorable terms or be particularly convenient for students and parents.

On the other hand, direct marketing by financial institutions in itself does not always establish that these accounts impact title IV aid. For example, a financial institution may contract with an institution to offer financial accounts to students in circumstances where no credit balances exist (typically at high-cost institutions), and students are therefore not receiving credit balances into the offered financial accounts. Where such circumstances exist, the integrity of the title IV programs is not at issue.

For this reason, we are limiting our oversight of T2 arrangements to institutions at which students and parents subject to these direct marketing tactics are expected to receive credit balances. Under this approach, if an institution documents that none of its students or parents received a credit balance in the most recently completed

award year, it does not have to comply with the restrictions in §668.164(f) that otherwise apply to financial accounts offered under a T2 arrangement. This approach is appropriate because it allows for the identification of arrangements where no credit balances are expected, while at the same recognizing the remarkable effectiveness of the marketing campaigns in general and the immediate need of students and parents for a place in which to have title IV credit balances deposited.[62]

We invite comment on whether there is a need to establish a minimum threshold of credit balance recipients at an institution before that institution's arrangement would implicate the T2 provisions. We are seeking feedback to determine whether a threshold would be needed to balance burden on institutions and financial institutions against the benefits to students of proposed §668.164. If a threshold is recommended, we are requesting data and analysis supporting the number chosen.

For the reasons discussed in the preceding paragraphs, we propose to limit the definition of "T2 arrangements" to arrangements where students receive credit balances and are

[62] This approach reserves an opportunity for an institution having a financial aid history at odds with the presumption to avoid applicability of the restrictions that would otherwise apply under §668.164(f)(4). The institution would need to maintain its documentation for use in the event of an audit or program review.

subject to direct marketing, either in the form of marketing from the school[63], or through the implied or direct endorsement of the product via a co-branding of a card or the ability to link an account to a student ID. We emphasize that these proposed regulations govern postsecondary institutions and their arrangements with financial institutions; these limitations narrow the scope of the regulatory requirements to these specific arrangements. As discussed previously, the concerns related to these accounts are not as significant as those involving third-party servicers. Instead, the proposed requirements relating to T2 arrangements are designed to improve the information available to students and parents so they understand their options. The proposed requirements include contractual disclosures and information related to average account holder costs; and for any account listed on the institution's list of credit balance receipt options, disclosure of the accounts fees and terms in an easily understandable format.[64] We believe

[63] Examples of this include: a recommendation of a particular account offering to students or mailing, emailing, or otherwise directly conveying information about an account to students pursuant to the contract between the institution and financial institution.

[64] To the extent that T2 arrangements permit students to open the accounts outside of the institution's student choice process, our conversations with banking regulators have convinced us that, in view of the lesser degree of access to student information these T2 providers have, existing banking regulations should suffice in

these disclosure requirements will enable financial providers and institutions with the best financial interests of students in mind to continue offering accounts that are student-friendly and will not result in the loss to aid recipients of critical Federal student aid dollars.

For purposes of clarifying what types of contracts fall under the purview of these proposed regulations, we are also providing the following examples of circumstances which are neither T1 nor T2 arrangements and therefore would not be subject to these proposed regulations if finalized as proposed in this NPRM:

- General marketing of a financial institution that does not specify the kind of account or how it may be opened (i.e., not direct marketing described under §668.164(f)(3));
- Sponsorship of on-campus facilities with financial institution branding that does not promote particular accounts;
- A lease permitting the operation of an on-campus branch or on-campus ATMs; or

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providing adequate disclosure of account terms to parents and students opening financial accounts in the traditional manner. For students that do so, they would elect to receive the disbursement to their newly-existing account. For students that do not open an account in this more traditional manner and instead select the account from the student choice menu, these disclosures would be required to be given to students as part of the student choice menu.

- A list of area financial institutions recommended generally to students for informational purposes rather than being provided pursuant to a contract with the institution.

Finally, many agreements between institutions and financial account providers, including those agreements with monetary benefits for the school, are not clearly disclosed to the consumer or the public. We believe that requiring the disclosure of information relating to the costs to students and benefits provided to schools will encourage market competition.

In sum, we believe that the troubling practices described in various reports and manifested in legal actions demands a regulatory response ensuring student aid recipients are afforded sufficient protections and taxpayer dollars are not put at risk of loss to unreasonable fee-based charges. We believe the most prudent approach is to establish a set of regulatory requirements based on the level of risk to students and taxpayers represented by the type of arrangement between an institution and a third-party servicer or financial institution. Due to the numerous findings and recommendations of consumer and government reports, legal action taken against the predominant third-party servicer in the industry, and

because third-party servicers have significant control over the disbursement process, we have determined a higher level of regulatory scrutiny over third-party servicer arrangements is appropriate.

Because student financial accounts offered by financial institutions (and entities that offer financial accounts through a financial institution) that are not third-party servicers do not present as much of a risk to students, we do not believe the same level of scrutiny is necessary for the arrangements between institutions and such entities (based in part on the work Consumers Union did to evaluate student financial account offerings[65]). However, arrangements with these financial institutions that directly market their products to students are not without risk to students and title IV, HEA program funds. By bearing the imprimatur of the school, these providers can circumvent the normal channels of informed consumer choice and have special access to potential customers that distorts the market. Consequently, where the financial account is endorsed or otherwise directly marketed by the institution, the institution must inform students of the fees in a clear, easy-to-understand disclosure format. We

[65] Consumers Union at 11-12.

believe that ensuring students receive clear information about the financial account will enable them to make a better choice based on the costs and benefits of the individual account, rather than the appearance of an institutional endorsement or a misapprehension about whether the account is a prerequisite for receiving Federal student aid.

We believe this regulatory framework will provide a measured and effective level of consumer protection for those accounts that present the greatest risk to title IV recipients. We also believe the disclosure requirements will provide incentives for institutions and financial institutions to ensure that the financial products marketed are fair to aid recipients. Finally, the recommended delineations between types of arrangements are likely to improve clarity relative to the proposed definitions advanced during negotiations, while ensuring the regulatory requirements are tailored to address the problems identified by consumer groups and government agencies.

Student or parent choice (§668.164(d)(4))

Current Regulations: Current §668.164(c)(1) permits an institution to pay title IV, HEA program funds directly to a student or parent by (1) releasing a check, (2) issuing a check via mail or in-person pickup, (3) initiating an EFT,

or (4) dispensing cash. These methods of payment may be used in situations when an institution pays a student (or parent) his or her entire disbursement directly, or, more often, when a credit balance occurs after the institution credits the student's account to cover the cost of tuition and fees, room and board, and other authorized educationally-related institutional charges.

Current §668.164(c)(3) permits an institution to establish a policy requiring its students to provide bank account information or open an account at a bank of their choosing, but requires the institution to disburse funds via check or cash if the student does not provide this information in a timely manner.

Current §668.164(c)(3) also requires that, if the institution opens a bank account on behalf of a student or parent or assists the student or parent in opening a bank account, the institution must obtain in writing affirmative consent from the student or parent to open that account and inform the student or parent of the terms and conditions associated with accepting and using the account before it is opened.

Proposed Regulations: We propose to modify the regulations governing direct payments in two ways. Under proposed §668.164(d)(4)(i), an institution that enters into an

arrangement described in §668.164(e) or §668.164(f) (i.e., uses an account offered pursuant to a T1 or T2 arrangement), must establish a selection process under which the student or parent chooses one of several options for receiving those payments. Alternatively, an institution that does not use an account offered pursuant to a T1 or T2 arrangement may make direct payments to an existing account designated by the student or parent, issue a check, or disburse cash to the student or parent without establishing a selection process.

For institutions required to establish a student choice process, the proposed regulations would establish four requirements under proposed §668.164(d)(4)(i)(A) that must be met in implementing the process.

First, the institution must inform the student or parent in writing that he or she is not required to open or obtain a specific financial account or activate an access device offered by a specific financial institution in order to receive title IV funds. Second, the institution must ensure that the options listed are presented in a clear, fact-based, and neutral manner, except for listing a student or parent's preexisting account as the first, most prominent, and default option. Third, the institution must ensure that initiating direct payments electronically to an

existing account is treated equivalently to initiating direct payments to an account offered pursuant to a T1 or T2 arrangement. Fourth, the institution must allow the student or parent the option to change his or her account preference with reasonable written notice.

In addition, the proposed regulations in §668.164(d)(4)(i)(B) would provide four provisions governing the description of account options under the student choice process. First, the institution must present, prominently and as the first and default option, the ability to receive funds in the student's or parent's existing account. Second, the institution must list and identify the major features and commonly assessed fees associated with all accounts offered pursuant to a T1 or T2 arrangement. (Using a format published by the Secretary in the Federal Register following consultation with CFPB would constitute compliance with this provision under the proposed regulations.[66]) Third, the institution may, at its discretion, provide information about other available financial accounts (that are not offered pursuant to a T1 or T2 arrangement) that are insured by the FDIC or NCUA.

[66] The Department intends to separately seek public comment on the manner and substance of these disclosures when publishing them in the Federal Register.

Finally, the institution must list issuing a check as an option for a student or parent to receive payments.

Reasons: Throughout the course of public hearings and negotiated rulemaking, and in the recommendations from consumer advocates and in government reports, there was near universal agreement that students and parents must be given the opportunity to make an informed choice regarding how they will receive their title IV funds. Negotiators representing students, State attorneys general, consumer advocates, institutions, and the banking sector agreed that (1) students should be given clear and neutral advice on the account terms prior to opening an account; (2) students must not be compelled to open a particular account; and (3) institutions should not favor one particular account to the detriment of others. As stated in the GAO report, "financial markets function best when consumers are fully informed about financial products and how to choose among them, and NACUBO has recommended that schools present students with information about their college cards in a neutral fashion."[67] It is with these principles in mind that we propose to revise §668.164(d)(4) to ensure that students and parents have the opportunity to make an

[67] GAO at 34.

informed choice regarding the account that best meets their needs.

We believe students and parents should be able to choose the account in which they receive their funds, and that, if students and parents are presented with options, those options should be presented in a clear and fact-based manner. This was a recommendation echoed by every group that has closely examined college card arrangements. GAO recommended that we develop regulations requiring that "objective and neutral information" be provided to students and parents regarding options for receiving Federal student aid payments.[68] USPIRG, in its report on college cards, included a similar recommendation, stating that "students should have an unbiased choice of where to bank," and should be "clearly informed of their ability to use their own existing bank account."[69] OIG recommended that we "develop regulations that require servicers to provide objective and neutral information to students on the available delivery options."[70] Consumers Union recommended that we "require schools to present financial aid disbursement options in a clear and neutral manner, so that students can easily set up an electronic fund transfer to

[68] GAO at 35.
[69] USPIRG at 25.
[70] OIG at 12.

an existing account to receive their funds"[71] and that "when a student is making a disbursement selection, she can easily and conveniently select direct deposit to an existing account in order to receive funds."[72] We agree with these recommendations, and the overarching purpose of the requirements enumerated in proposed §668.164(d)(4) is to ensure that these recommendations are carried out.

We also believe that signing up for a financial account promoted or offered by the school should not be a prerequisite of receiving title IV aid. For those students with a preexisting bank account, we think it should be easy and straightforward to select their existing account for receipt of title IV funds. The fact that students or parents have an existing account implies that they have already exercised some measure of informed consumer choice; and our requirement that such an option be listed first, most prominently, and as the default choice, will ensure that students are not misled to believe that choosing an existing account is discouraged or will result in delays.

CFPB has recommended that, as a general matter, students receive their financial aid via direct deposit to

[71] Consumers Union at 2.
[72] Ibid. at 20.

an existing bank account.[73] Many school officials interviewed by GAO also acknowledge that college cards may not be the best option for many students, especially those who need more comprehensive products or who already have an existing account. In fact, students attempting to maintain both a college card and an existing account may "find it costly or inconvenient to manage both accounts concurrently."[74] Furthermore, the argument advanced by some financial account providers, that many students are unable to qualify for a bank account, is inconsistent with statements made by the CFPB, which has stated that "very few students are unable to obtain a bank account."[75] For these reasons, our proposed regulations allow students and parents to select an existing account easily.

More disturbing are the practices employed by some financial account providers that seem to eliminate, or at best hamper, the ability of students to choose a product that is best for them. The reports produced by GAO, OIG, CFPB, Consumers Union, and USPIRG all describe troubling practices and the lack of legitimate choice in the student financial products marketplace. These reports describe

[73] CFPB. "Reminder: Accessing your scholarships and student loan funds." [Page 1](2013), available at www.consumerfinance.gov/blog/reminder-accessing-your-scholarships-and-student-loan-funds/.
[74] GAO at 25.
[75] CFPB Presentation at 8.

situations where these providers did not give students any choice as to how they receive credit balances, or where the choice was deceptive.[76] The Federal Reserve Board in 2014 issued a consent order to cease and desist and a civil money penalty assessment against Cole Taylor Bank for deceptive practices engaged in by the bank and its agent Higher One that violated section 5 of the Federal Trade Commission Act.[77] These practices were consistent with the findings in the reports discussed throughout this preamble.

In another case, GAO found a school that was not only recommending its card over direct deposit to students' existing accounts, but also providing guidance to its students on how to switch from their existing accounts to the card option.[78] This finding was further reinforced in public comments received by CFPB, in which students stated that they "felt pressured to sign up for college cards and that this pressure could convince uninformed students that 'the provider was the only choice.'"[79]

Some financial institutions and third-party service providers apparently work to create the impression that

[76] USPIRG at 20.
[77] Board of Governors Of The Federal Reserve System, "Order to Cease and Desist and Order of Assessment of a Civil Money Penalty Issued Upon Consent Pursuant To the Federal Deposit Insurance Act and the Illinois Banking Act, As Amended." July 1, 2014, available at: www.federalreserve.gov/newsevents/press/enforcement/enf20140701b1.pdf.
[78] GAO at 28.
[79] Ibid.

their product is required or a preferred option for receiving student aid funds. In many cases, financial institutions use access to private student information to send university-branded mailings or a financial access device before students have made a disbursement selection, or even arrived on campus, which may lead the students to believe that the account has already been established on their behalf.[80] For example, OIG found that Higher One typically sends a debit card with the student's name on it, along with instructions to sign up using a Higher One web site, which allowed Higher One to attempt to persuade students that signing up with that account was the easiest method for receiving credit balances throughout the selection process.[81] FDIC staff told the GAO that existing practices give students the impression that selecting the college card is a "requirement to receive their funds."[82] USPIRG reports that, in the worst cases, some schools simply mandate that all funds be disbursed into an account preselected by the institution.[83]

A school implying that specific accounts are preferred or required is not the only way student choice is limited.

[80] USPIRG at 21.
[81] OIG at 9.
[82] GAO at 28.
[83] USPIRG at 22.

Some providers create an environment where the provider's preferred account offering is a de facto requirement because of the way funds are disbursed. One example of this is to create circumstances (or at least the appearance of such circumstances) where receiving disbursement via a non-preferred electronic method will require additional steps or time. Some providers allow students to select the preferred account immediately, but selecting the student's own account requires additional steps, instructions, or documentation.[84] Others allow students to select the preferred account offering online, but require students selecting a different option to fax hand-written forms.[85] One provider claimed that these additional steps are "an antifraud measure," but GAO was told by the industry organization that oversees payment processing that such measures are unnecessary and the account selection process can be achieved equally well online.[86]

Even if additional steps are not required, some providers set up barriers by informing students that a deposit to an existing account will take additional time, and that selecting the preferred account will get students

[84] GAO at 27.
[85] USPIRG at 22-23.
[86] GAO at 28.

their money the fastest.[87] For students who depend on the timely delivery of their credit balances to pay for off-campus housing, books, or dependent care, this additional time can often be enough to force students to select the provider's account. For example, one student told USPIRG that he was effectively forced to select a preferred account "even though he wanted to use his own account because he cannot wait the extra [three] to [four] days for a wire to his own bank account."[88]

Finally, providers that are third-party servicers have frequently used their advantaged access to student information to market and persuade students to select their debit card over other delivery options.[89] These practices have included collection of student data incidental to the delivery of credit balances.[90] Furthermore, student data have often been provided to these servicers before a student has selected an account, regardless of whether the student ever ultimately received financial aid.[91]

Due to these troubling and widespread practices, we believe institutions should clearly inform students and parents of their options for receiving their title IV

[87] USPIRG at 22.
[88] Ibid. at 17.
[89] OIG at 9.
[90] Ibid. at 5.
[91] Ibid. at 19.

credit balance funds. Further, we believe these findings demonstrate that there is no reasonable explanation for delaying direct deposit to a student's existing account or requiring additional documentation or verification and forces students to choose the provider's preferred accounts to get timely access to student aid. Finally, we believe that after an aid recipient has selected a particular financial account--and has had experience with that account, he or she should be afforded the opportunity by the school to change that selection with reasonable written notice and that initial selection of an account should not force a student to use it indefinitely.

In addition, we are also concerned about the type of information students receive about their choices. While some schools present students with unbiased options for receiving their credit balances, GAO found instances where options for receiving payments "were not presented to students in a clear or neutral fashion," and in fact encouraged students to choose the college card over other options.[92] Many schools rely on the materials provided by financial account providers in describing account options, which present providers' accounts in a complimentary way.[93]

[92] GAO at 27.
[93] USPIRG at 20.

As a result, the site students use to select their method of payment often states that a particular account is the "preferred choice," rather than neutrally.[94]

FDIC staff told GAO that "requiring a clear and conspicuous affirmative statement that students have a choice could enhance student awareness of options."[95] NACUBO, the organization that represents school business officers, recommends that schools provide "a fair explanation of services [without] misleading, biased, or aggressive marketing schemes."[96] GAO also recommended that we require that "schools and financial account providers present students with objective and neutral information on their options for receiving federal student aid payments."[97] We agree with these recommendations, and believe that our requirements will help ensure that students receive unbiased information.

USPIRG argued that if students are not informed of the account terms in a clear and easily-understandable manner, they will be unable to make an informed choice as to the account that best meets their needs.[98] OIG agreed on this point, recommending that schools help students understand

[94] Ibid.
[95] GAO at 29.
[96] Ibid.
[97] Ibid. at 35.
[98] USPIRG at 21.

the fees that they are subject to if they select the servicer's debit card.[99] We believe that our requirements for neutral and objective disclosures address these recommendations.

The importance of objective, neutral, and easily understandable disclosures is highlighted by the concerns of consumer advocates regarding fee disclosures. For example, a common complaint among consumer advocates is that students or parents may be surprised when they are charged fees that they may not have expected, such as the 50 cent PIN fee charged by some servicers. According to USPIRG, "[s]tudent consumers may have built in assumptions about the product and its fee structures and costs.... [T]hey are likely to think that a debit card is a debit card and won't discern the key differences."[100] Furthermore, USPIRG advises students that "[b]anks may insert additional or surprising fees into the small print that could cost [students], such as a fee for not using [an] account."[101] To address this problem, GAO recommended that the Secretary should "[i]n consultation with CFPB, develop requirements that schools and college card providers present students with objective and neutral

[99] OIG at 13.
[100] USPIRG at 21.
[101] Ibid. at 28.

information on their options for receiving federal student aid payments."[102]

Since the release of the USPIRG and GAO reports, CFPB has issued an NPRM that proposes to create short form disclosures for prepaid accounts. These short form disclosures would highlight "key fees that [CFPB] believes are most important for consumers to know about...."[103] CFPB further noted that the "short form's design ... will prominently present key fees, and create a visual hierarchy of information that will more effectively draw [a] consumer's attention to a prepaid account product's key terms"[104] and that the design of the short form "will increase the likelihood that consumers will engage with the disclosure."[105]

To help students and parents obtain objective, neutral, and easily understandable information about their options, we propose to work with CFPB to ensure that students and parents receive fee information prior to acquiring an account by adding these disclosures to the selection process in a format similar to the disclosures

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[102] GAO at 35.
[103] CFPB. "Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z)." [Page 2] (2014), available at www.gpo.gov/fdsys/pkg/FR-2014-12-23/pdf/2014-27286.pdf. With subsequent references "CFPB NPRM at [page number]."
[104] CFPB NPRM 49.
[105] Ibid.

CFPB has proposed. We agree with CFPB that receiving disclosures prior to the acquisition of an account would "ensure that the features of the prepaid accounts are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the account,"[106] and we have chosen to adopt the same disclosure timeline for accounts offered under T1 and T2 arrangements.

Because the proposed disclosures in CFPB's NPRM are designed for prepaid accounts, and the financial accounts under T1 and T2 arrangements may be either prepaid accounts or traditional checking accounts, and because the model forms address certain fees not permitted under this NPRM to be assessed against students or parents opening financial accounts offered under a T1 arrangement, we will likely be unable to use the exact format of the short form disclosure proposed in CFPB's NPRM. In addition, CFPB may alter the requirements for its short form disclosures while we are in the process of developing final cash management regulations. For these reasons, instead of adopting the short form disclosures described in the CFPB NPRM at this time, we plan to develop consumer-friendly disclosures in

[106] Ibid. at 68.

close consultation with CFPB and to release the format for those disclosures in a Federal Register notice following the publication of our final regulations.

Finally, in our proposed regulations, we allow schools to provide information to students about other accounts not offered pursuant to a T1 or T2 arrangement because we do not want the student choice provisions to prevent schools from making good faith attempts to inform students of convenient banking options. The proposed regulations also allow students to continue to receive funds via a check because many institutions believe that a disbursement option via non-electronic means best serves their students. We invite comment as to whether the option to receive a check should continue to be affirmatively offered to students, although we note here that offering a check will continue to be allowed in the event students fail to make a choice on how to receive their credit balance.

One of the most critical aspects of this rulemaking is ensuring that students are truly able to easily receive their title IV funds in an account of their choosing. We believe that the requirements of proposed §668.164(d)(4) would address the numerous problems with the existing account selection process and provide students the opportunity to choose their account, while still allowing

institutions the opportunity to offer students a variety of options.

Consent prior to disclosing a student's or parent's information, sending an access device, or associating or opening an account (§668.164(e)(2)(i) and (f)(4)(i))

Current Regulations: Current §668.164(c)(3)(i) states that in cases where the institution opens a bank account on behalf of a student or parent, establishes a process the student or parent follows to open a bank account, or similarly assists the student or parent in opening a bank account, the institution must obtain in writing affirmative consent from the student or parent to open that account.

Proposed Regulations: Proposed §668.164(e)(2)(i)(A) and (f)(4)(i)(A) require that an institution obtain consent to open an account under a T1 or T2 arrangement from the student or parent before sharing any information about the student or parent, other than name, address, and email address, with the third-party servicer or financial institution marketing or offering the financial account.

Proposed §668.164(e)(2)(i)(B) and (f)(4)(i)(B) require that an institution obtain a student's or parent's consent to open a financial account before an access device, or any representation of an access device, is sent to the student or parent.

Proposed §668.164(e)(2)(i)(C) and (f)(4)(i)(C) require that an institution obtain consent from the student or parent before a card or tool provided to the student or parent for institutional purposes, such as a student ID card, is linked with a financial account.

Reasons:

Disclosing a student's or parent's information

In its report, USPIRG raised concerns regarding third-party servicers and financial institutions using their access to personal information to market financial accounts to students.[107] OIG stated that the information provided by institutions to financial account providers was often extensive and could include a student's photo, full name, physical address, birthdate, student ID number, phone number, email address, and gender.[108] OIG further stated that, in some cases, the information being provided was "optional ... and therefore not needed to complete the credit balance delivery" and that "[a]s optional information, it did not serve a legitimate educational purpose ...."[109] In response to these findings, and in an effort to prevent marketing abuses, we initially proposed to the negotiating committee regulations that banned

[107] USPIRG at 21.
[108] OIG at 19.
[109] Ibid.

institutions from sharing any information about the student or parent with a financial institution or a third-party servicer until a student or parent affirmatively consented to open an account.

While some negotiators also had concerns regarding the use of a student or parent's personally identifiable information in marketing or opening financial accounts, others expressed concerns that third-party servicers would be unable to perform their duties without data provided by institutions. In response, we revised our proposal to state that an institution may not share with the entity (e.g., a third-party servicer, financial institution, or other person) any information about the student or parent until the student or parent makes a selection regarding how they choose to receive direct payments.

Prior to the final session, negotiators representing third-party servicers and financial institutions continued to express concerns that this draft language would prohibit third-party servicers from performing their duties and stated that, at minimum, servicers would require a student or parent's permanent address, delivery address (if different), date of birth, partial Social Security number or tax ID number, student ID number, cryptographic information, unique identifier(s), phone number, email

address, secure alternatives to email messaging, gender, photos, password or other unique item only known by the student, and confirmation that the student is to receive a title IV credit balance disbursement and the amount of such disbursement.[110] We were not presented with evidence that all of these items were needed, so we proposed a draft that prohibited institutions from sharing any information with third-party servicers or financial institutions other than the student's or parent's name, address, and email address until the student or parent selected an option for receiving direct payments of financial aid.

In this proposal, we maintain our position that the only information that an institution may initially share with a third-party servicer or financial institution is the student's or parent's name, address, and email address. This limitation on sharing personal information applies to both T1 and T2 arrangements. While we appreciate the concerns of the negotiators for third-party servicers and financial institutions, we disagree that extensive personal information is necessary for a third-party servicer or

[110] Kundert, Levandowski, McGuane, and Norwood. Memo to Negotiated Rulemaking Committee. [Page 12] (2014), available at www2.ed.gov/policy/highered/reg/hearulemaking/2014/pii4-cashmgmt-klmn-050114.pdf . With subsequent reference "Kundert, Levandowski, McGuane, and Norwood May 1, 2014 Memo [page number]."

financial institution before a student or parent gives consent to open an account. However, the institution may provide additional information after the student or parent consents to open the account.

To clarify our position, we have also amended the language to require that in order to share more than this basic contact information with a servicer or financial institution, a student or parent must provide consent to actually open an account, rather than simply select an option for receiving direct payments of financial aid.

We believe that the proposed language strikes a balance between the need for a third-party servicer to be able to perform its duties, a financial institution to make its financial accounts available to students and parents, and the privacy of an individual's personal information. We invite comment on whether the personal information that an institution may provide before a student or parent consents to open a financial account in our proposed regulations is sufficient to meet the needs of a servicer or financial institution.

Sending an access device

USPIRG stated that "[o]ften, the disbursement card is mailed to the student before he or she has made a

disbursement selection"[111] and that, in conjunction with other aggressive marketing tactics, this can "set the expectation that the school has already set up the bank account for the student and that they don't have a choice."[112]

We share the concerns regarding manipulation and potentially deceptive marketing practices detailed by USPIRG. As a result of those concerns and in response to the suggestions of negotiators at the first session of negotiated rulemaking, we originally proposed provisions that would allow an institution to send a debit card, prepaid card, or access device associated with the account to a student or parent only if the student or parent specifically requests it after providing consent to open an account. While some negotiators supported our position that a student or parent should have to request a card, others expressed concerns that "[p]rohibiting [an] institution from sending an unactivated debit or similar card to a student interferes with the student's access to [t]itle IV funds...."[113]

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[111] USPIRG at 21.
[112] Ibid.
[113] McGuane. Memo to Negotiated Rulemaking Committee. [Page 5] (2014), available at www2.ed.gov/policy/highered/reg/hearulemaking/2014/pii3-caseymcguane-cashmgmt-040214.pdf.

In this NPRM, we have modified the approach we initially took in the negotiations by removing the requirement for the student or parent to specifically request the card, while retaining a requirement that the student or parent consent to opening the account before the card is sent by an institution, third party servicer, or an associated financial institution. Though we understand that the requirement to obtain consent to open a financial account before sending an access device to a student or parent may slow the speed with which a student or parent could access his or her credit balance, we believe that requiring that consent be obtained initially helps to dispel the implication that the access device and its associated financial account are required by the institution. We also believe it reinforces the notion that choosing to use the access device and its associated account is, in fact, a choice. This provision does not apply to cards or devices distributed for institutional purposes that can also serve as access devices if activated, such as student identification cards; those institutional cards or devices are addressed next.

Associating a card or device with a financial account

According to the GAO's report, in cases where student IDs can also be electronically linked with financial

accounts, "either the school or the card provider issues student ID cards to all students. Students then can choose whether to have their ID card also serve as a debit or prepaid card."[114]

In our initial draft of the proposed regulations presented at the second session of negotiations, we proposed banning access devices from bearing the institution's logo or mascot, or otherwise implying an affiliation with the institution. According to negotiators, this would have prevented student IDs or similar institutional devices from being electronically linked to financial accounts that are controlled by outside entities. In response to those concerns, subsequent drafts contained provisions requiring consent to open an account that are very similar to the provisions contained in these proposed regulations.

We note that if an institution chooses to allow this functionality on products used for institutional purposes, the institution, third-party servicer, or financial institution is required to obtain consent from the student or parent to open the financial account. The proposed language in §668.164(e)(2)(i)(C) and (f)(4)(i)(C) does not

[114] GAO at 9.

prohibit an institution or third-party servicer from distributing a student ID that is fully functional for institutional purposes and that contains an inactive device or other inactive means of using the card to access a linkable financial account. However, before activating this financial capability, electronically linking, or otherwise associating the ID card with the financial account, the institution must first secure consent to open the financial account from the student or parent. We believe this is a balanced approach that will not constrain institutional functions for which these cards may be necessary, but will ensure that students or parents make an affirmative decision before an account is effectively activated on their behalf.

While we believe that this provision allows students the option to obtain a multipurpose device while also improving consumer protections around student IDs and similar products, we have concerns about allowing devices distributed for institutional purposes to become associated with financial accounts. Because of these concerns, we are open to further suggestions from the public on how to prevent coercive marketing practices with respect to institutional devices such as student IDs and associated financial accounts.

Disclosure of account information ((§668.164(e)(2)(ii) and §668.164(f)(4)(ii))

Current Regulations: Under current §668.164(c)(3)(ii), in cases where the institution opens a bank account on behalf of a student or parent, establishes a process the student or parent follows to open a bank account, or similarly assists the student or parent in opening a bank account, the institution must, before the account is opened, inform the student or parent of the terms and conditions associated with accepting and using the account.

Proposed Regulations: Under proposed §668.164(e)(2)(ii) and (f)(4)(ii), institutions must inform the student or parent of the terms and conditions of the financial account, as required under §668.164(d)(4)(i)(B)(2), before the financial account is opened.

Reasons: For clarity and to ensure that the regulatory requirements for institutions that have a T1 or T2 arrangement are comprehensively listed in the relevant section of the proposed regulations, we have cross-referenced the requirements of §668.164(d)(4)(i)(B)(2) in §668.164(e)(2)(ii) and (f)(4)(ii), respectively. Section 668.164(d)(4)(i)(B)(2) requires that institutions list and identify the major features and commonly assessed fees associated with all accounts described in §668.164(e) and

(f), as well as a Universal Resource Locator (URL) for the terms and conditions of those accounts. For each account, if an institution follows the format and content requirements specified by the Secretary in a notice published in the Federal Register following consultation with the CFPB, it will be in compliance with this requirement with respect to the major features and assessed fees associated with the account. For discussion of this issue, please refer to the "Clear and neutral information" section of §668.164(d) of the preamble.

Fee provisions for T1 accounts (§668.164(e)(2)(iii)-(iv))

Current Regulations: Current §668.164(c)(3)(iv) states that, if an institution opens, establishes a process the student or parent follows to open, or similarly assists a student or parent in opening a bank account, the institution must ensure that the student or parent does not incur any cost in opening the account or initially receiving any type of debit card, stored-value card, other type of ATM card, or similar transaction device that is used to access the funds in that account.

Current §668.164(c)(3)(v) states that institutions must ensure that the student has convenient access to a branch office of the bank or an ATM of the bank in which the account was opened (or an ATM of another bank), so that

the student does not incur any cost in making cash withdrawals from that office or these ATMs. This branch office or these ATMs must be located on the institution's campus, in institutionally owned or operated facilities, or, consistent with the meaning of the term "public property" as defined in §668.46(a), immediately adjacent to and accessible from the campus.

Current §668.164(c)(3)(vi) requires that institutions ensure that the debit card, stored-value card, ATM card, or other device can be widely used. For example, the institution may not limit the use of the card or device to particular vendors.

Finally, current §668.164(c)(3)(vii) requires that institutions not market or portray the account, card, or device as a credit card or credit instrument, or subsequently convert the account, card, or device to a credit card or credit instrument.

Proposed Regulations: Proposed §668.164(e)(2)(iii)(A) maintains the existing requirement that institutions ensure students have "convenient access" to accounts offered pursuant to a T1 arrangement but specifies that convenient access includes access through a regional or national ATM network with ATMs located on or near each location of the

institution.[115] We propose that convenient access also includes access to a sufficient number of ATMs that are located and maintained in a manner such that funds are reasonably available from them, including at the times the institution or its third-party servicer makes direct payments into the student and parent financial accounts. Proposed §668.164(e)(2)(iii)(B)(3) requires that the institution ensure that students and parents do not incur any cost for conducting any transaction at such an ATM.

Proposed §668.164(e)(2)(iii)(B)(1) maintains, for accounts offered pursuant to a T1 arrangement, the current requirement that an institution must ensure that students and parents incur no cost for opening the account or initially receiving an access device.

Proposed §668.164(e)(2)(iii)(B)(2) specifies that an institution must ensure that a student or parent who opens a financial account offered pursuant to a T1 arrangement does not incur a cost assessed by the institution, third-party servicer, or third-party servicer's associated

[115] The intent of the proposed regulations is that the requirement for an ATM to be located on or near each location applies to each location or branch approved as part of the institution's application for eligibility under 34 C.F.R. § 600.10, or required to be reported to or approved by the Department under 34 C.F.R. §§ 600.20(c) (1), 600.20(c)(3), 600.21(a)(2) , or 600.21(a)(3).

financial institution when the student or parent conducts a point-of-sale transaction.

Proposed §668.164(e)(2)(iii)(B)(4) requires that an institution ensure that a student or parent does not incur a cost initiated by the institution, its third-party servicer, or the third-party servicer's associated financial institution for at least 30 days following the date that title IV funds are deposited or transferred into the financial account offered pursuant to a T1 arrangement.

Proposed §668.164(e)(2)(iv) maintains the current requirement that an institution ensure that the financial account or access device is not marketed or portrayed as a credit card, and would further specify that the card not be converted to a credit instrument and that no fee is charged to the student or parent for any transaction that exceeds the balance on the card, regardless of whether the full amount of the transaction is established at the time the transaction is authorized by the financial institution.

Reasons: Over the past several years, a growing group of consumer advocates, higher education stakeholders, government agencies, and Members of Congress have raised concerns about the incidence, type, and frequency of fees assessed on cards offered to students under agreements with

third parties to receive their title IV credit balances.[116] The majority of funds paid to students are credit balance disbursements of title IV student aid, which is "intended to help students pay for nonschool items related to their education."[117] As USPIRG has stated, the amount of fees assessed to student aid recipients under these agreements is especially critical because not only are these funds taxpayer-provided, but "students receiving grant aid, such as the Pell grant, are mostly low-income students with a high level of need. Students taking out federal loans are primarily from low and moderate income backgrounds, paying interest on those funds."[118]

As noted previously, due to a number of factors, including changes made by the CARD Act and decreasing State support for higher education, to mitigate the cost and burden of disbursing title IV funds schools have increasingly opted to contract with third-party servicers. While institutions have saved money by outsourcing administrative functions, those savings may have been transferred as costs to students through fees that reduce their title IV aid balances. Indeed, Higher One has stated that about 50 percent of its $180 million in revenues for

[116] GAO at 1.
[117] Ibid. at 4.
[118] USPIRG at 15.

the year that ended December 31, 2011, came from account activity fees associated with one of its account offerings.[119]

There is also evidence that some students are incurring unreasonably high fees associated with these account offerings. Public comment the Department received in anticipation of the negotiated rulemaking sessions indicated that fees were unnecessarily high and reduced student aid intended to address costs of attendance. Staff from the FDIC have reported that some students have "complained of paying aggregate fees ranging from hundreds of dollars to more than $1,000," [120] and even isolated cases of high levels of fees can completely compromise the balance of funds intended to cover educationally related expenses. These and similar reports, including the legal actions resulting from third-party servicer behavior, have led groups like Consumers Union and USPIRG to recommend the total elimination of fees for campus cards.[121]

During negotiated rulemaking, the Department's proposals on the subject of allowable fees in particular generated significant disagreement among negotiators. Student representatives voiced support for the Department's

[119] OIG at 4.
[120] GAO at 23-24.
[121] USPIRG at 3.

approach prohibiting most fees, and asked that debit card "swipe" fees also be prohibited from being charged under institutional agreements with outside parties. Other negotiators disagreed with prohibitions on fees--particularly the provision requiring unlimited reimbursement to students for ATM surcharges. These negotiators stated that prohibiting institutions from allowing fees to be charged to students would ultimately be counterproductive because it would prevent providers from recovering their costs and drive them from the market. Consequently, institutions would be forced to adopt less efficient, more costly processes for making payments to students and these less efficient processes would affect students through tuition increases that would be more onerous to students than paying account fees set at fair market rates.

In sum, most negotiators expressed a preference for a framework that would: (1) allow a reasonable fee structure to remain in place, (2) not favor direct deposit to the point of preventing a student from selecting a more favorable sponsored account, and (3) present a clear set of options to allow students to make an informed choice.

The Department is sympathetic to the position advocated by consumer advocates and students. The intent

of title IV student aid is to give students the financial assistance necessary to help pay for their postsecondary education. The greater the number and amount of fees, the less money students will have to pay for educationally related expenses such as housing, books, supplies, and childcare. Title IV grant recipients are typically low-income individuals and these fees will disproportionately impact low-income students.

However, even financial accounts available to the general public are not truly free, and fees can often be difficult to avoid entirely. As OIG stated, "students who choose to receive their title IV funds by check or direct deposit to an existing account might incur fees or other costs to access and spend the funds once they have been delivered. Students who have their funds transferred to an existing bank account are subject to the fees charged by their financial institution based on account activity, whereas students who choose to receive their funds by check may incur check-cashing fees."[122] Furthermore, many of the providers of campus cards do not charge fees "higher than those associated with other banking products available to students,"[123] though as explained previously, certain

[122] OIG at 14.
[123] GAO at 15.

providers are more likely to do so, and have shown evidence of doing so, resulting in our differing treatment of T1 and T2 arrangements.

Perhaps the most disturbing aspects about fees charged to students are the complexity, obscurity, and confusing nature of certain fees that are charged. We believe that certain practices employed by institutional third party servicers are inconsistent with normal banking practices, or have damaging consequences to Federal student aid recipients, or both. We believe that absent targeted provisions addressing specific fee-related issues, students and parents that are offered financial accounts under T1 arrangements will continue to be subject to the alarming practices identified by government agencies and consumer groups that led to this rulemaking effort.

Under this approach, the Department is not prohibiting a financial institution from charging any particular fee; only that the contract negotiated by the institution and the servicer prohibit certain fees from being passed on or assessed to recipients of title IV aid who open accounts under a T1 arrangement. The institution and servicer would, as a part of normal contractual negotiations, bargain between themselves for services provided in full appreciation of the true costs being borne by all parties,

including the costs to the servicer and its associated financial institutions of complying with these regulatory provisions. Under title IV, the cost of paying students is a responsibility incident to the administration of the programs which the HEA entrusts to institutions. We believe this is an appropriate remedy for the acknowledged cost-shifting from institutions to students of title IV disbursement services.

ATM access

Current regulations require institutions to ensure that students have "convenient access" to their title IV funds through ATMs. GAO, OIG, USPIRG, and Consumers Union (among others) have recommended that the Department more clearly define convenient access, so that students "have meaningful ways to access their financial aid at no cost."[124] [125] Most financial institutions associate their debit or prepaid card to a regional or national ATM network, providing a level of convenience attributable largely to the total number of ATMs; for transactions on that network, there are no surcharges.[126]

However, the same level of access is not typically provided by third-party servicers, or their associated

[124] Consumers Union at 1.
[125] GAO at 35.
[126] Ibid. at 21.

financial institutions. For example, according to USPIRG, Higher One is responsible for disbursing title IV funds for about 520 schools, but with 700 ATMs in service,[127] the number of ATMs at a given location may be insufficient for students to have a reasonable opportunity to access their funds at the surcharge-free ATM. According to USPIRG and GAO, this can cause a "run" on surcharge-free ATMs, especially during periods when funds are generally disbursed to students, that can result in these ATMs running out of cash,[128] or causing dozens of students to line up to withdraw their money.[129] Aside from the security concerns associated with large groups of students withdrawing hundreds of dollars in cash at a single location, the lack of available surcharge-free ATMs can lead to unnecessary fees charged to students. When lines are long or ATMs run out of money, students are forced to incur out-of-network ATM fees, often at $5 per withdrawal.[130] These fees can quickly add up, especially for students who make multiple smaller withdrawals to carefully manage their funds on a tight budget.[131]

[127] USPIRG at 16.
[128] Ibid. at 17.
[129] GAO at 22.
[130] USPIRG 17.
[131] GAO at 21.

As noted previously, the common approach in the financial products market is to provide a network, either regional or national, of surcharge-free ATMs. Even third-party servicers who otherwise restrict surcharge-free access to a single ATM provide broader network coverage for a flat monthly fee,[132] indicating that such an approach is workable given existing market conditions. To help ensure reasonable access, ATMs located on campus must be sufficient in number and reasonably accessible, as determined and documented by the institution. Negotiators representing both servicers and the banking industry agreed that access to a surcharge-free network of ATMs was a common feature of most banking products, and a feasible approach to providing convenient access to funds. For these reasons, the proposed regulations require that accounts offered pursuant to a T1 arrangement provide access to such a network, enabling students and parents exercising ordinary care to have reasonable access to their student aid dollars.

Point-of-sale transaction fees

One of the more troubling fees assessed to students by third party servicers is what is known as a "point-of-sale

[132] Ibid. at 22.

swipe" fee or "PIN debit" fee (hereafter referred to as a PoS fee). This fee is distinct from the interchange fee charged to merchants on a per-sale basis as a charge for the service of fulfilling the credit card or debit card payment request. Instead, the PoS fee is charged to students by the institution's financial account provider as a surcharge for selecting the "debit" function and entering a PIN to complete a purchase, and charges no such surcharge for selecting the "credit" function and signing for their transaction. Each PoS fee is typically small--usually about $0.50[133]--but is objectionable for three reasons.

First, because most student cards are marketed or portrayed as a debit card or having functionality similar to a debit card, students are likely to believe that selecting the "debit" option is required to complete the transaction.[134] [135] They are unlikely to recognize that while the "debit" option results in a charge, the "credit" function does not.

Second, the PoS fee is excessive. The fee is assessed each time the student uses the card. Since one-third of all such transactions are for less than $15, the PoS fees are high relative to the cost of the purchase and can add

[133] Ibid. at 20.
[134] OIG at 13.
[135] GAO at 20.

up quickly with repeated charges.[136] Public comments to CFPB on financial products offered to students specifically reiterated these concerns.[137]

Third, PoS fees are uncommon outside of the third-party servicer realm. GAO found that "no basic or student account that we reviewed for comparison purposes charged a transaction fee for using the account's debit card."[138] Consumers Union, in a review of the banking products made available to students, found that PoS fees were atypical in the market--only two of the 16 products surveyed employed such a fee.[139] This makes such a fee unexpected and difficult for students to both anticipate and estimate when comparing prospective account options. It also suggests that some third-party servicers, by imposing onerous account terms, seek to take advantage of the unique position they occupy in administering title IV programs to put onerous terms in place, especially at the expense of often young and inexperienced students.

Third-party servicers and institutional officials told GAO, and reiterated during negotiations, that adjustment of student behavior can limit these charges: "students can

[136] Ibid.
[137] CFPB RFI.
[138] GAO at 20.
[139] Consumers Union at 11.

avoid fees in some cases by choosing to authorize debit transactions using a signature rather than a PIN ...."[140] However, it appears that the purpose of these charges is to encourage students to utilize the "credit" function when charging a transaction because the financial provider realizes a higher interchange fee when a debit card transaction is processed with a signature.[141] Again, however, regular accounts provided in the general banking market do not assess this fee.[142]

PoS fees have been actively identified as harmful to students in multiple reports because they are atypical, opaque, difficult for students to anticipate and compare with other account offerings, and are often disproportionate to the amount of the underlying financial transaction. Most importantly, it is feasible for schools and their third-party servicers to negotiate the terms of a contract such that any cost is not passed on to account holders. Indeed, that is precisely what was accomplished at one institution when students became aware of the charge and relayed their complaints to the institution's administration.[143]

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[140] GAO at 24.
[141] USPIRG at 33.
[142] Ibid. at 27.
[143] OIG at 14.

Overdraft fees

Overdraft fees are more common in the general banking market. Overdraft fees (sometimes also referred to as overdraft protection, transaction denial fees, or insufficient funds charges, among other designations) are assessed when an account holder attempts to charge a purchase on a card or other access device in excess of the outstanding balance of the account.

Historically, such fees were "ad hoc courtesies banks would occasionally provide customers; they were never intended to become a routinely administered, extremely high-cost credit product."[144] However, as these charges have become somewhat more common, more banks are allowing overdrafts and charging a fee, rather than denying the charge at the moment of attempted transaction.[145]

Nevertheless, these fees are not widely imposed across all sectors. CFPB's study of the prepaid card market indicated that of all prepaid card agreements surveyed, more than 95 percent did not extend overdraft service to their cards, indicating that not only is it possible to

[144] Center for Responsible Lending, "State of Lending: High-Cost Overdraft Practices." [Page 2](2013), available at www.responsiblelending.org/state-of-lending/reports/8-Overdrafts.pdf. With subsequent references "Center for Responsible Lending at [page number]."
[145] Center for Responsible Lending at 3.

remove such "protection" from a device or account, but it is already a widespread practice in this market segment.[146] And the imposition of these fees by some providers does not imply a lack of harm to the account holder: CFPB has found that the imposition of these fees by some providers has the "capacity to inflict serious economic harm."[147] CFPB has also determined that many consumers incur a significant amount of overdraft fees and that even those with "moderate" overdraft usage may pay hundreds of dollars annually.[148] Specifically, those who "frequently" overdraft and whose debit cards lost such functionality saved more than $450 annually compared to those who continued to receive overdraft services,[149] an amount that on its own would exhaust many students' entire credit balances. Communities of color, seniors, young adults, and military families may also be particularly susceptible to overdraft fees.[150]

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[146] Consumer Financial Protection Bureau. "Study of Prepaid Account Agreements." [Page 25] (2014), available at files.consumerfinance.gov/f/201411_cfpb_study-of-prepaid-account-agreements.pdf.

[147] CFPB. "Prepared Remarks, CFPB Roundtable on Overdraft Practices." (2012), available at www.consumerfinance.gov/speeches/prepared-remarks-by-richard-cordray-at-the-cfpb-roundtable-on-overdraft-practices/).

[148] CFPB. "CFPB Student of Overdraft Programs: A While Paper of Initial Findings." [Page 61](2013), available at files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf. With subsequent references "CFPB White Paper at [page number]."

[149] CFPB White Paper at 38.

[150] Center for Responsible Lending at 13.

The Federal Reserve has adjusted the overdraft fee to an "opt-in" service; however, consumers are likely to misunderstand information given to them on such processes and whether these "protections" are in their best interests.[151] [152] Furthermore, "a large majority of consumers" prefer that banks decline debit card overdrafts rather than approve them in exchange for the typical fee.[153] [154]

A number of practices around overdrafts are troubling and are likely to result in students incurring excessive fees to access their financial aid funds. Typically, the cost of the overdraft fee itself is as much as twice the underlying charge. The reasons for this are difficult to discern, especially because the banking provider can deny the transaction at no cost, rather than extending credit to the account holder.[155] In addition to the overdraft fee itself, some banks charge for negative account balances--so

[151] USPIRG at 32.
[152] Center for Responsible Lending. "Banks Collect Overdraft Opt-ins through Misleading Marketing." [Page 2](2011), available at www.responsiblelending.org/overdraft-loans/policy-legislation/regulators/banks-misleading-marketing.html).
[153] Center for Resposible Lending. "Consumers Want Informed Choice on Overdraft Fees and Banking Options."[Page 1] (2008), available at www.responsiblelending.org/overdraft-loans/research-analysis/final-caravan-survey-4-16-08.pdf.
[154] The Pew Center on the States, Safe Checking in the Electronic Age. (2012). Overdraft America: Confusion and Concern about Bank Practices. [Page 2] (2012),available at www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/SCIBOverdraft20America1pdf.pdf.
[155] Center for Responsible Lending at 3.

the fee is initially incurred at the time of the charge and then additional fees are charged for days or weeks thereafter.[156] One particularly troubling practice is the purposeful reordering of transactions to prioritize the charges that will place a customer's account in overdraft status. Then, each subsequent (and typically smaller) transaction incurs results in additional charges.[157]

Additionally, in 2012, Higher One settled a lawsuit with the FDIC, agreeing to return more than $10 million to students for account overcharges, including charging students multiple nonsufficient funds (NSF) fees for the same transaction.[158] [159]

As detailed above, the overdraft fees present the potential for significant costs and harm to students, especially because students are often among those most vulnerable to incurring such charges. However, in most cases, the remedy for such harm is simple and is already practiced by the vast majority of prepaid card providers. The financial institution has the opportunity to refuse the charge sought to be authorized.[160] [161] We understand that in

[156] USPIRG at 33.
[157] Center for Responsible Lending at 7.
[158] OIG at 13.
[159] FDIC at 1.
[160] USPIRG at 26.
[161] Center for Responsible Lending at 11.

limited circumstances there is a potential for a card issuer to be faced with, for example, a gratuity that exceeds the balance on the card even though the account contained sufficient funds to pay the initial charge when authorized, but the draft regulations would not create any exception to the ban on overdraft fees to address such situations. Instead, the proposed regulations would leave the card issuer responsible for placing such limits on its authorization process that it may believe necessary, if any, to address these situations, rather than permitting imposition of insufficient funds fees that deplete students' and parents' title IV credit balances. We believe deficiencies in the authorization process should not trigger a fee assessed to a student, though we acknowledge that the student is responsible for paying any balance due.

30 days free access to funds

As explained above, we recognize that, generally, institutions will charge account holders some fees, either on a regular basis or in response to specific behaviors. We have sought to address the three specific types of fees based on the impediments they pose for students seeking access to the title IV aid to which the students are entitled. We believe that these three types of fees are

particularly onerous, difficult to understand and anticipate, or uncommon. The unifying characteristic of the proposed regulations addressing these specific fees is to give students a reasonable opportunity to access their full title IV credit balance refund--which is statutorily determined as the amount intended to provide the means by which to pay for the costs of attending the institution. The proposed regulation barring servicers or their associated financial institutions from assessing a fee for 30 days following the receipt of title IV funds is also consistent with our objective of affording students and parents a reasonable opportunity to access their full title IV credit balance.

As recommended by USPIRG, we believe aid recipients should particularly be able to access their title IV funds during the period immediately following disbursement, when they are most likely to need funds to cover educationally related expenses, without charge.[162] We emphasize that this is not a blanket prohibition on fees of any kind being assessed to the account. For example, if a student uses an out-of-network ATM, a servicer or its associated financial institution may not have control over a fee assessed by the

[162] USPIRG at 25.

owner of that ATM. Instead, this provision only prevents a student from incurring a cost initiated by the servicer or its associated financial institution. During negotiations, many non-Federal negotiators agreed that a fixed period of time following the disbursement of funds was an acceptable compromise, giving students a reasonable opportunity to receive their title IV funds; the use of the account after that period would then be subject to fees as a cost of using the account. We specifically invite comment on whether 30 days following a disbursement is an appropriate timeframe to allow a title IV aid recipient an opportunity to reasonably access aid dollars free of charge.

Finally, we emphasize that we do not intend these fee provisions to discourage institutions from negotiating even more favorable arrangements that provide students and parents with better account terms. We believe that institutions should use their considerable negotiating leverage to get the most favorable offerings on behalf of those they serve.

Disclosure of contracts for T1 and T2 arrangements ((§668.164(e)(2)(v) and (§668.164(f)(4)(iii))

Current Regulations: None.

Proposed Regulations: In both §668.164(e)(2)(v)(A) and §668.164(f)(4)(iii)(A), we propose to amend our regulations

to state that, under both T1 and T2 arrangements, no later than 60 days after the most recently completed award year, an institution must provide to the Secretary and disclose conspicuously on the institution's Web site the contract between the institution and financial institution (or, with respect to paragraph (e)(2)(v)(A), its third-party servicer) in its entirety, except for any portions that, if disclosed, would compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities.

Reasons: Throughout the process of developing these proposed regulations, outside parties informed us that a major problem with studying the impact of college financial agreements is the lack of transparency surrounding those agreements. As a result, USPIRG, GAO, Consumers Union, and NACUBO have all recommended that these agreements or contracts be made available to the public.

During negotiated rulemaking, several negotiators urged the Department to "issue regulations that require schools to publically disclose the terms of such arrangements, as well as the method and criteria used by the school in selecting the partner financial services

company."[163] Because we agreed, we presented draft language to the negotiators containing provisions requiring an institution to post the contract on its Web site.

However, not all negotiators agreed with the Department's position that the full contract should be available on the institution's Web site. Negotiators representing financial institutions and third-party servicers argued that "disclosure of [the] contract documents would potentially damage competition by making public critical proprietary information, and would create security concerns where, as is often the case, a servicer's technical system specifications and processes were appended to or otherwise included in the contract document."[164] These negotiators also reasoned that a summary of the terms would be sufficient to achieve the transparency that negotiators representing students, consumer advocates, and State attorneys general desired.

While we are sensitive to the concerns raised by third-party servicers and financial institutions, there is evidence that releasing the complete contract would not

[163] Fast and Wojewoda. Memo to Negotiated Rulemaking Committee. [Page 3] (2014), available at www2.ed.gov/policy/highered/reg/hearulemaking/2014/pii2-fast1-cashmgmt.pdf.

[164] Kundert, Levandowski, McGuane, and Norwood May 1,2014 Memo at 11.

result in the negative outcomes cited. In a 2012 NACUBO survey, 55 percent of the responding institutions that contracted with a third-party vendor indicated that their agreements are publically available, and that these agreements are most likely accessible through public records requests (39 percent) or by written request to a specific office on campus (33 percent).[165] As for institutions with banking agreements, "[t]he details of agreements between banks and institutions are publicly available at 69 percent of participating institutions, with contract documents accessible through written request to a specified campus department or office (46 percent) or through an official public records request (26 percent)."[166]

Although this survey was only sent to 2,036 institutions with 412 responding, we believe it makes the important point that institutions are already releasing contracts without damaging consequences. Given that third-party servicers and financial institutions continue to contract with institutions that make their agreements available to the public in various ways, we believe that disclosing those agreements is not harmful and is likely to enhance rather than inhibit competition.

[165] NACUBO at 3.
[166] Ibid. at 4.

However, to address the concerns raised by third-party servicers and financial institutions, our proposed regulations, like the final proposal distributed during negotiated rulemaking, would create an exemption for any provision of the contract that would compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities and would permit the parties to the contract to redact such information. We believe that exempting these provisions from public disclosure will safeguard proprietary and security-related information while also creating the transparency that many advocates have called for.

Disclosure of contract summaries for T1 and T2 arrangements (§668.164(e)(2)(v)(B), (e)(2)(v)(C), (f)(4)(iii)(B), and (f)(4)(iii)(C))

Current Regulations: None.

Proposed Regulations: In §668.164(e)(2)(v)(B), §668.164(e)(2)(v)(C), §668.164(f)(4)(iii)(B), and §668.164(f)(4)(iii)(C), we propose to amend our regulations to state that, under a T1 or T2 arrangement, no later than 60 days after the most recently completed award year, an institution must provide to the Secretary and disclose conspicuously on its Web site the total consideration for

the most recently completed award year, monetary and non-monetary, paid or received by the parties under the terms of the contract, the number of students and parents who had financial accounts under the contract at any time during the most recently completed award year, and the mean and median of the actual costs incurred by those account holders.

Reasons: Complicating the issue of the lack of transparency regarding agreements between third-party servicers or financial institutions and institutions is the fact that, as referenced in the GAO report, " ... little information is available on the frequency with which students incur ATM, PIN, and other fees, and the total amount of college card fees paid by students is unknown."[167] Additionally, in an August 2014 report, Consumers Union stated that "[s]ummaries of key contract provisions, including fees and revenue-sharing agreements, should be prominently and publicly disclosed on school websites."[168] Furthermore, OIG recommended that the Department "[d]evelop regulations that require schools to compute the average cost incurred by students who establish an account with the

[167] GAO at 23.
[168] Consumers Union at 20.

servicer and at least annually disclose this fee information to students."[169]

During negotiations, non-Federal negotiators representing students and State attorneys general also encouraged the Department to add a provision requiring the release of a summary of the contract and "include in the summary form the fees imposed on sponsored accounts, the actual payments made in connection with the agreement, and the value of in-kind services provided to schools by third-party providers."[170] Many negotiators also argued that, in many cases, a summary of the terms of the contract and the fees that a student or parent incurred could be more useful to individual consumers than the release of the full contract, and there was little contention over the idea that a summary of the contract could be released.

As a result of these discussions, the final draft of the Department's proposal circulated at the fourth session contained a provision that would have required the disclosure of a contract summary. This latter draft would have required institutions to disclose the name of the

[169] OIG at 15.

[170] Lindstrom and Martindale. "Memo to Negotiated Rulemaking Committee." [Page 2] (2014), available at http://www2.ed.gov/policy/highered/reg/hearulemaking/2014/pii3-lind-mart-cashmgmt-040214.pdf. With subsequent references "Lindstrom and Martindale April 2 Memo at [page number]."

financial institution offering the account and the third-party servicer or other parties involved in opening or enabling the account; whether the contract or arrangement provided for revenue sharing or royalty payments, and, if so, the nature and amount of that compensation; whether the account was a checking account, prepaid debit card, or other type of account; any fees or charges associated with the account; the number of allowable out-of-network surcharge-free ATM transactions; the network of surcharge-free ATMs available, indicating all the names associated with the network, the approximate number of available ATMs in that network both nationally and locally, and the number and location of surcharge-free ATMs on campus (if any) and their hours of accessibility, and a publicly accessible online ATM locator to search for in-network ATMs; and the total number of students and parents with an account and the average amount of fees paid by students and parents who had the account during the most recently completed award year or twelve-month period.

However, to reduce burden on institutions, we propose in these regulations that an institution must only provide to the Secretary, with respect to a contract summary provided under a T1 or T2 arrangement:

- The total consideration for the most recently completed award year, monetary and non-monetary, paid or received by the parties under the terms of the contract;
- The number of students and parents who had financial accounts under the contract at any time during the most recently completed award year; and
- The mean and median of the actual costs incurred by those account holders.

We believe that these proposed disclosures address the transparency issues raised by GAO, OIG, and others since the key information most commonly called for by advocates will now be available to the public, as well as the full contract, except for the redactions allowed, none of which concern consumer information.

Publication of contracts and contract summaries in a centralized database

Current Regulations: None.

Proposed Regulations: Proposed §664.164(e)(2)(vi) and §664.164(f)(4)(iv) require institutions to submit the URL of the Web page where the contracts and contract summaries are posted to the Secretary. The Secretary will then make those URLs publicly available.

Reasons: During negotiated rulemaking, non-Federal negotiators argued that "transparency through centrally

collecting the contracts is necessary to ensure compliance issues, to empower colleges to negotiate even better deals for students over time, and to track trends that may elude the individual consumer."[171] Consumers Union has also called for the submission of "full campus banking contracts and the accompanying summaries to the Department for collection in a publicly-accessible central database,"[172] and USPIRG has stated that contracts with third-party servicers "should always be publically available in an easily accessible database."[173] We agree with the non-Federal negotiators, Consumers Union, and USPIRG regarding the importance of a centralized database containing each institution's URL where contracts and their summaries are posted, and we have added this provision to the proposed regulations.

Best financial interests of account holders (§668.164(e)(2)(vi)-(vii) and §668.164(f)(4)(vi) -(vii))

Current Regulations: Current §668.82(a) states that a participating institution or a third-party servicer that contracts with that institution acts in the nature of a

[171] Lindstrom. Memo to Negotiated Rulemaking Committee. [Page 2] (2014), available at www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html. With subsequent references "Lindstrom April 22, 2014 Memo [page number]."
[172] Consumers Union at 20.
[173] USPIRG at 30.

fiduciary in the administration of the title IV, HEA programs. To participate in any title IV, HEA program, the institution or its servicer must at all times act with the competency and integrity necessary to qualify as a fiduciary.

Current §668.14(b)(4) requires that a school establish and maintain such administrative and fiscal procedures and records as may be necessary to ensure proper and efficient administration of funds received from the Secretary or from students under the title IV, HEA programs.

Proposed Regulations: Proposed §668.164(e)(2)(vi) and §668.164(f)(4)(vi) would require institutions that have a T1 or T2 arrangement to ensure that the terms of accounts offered under such arrangements are not inconsistent with the best financial interests of the students and parents opening them. To comply with this provision, an institution would be required to meet three requirements: (1) it must document that it periodically conducts reasonable due diligence reviews to ascertain whether the fees imposed under the arrangement are, considered as a whole, not excessive in light of prevailing market rates; (2) it must ensure that all contracts for the marketing or offering of accounts to the institution's students or parents, pursuant to a T1 or T2 arrangement, provide that

the institution may terminate the arrangement based on complaints received or a determination that the fees imposed under the arrangement are excessive; and (3) it must take affirmative steps, including contractual arrangements if necessary, to ensure the requirements of proposed §668.164 are met.

Reasons: The preceding sections of the preamble discussion have documented a wide range of troubling practices by some institutions and their associated financial entities. However, the practices themselves are not the only disturbing aspect of the proliferation of campus card agreements--so too are the motivations that have led to the agreements, especially given the role of institutions as the conduits for payment of Federal funds awarded to students.

The GAO stated that it remains concerned that benefits to institutions, especially in the form of contractual remuneration, may "motivate schools to encourage the use of college cards or potentially choose the arrangement that provides the schools the most revenue rather than one that provides students the best terms."[174] We believe that a school entering into such arrangements should not be

[174] GAO at 29.

prohibited from realizing benefits; however, the pursuit of any such benefits must be subordinate to serving the best financial interests of the students and parents opening the accounts. Absent a requirement for schools to negotiate with the best interests of students in mind, we believe that agreements between institutions and servicers pose potential conflicts of interest that could encourage institutions to prioritize revenue or other benefits "at the expense of student interests."[175]

The failure on the part of some institutions to negotiate arrangements that serve the best financial interests of the students opening the accounts is troubling. At the institutions it reviewed, OIG found that officials did not even attempt to negotiate better terms on behalf of their students and instead accepted the preexisting fee schedules offered by the financial account providers. In justifying this approach, officials stated that they felt a student's relationship with a financial institution was separate from the relationship with the institution.[176] Considering the practices identified in the student and parent choice section of the preamble and given the fact that many students assume that the co-branding of

[175] OIG at 5.
[176] Ibid. at 14.

an access device implies an institutional endorsement, we think this "separate relationship" presumption is incorrect. Choosing not to negotiate on behalf of students while enjoying the remuneration from financial account providers takes advantage of the institution's position as a conduit for Federal payments to the benefit of the institution and the financial institution, and at the expense of inexperienced students' and contrary to the institution's fiduciary role.

We are confident that postsecondary institutions can negotiate appropriate terms on behalf of their students, especially for products intended to be marketed to title IV recipients. Indeed, one of the institutions reviewed by OIG that initially declined to negotiate better terms on behalf of its students later did so after receiving numerous student complaints about PoS fees; after negotiations, the school was able to successfully eliminate PoS fees for students.[177]

This institution's experience helps to substantiate USPIRG's argument that colleges have an advantageous negotiating position because they control access to a lucrative student market--and they therefore have the

[177] Ibid.

ability to negotiate on behalf of their students.[178] In a NACUBO survey released following the USPIRG report, about 77 percent of institutions said they do consider fees when selecting their vendor and about 60 percent said they use a competitive bidding process.[179] While this is not a universal practice (and indeed, its absence on some campuses may explain the different fees students at various institutions face), the relatively high proportion of institutions that engage in a competitive bidding process would indicate that this is a practice all institutions could engage in with little additional burden.

Finally, in an effort to address this problem during negotiated rulemaking, negotiators representing State attorneys general submitted a proposal to require "institutions to base decisions to enter into such arrangements solely on consideration of the best interest of students,"[180] believing that this "would help to address possible unforeseen changes in the industry by ensuring that no matter what financial services or products are offered, schools place students' best interests above the

[178] USPIRG at 24.
[179] NACUBO at 2.
[180] Fast and Wojewoda." Memo to Negotiated Rulemaking Committee." [Page 1] (2014), available at www2.ed.gov/policy/highered/reg/hearulemaking/2014/pii3-fast-cashmgmt-04022014.pdf. With subsequent references "Fast and Wojewoda April 2 Memo [page number]."

schools' interests."[181] We agree, but we also believe that institutions need and deserve guidance as to what is expected of them under such a standard. In that regard, the proposed regulations would require institutions to conduct, at reasonable intervals, a due diligence review of the fees assessed at reasonable intervals, while leaving flexibility as to the particular types and amounts of charges entailed as long as the account is competitive in its financial terms overall. The proposed regulations are also designed to remove contractual impediments to ensure that arrangements serve the best financial interests of student account holders. Specifically, they would ensure an opportunity for early termination of an arrangement where the financial institution has failed to provide a competitive fee structure or has otherwise provoked substantial complaints from student and parent account holders. The proposed regulations are also designed to prevent the wholesale delegation of institutional responsibilities to contractors, so that institutions remain accountable. We believe that regulations requiring institutions to consider the best financial interests of students when evaluating their T1 and T2 arrangements can

[181] Ibid.

serve as a useful tool in eliminating many troubling practices. We invite comment on the methods proposed to evaluate whether a T1 or T2 arrangement is or remains in the best financial interests of students and invite comment on alternative methods that accomplish this objective.

Ownership of student or parent financial accounts ((§668.164(g))

Current Regulations: None.

Proposed Regulations: The proposed regulations would require institutions that offer financial accounts offered pursuant to T1 or T2 arrangements to ensure that those financial accounts meet the requirements of either 31 CFR 210.5(a) or (b)(5), as applicable.

Reasons: The cross-referenced Treasury regulations require that an Automated Clearing House "federal payment," defined in such a way as to include payment by EFT of title IV funds to parents and students, be deposited in a deposit account that is either in the name of the recipient, or, if the recipient accesses the funds by prepaid card, meets the following requirements:

(A) The account is held at an insured financial institution;

(B) The account is set up to meet the requirements for deposit insurance under 12 CFR Part 330, or share

insurance in accordance with 12 CFR Part 745, such that the funds accessible through the card are insured for the benefit of the parent or student by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund;

(C) The account is not attached to a line of credit or loan agreement under which repayment from the account is triggered upon delivery of the Federal payments; and

(D) The issuer of the card complies with all of the requirements, and provides the holder of the card with all of the consumer protections, that apply to a payroll card account under the rules implementing the Electronic Fund Transfer Act, as amended.

While the requirements under 31 CFR 210.5 pertain specifically to federal payments made through the Automated Clearing House network, we believe that to ensure such protections are extended to students, they should apply to all financial accounts an institution includes in its student choice process under proposed paragraph §668.164(d).

Retroactive payments (§668.164(k))

Current Regulations: None.

Proposed Regulations: Proposed §668.164(k) provides that if an institution did not make a disbursement to a student

who was enrolled and eligible for a payment period the student completed in the current year or loan period (for example, because of an administrative delay or a delay in processing or receiving the student's ISIR), the institution may make the disbursement to the student for a payment period in the current year or loan period.

Reasons: A student should receive all the title IV, HEA program funds he or she is eligible to receive for the current year or loan period, despite any delays in disbursing those funds to the student. These provisions codify in regulations existing Department and institutional practices.

Student or parent authorizations (§668.165)

Current Regulations: Current §668.165(b)(1)(ii) provides that the Secretary may prohibit an institution from obtaining a student's or parent's authorization to hold credit balance funds if the institution receives title IV, HEA program funds under the reimbursement or cash monitoring payment methods. With the student's or parent's written authorization, an institution that is not prohibited from holding credit balance funds may issue a stored-value card or other similar device that allows the student or parent to access those funds at his or her discretion to pay for educationally related expenses.

Proposed Regulations: Proposed §668.165(b)(1)(ii) specifies that when the Secretary provides title IV, HEA program funds to an institution placed on the reimbursement payment method or the heightened cash monitoring payment method described in §668.162(c)(2) or §668.162(d)(2), respectively, the institution may not hold credit balance funds.

Reasons: As discussed more fully under the heading "Reimbursement and cash monitoring payment methods," an institution that receives title IV, HEA program funds under the reimbursement or heightened cash monitoring payment method must show that it paid any credit balances due to students and parents before the Department approves the institution's request for reimbursement. Because the Department typically places an institution on reimbursement or heightened cash monitoring for material financial or compliance issues, we do not believe it is appropriate to allow that institution to circumvent the requirement that it directly pay credit balances to students and parents by obtaining authorizations to hold those credit balance funds. We note that this is prohibition would apply uniformly to all affected institutions, rather than only those institutions notified by the Secretary.

Severability (§668.167)

Current Regulations: None.

Proposed Regulations: Proposed §668.167 would make clear that, if any part of the proposed regulations is held invalid by a court, the remainder would still be in effect.

Reasons: We believe that each of the proposed provisions discussed in this preamble serves one or more important, related, but distinct, purposes. Each of the requirements provides value to students, prospective students, and their families, to the public, taxpayers, and the Government, and to institutions separate from, and in addition to, the value provided by the other requirements. To best serve these purposes, we would include this administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Retaking coursework (§668.2)

Current Regulations: The definition of "full-time student" in current §668.2 allows repeated coursework to count towards a student's enrollment status in a term-based program, but does not allow an institution to include either more than one repetition of a previously passed

course or any repetition of previously passed coursework due to a student's failure of other coursework.

Proposed Regulations: Proposed §668.2 would eliminate the provision in the current regulations that prohibits an institution from counting for enrollment purposes any courses that a student previously passed if the student retakes those courses in the same term in which the student repeats a failed course. The proposed regulation would apply to undergraduate, graduate, and professional students.

Reasons: On October 29, 2010, we published in the Federal Register final regulations (75 FR 66832), which included the definition of "full-time student" described above. After we published these regulations, institutions with medical, dental, and other similar graduate or professional programs asked whether the limitations on repeated coursework applied to programs above the undergraduate level, noting that students enrolled in these program were often required to repeat the coursework for an entire term if they failed just one course in that term. They also pointed out that students in these programs are only eligible for unsubsidized loans and that denying Federal aid to these students while they were repeating all coursework in the term would result in students relying on

less desirable private education loans or withdrawing from these programs.

During the negotiated rulemaking process, some non-Federal negotiators recommended the Department clarify existing regulations for repeating coursework and supported limiting the applicability of the regulations to undergraduate students only. However, other non-Federal negotiators were concerned that, due to the high standards some graduate schools impose on their students, the limitations on retaking coursework should apply to graduate students as well. Based upon these discussions and the recommendations of some of the non-Federal negotiators, the Department proposed to allow an institution to count all of the coursework for a student, at all program levels, who is enrolled in a program using an integrated curriculum that requires a student who failed one course to retake both the failed course and all previously passed coursework to academically progress in the program. The current prohibition against counting more than one repetition of a previously passed course would remain.

The Department also clarified that the revised regulation would apply to undergraduate, graduate, and professional students.

The Department received tentative agreement from all members of the negotiating committee on the proposed changes to the regulations.

Clock-to-credit hour conversion (§668.8(k))

Current Regulations: Under §668.8(k)(1), certain undergraduate educational institutions are required to use a specified clock-to-credit hour formula to determine the number of credit hours in a program. However, even if a program is offered in credit hours and the number of credit hours in the program is determined in accordance with the conversion formula in §668.8(l), the program must still be treated as a clock hour program for title IV, HEA purposes under §668.8(k)(2) if (1) it is required to measure student progress in clock hours to receive State or Federal approval or licensure to offer the program, or for graduates to apply for licensure or the authorization to practice the occupation that the student is intending to pursue, (2) the credit hours in the program do not comply with the definition of a "credit hour" in 34 CFR 600.2, or (3) the institution does not offer all the underlying clock hours that are the basis for the credit hours and generally requires attendance in the clock hours that are the basis for the credit hours awarded.

Under §668.8(k)(3), the Federal and State approval provisions in §668.8(k)(2)(i) that make a program a clock hour program do not apply if the program has a State or Federal approval or licensure requirement that a limited component of the program must include a practicum, internship, or clinical experience that is required to be measured in clock hours.

Proposed Regulations: We are proposing to eliminate §§668.8(k)(2) and (k)(3), and to make a conforming change in §668.8(l), to streamline the requirements governing clock-to-credit hour conversions, mitigate confusion about whether a program is a clock or credit hour program for title IV, HEA program purposes, and remove the provisions under which a State or Federal approval or licensure action could cause the program to be measured in clock hours.

Reasons: The Department has received many questions regarding the clock/credit hour regulations, particularly as they relate to State requirements. We do not wish or intend to interfere with State requirements relating to program delivery or the number of credit or clock hours a State recognizes or requires for its purposes. For title IV, HEA program purposes, we believe that the conversion formula alone is sufficient to ensure that clock hours are appropriately converted to credit hours without regard to

any State requirement or role in approving or licensing a program. In addition, eliminating these provisions simplifies the regulations. The negotiators reached tentative agreement on the regulatory language in §668.8(k), as well as on the conforming change in proposed §668.8(l).

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Introduction

As more colleges and universities enter into agreements with financial institutions and third-party servicers to assist in the disbursement of financial aid to students, we believe it is necessary to address the troubling practices discussed more fully in the preamble. Concerns regarding the marketing strategies, lack of transparency, and financial incentives contained in contractual relationships between colleges and universities and financial institutions have arisen as colleges adopt new strategies to save costs. We propose to amend the current cash management regulations to address this changing marketplace. By doing so, the Department believes that these current arrangements, along with future arrangements, will be more beneficial and transparent to students and other parties.

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as

user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory

requirements and those we have determined as necessary for administering the Department's programs and activities.

This Regulatory Impact Analysis is divided into six sections. The "Need for Regulatory Action" section discusses why amending the current regulations is necessary.

The "Summary of Proposed Regulations" briefly describes the amended changes the Department is proposing in these regulations. The proposed regulations amend the cash management regulations, along with two issues unrelated to cash management: retaking coursework and clock-to-credit-hour conversion.

The "Discussion of Costs, Benefits, and Transfers" section considers the cost and benefit implications of the proposed regulations for students, parents, financial institutions, and postsecondary institutions. Specifically, we considered the costs and benefits of interest-bearing bank accounts, accounts offered under T1 and T2 arrangements, retaking coursework, and clock-to-credit-hour conversion.

Under "Net Budget Impacts," the Department presents its estimate that the proposed regulations would not have a significant net budget impact on the Federal government.

In "Alternatives Considered," we describe other approaches the Department considered for key provisions of the proposed regulations, including prohibiting an institution from including books and supplies as part of tuition and fees; requiring an institution to obtain consent to open an account before sharing the student's or parent's information with a servicer; allowing an institution to send a debit card, prepaid card, or access device associated with the account to a student or parent only after the student or parent specifically requests it after providing consent to open an account; and additional disclosures relating to contracts between postsecondary institutions and financial institutions.

Finally, the "Initial Regulatory Flexibility Analysis" considers the effect of the proposed regulations on small entities.

Need for Regulatory Action

Executive Order 12866 emphasizes that "Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people." In this case, there is

indeed a compelling public need for regulation. The Department's main goal in promulgating the proposed regulations is to address major concerns regarding the rapidly changing financial aid marketplace wherein financial products are offered to students who receive title IV, HEA credit balances.

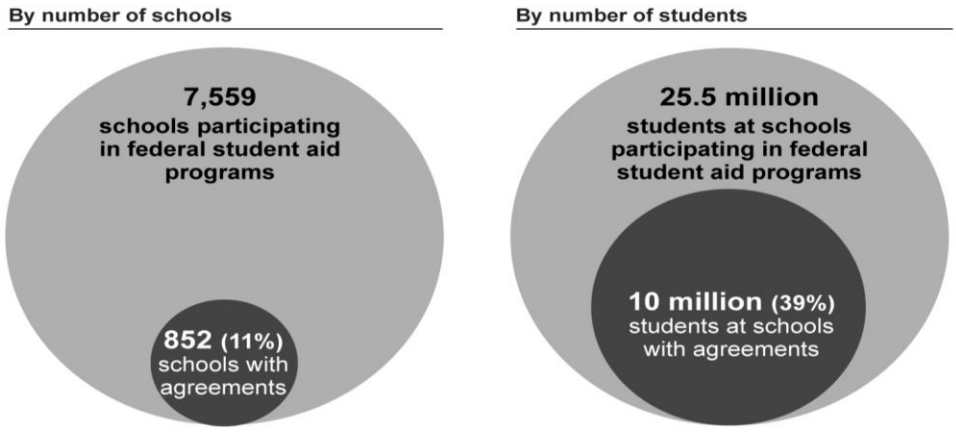
Several changes in the student financial aid marketplace make the proposed regulations necessary. The number of institutions entering into these agreements continues to increase. For institutions, these agreements save money on administrative costs that they would otherwise incur in disbursing title IV credit balances to students. While a convenient option, we are concerned about some of the practices employed by financial institutions and third-party servicers in connection with these agreements. Some of these practices include requiring or giving preference to college card accounts over preexisting accounts, implying that the only way to receive Federal student aid is through college card accounts, allowing private student information to be made available to card providers without student consent, and imposing uncommon and confusing fees on aid recipients accessing their funds. These practices, along with others

discussed in the preamble, reduce the amount of title IV aid available for educational expenses.

These practices are particularly disturbing because of the number of students impacted. While data on credit card agreements and credit balances is scarce, a GAO report from July 2013 identified 852 postsecondary institutions (11 percent of all schools that participate in the title IV programs) that had college card agreements in place. While 11 percent is a small percentage of total title IV participating schools, these schools had large enrollments, making up about 39 percent of all students at schools participating in title IV programs.[182]

Chart 1: College Card Agreements by Number of Schools and Number of Students that Participate in Federal Student Aid Programs.[183]

[182] GAO at 9.
[183] Ibid. at 10.

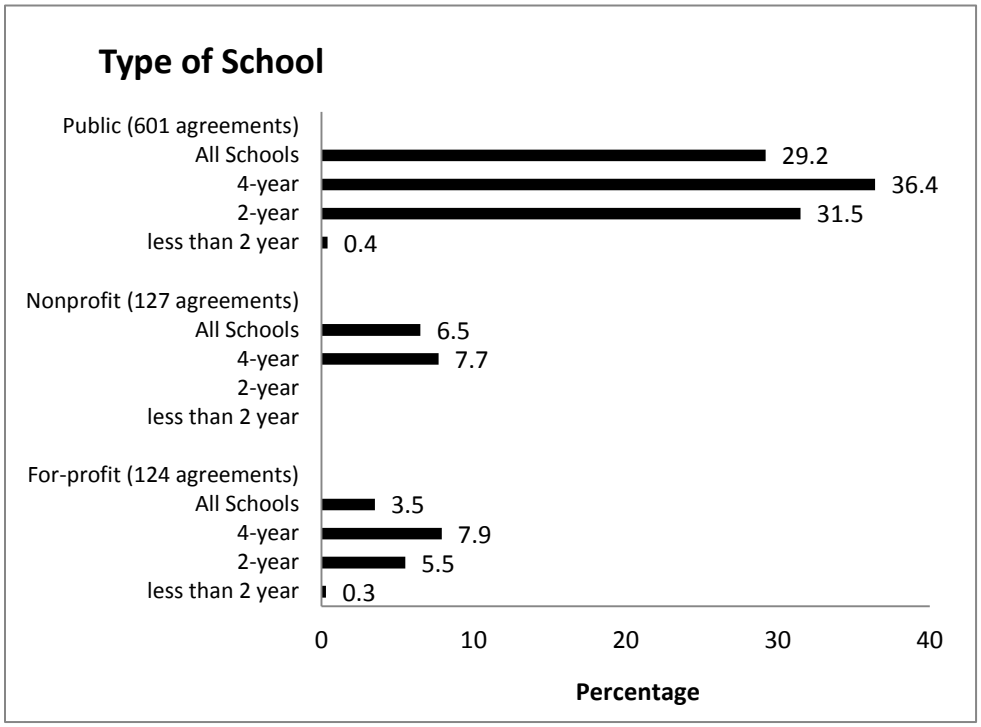


The GAO report also found that college card agreements were most common at public postsecondary institutions, where 29 percent of public schools had card agreements compared to not-for-profit schools with 6.5 percent and for-profit schools with 3.5 percent (see table [1]). Comprehensive data do not currently exist for the number of students who choose to enroll in a college card. However, the GAO report found that public two-year institutions represented almost half of all schools that used college cards to make financial aid payments.[184] Public two-year institutions' students are most likely to receive a financial aid payment (credit balance) due to the low tuition and fees deducted from total aid received.

Table 1: Percentage of Schools with College Card Agreements by Sector and Program Length, as of

[184] Ibid.

July 2013.[185]



Given the number of students affected by college card agreements, according to the data available, the questionable practices of the providers, and the amount of Federal funds at stake, we believe amending the regulations governing title IV student aid disbursement is warranted. We welcome public comments on comprehensive data sources or data sources on financial institutions and third-party servicers that may be available for further analysis.

Summary of Proposed Regulations

[185] Ibid. at 11.

The Department proposes to amend the cash management regulations under subpart K and other sections of the Student Assistance General Provisions regulations issued under the HEA. The proposed regulations are intended to ensure students have convenient access to their title IV, HEA program funds, do not incur unreasonable and uncommon financial account fees for accessing their title IV funds, and are not led to believe they must open a particular financial account to receive their Federal student aid. In addition, the proposed regulations update other provisions in the cash management regulations under subpart K and otherwise amend the Student Assistance General Provisions. We also propose to clarify how previously passed coursework is treated for title IV eligibility purposes and streamline the requirements for converting clock hours to credit hours. The table below briefly summarizes the major provisions of the proposed regulations.

Provision	**Reg Section**	**Description of Provision**	
		T1	**T2**
Defines T1 and T2 arrangements between institutions and financial account providers	§668.164(e) §668.164(f)	Arrangement between an institution and a third-party servicer that performs one or more of the functions associated with processing direct payments of title IV funds on behalf of the institution	Arrangement between an institution and a financial institution or an entity allied with a financial institution under which financial accounts are offered

		and that offers one or more financial accounts to students and parents	and marketed directly to students or their parents
Fee mitigation	§668.164(e)(2)(iii)(B)(2) §668.164(e)(2)(iv)	Prohibits point-of-sale and overdraft fees	Not Applicable
		Applicable to Entities with T1 or T2 Arrangements	
Reasonable access to funds	§668.164(c)(3) §668.164(e)(2)(iii)(A)	Requires reasonable access to surcharge-free ATMs or a surcharge-free ATM network	
Student choice process	§668.164(d)(4)(i)	Requires institutions to establish a student choice process that: • Prohibits institution from requiring students or parents to open a specific financial account to receive credit balances • Provides the student a list of options for receiving credit balance funds with each option presented in a neutral manner • Lists pre-existing accounts as the first, most prominent, and default option • Establishes that an aid recipient has the right to receive funds to pre-existing accounts • Specifies that electronic payments made to pre-existing accounts are as timely as and no more onerous than payments made to another account on the list of options	
Consent to open account	§668.164(e)(2)(i) and (f)(4)(i)	Student or parental consent required to open account and before: • Providing information about student or parent to financial account provider • Sending access device to student or parent • Associating student ID with a financial account	

Contract disclosure	§668.164(e)(2)(V)(A) §668.164(f)(4)(iii)(A)	Public disclosure of contracts governing arrangements and related cost information
Contract interpretation		Requires institutions to establish and evaluate T1 and T2 arrangements in light of the best interests of students
		Additional Provisions
Secretary's reservation of right		Confirms that the Secretary reserves the right to establish a method for directly paying credit balances to student aid recipients
Retention of interest on accounts holding title IV funds	§668.163	Increases from $250 to $500 the amount of interest accrued in accounts holding title IV funds non-Federal entities are allowed to retain annually
Retaking coursework	§668.2	Eliminates, for all program levels, the prohibition on counting towards enrollment repeated courses taken in the same term in which the student repeats a failed course. The current prohibition against counting more than one repetition of a previously passed course would remain.
Clock-to-credit-hour conversion	§668.8(k)	Eliminates §668.8(k)(2) and (k)(3) and makes a conforming change in §668.8(l), to streamline the requirements governing clock-to-credit-hour conversions, mitigate confusion about whether a program is a clock- or credit-hour program for title IV, HEA program purposes, and remove the provisions under which a State or Federal approval or licensure action could cause the program to be measured in clock hours.

Discussion of Costs, Benefits, and Transfers

We expect the effects of the proposed regulations would include improved information to facilitate consumer choice of financial accounts for receiving title IV credit balance funds, reasonable access to title IV funds without fees, a transfer of some types of fee income among students, institutions, and financial institutions, updated cash management rules to reflect current practices, streamlined rules for clock-to-credit-hour conversion, and the ability of students to receive title IV funds for repeat coursework in certain term programs. Students, institutions, and third-party servicers and the financial institutions that have contractual relationships described as T1 and T2 arrangements would be most affected by the proposed regulations.

Data and Methodology

In an attempt to quantify some of the costs and to reduce the burden associated with the proposed regulations, the Department analyzed its own data to estimate the prevalence of credit balances. While there may be instances where financial institutions have an agreement with a postsecondary institution to offer college card accounts to students who do not receive credit balances, the proposed regulations focus on accounts offered under T1 or T2 arrangements where students have a credit balance.

While comprehensive data on the number of students who receive credit balances on a college card do not currently exist, we attempted to calculate the incidence and distribution of credit balance recipients. We analyzed the data maintained by the Department to estimate the number of students who would potentially be affected by the proposed regulations and to evaluate whether, in order to reduce burden, we could establish a de minimis threshold below which an institution would not be subject to the T2 requirements by analyzing the percentage of students with a credit balance at various institutions.

The numbers of students who received title IV aid in the 2013-2014 school year (from the National Student Loan Data System (NSLDS) of the Department's Office of Federal Student Aid (FSA)) were matched by institution to data from the Integrated Postsecondary Education Data System (IPEDS) for tuition, fees, and room and board. The credit balance calculation established an institutional cost that included an estimated average tuition, fees, and room and board amount (which took into account the percentage of students who lived in-district, in-state, and out of state for tuition and fees expense, and the percentage of students who lived on-campus for room and board charges). Aid recipients were grouped by the amount of aid received

(rounded into $500 ranges). For each institution, the students in the aid ranges above the estimated institutional cost were considered to have a credit balance. We then used the number of those students to obtain a percentage of students who received a credit balance at each institution. For example, if the institutional cost was determined to be $12,456 and 50 of 150 title IV aid recipients were in the buckets from $12,500 and above, approximately 33 percent of aid recipients at that institution were considered to have a credit balance.

We looked only at title IV participating institutions and aid recipients. From the data obtained, 3,400 institutions had both tuition estimates and aid recipient information. Unsurprisingly, there is an inverse relationship between an institution's tuition and fees and the percentage of students receiving a title IV credit balance. Our findings were consistent with findings from GAO and USPIRG. Based on our data, we estimated that 2,816,104 students at these 3,400 institutions were receiving a credit balance. The Department's data showed 70 percent of total students receiving a credit balance were at public two-year institutions (1,972,035 students). While we estimated that that there was a significant number

of students who received a credit balance at all of the four-year institutions, the students at four-year institutions combined (819,062) still did not equal half the total number of students who received a credit balance at public two-year institutions (Table [2]). The number of students who received a credit balance was lowest at the less-than two-year institutions, which represented approximately 1.8 percent of institutions and under 1 percent of students who received a credit balance from the 3,400 institutions with both tuition and fee and financial aid data.

Table 2: Number of Institutions and Students with a Credit Balance.

Number of Institutions and Students with a Credit Balance		
Sector	**Number of Institutions**	**Students with a Credit Balance**
Public, 2-year	912	1,972,035
Public, 4-year or above	625	540,461
Private for-profit, 4-year or above	195	181,530
Private not-for-profit, 4-year or above	1,297	97,071
Private for-profit, 2-year	212	19,436
Private not-for-profit, 2-year	97	3,699
Public, less-than 2-year	20	877
Private for-profit, less-than 2-year	32	863
Private not-for-profit, less-than 2-year	10	132
Total	**3,400**	**2,816,104**

As several provisions of the proposed regulations apply to institutions with T1 or T2 arrangements, utilizing publically available sources and working with CFPB, we identified a listing of institutions that were known to have card agreements with financial institutions and applied the same methodology described above to this subset of institutions.[186] Of these known 914 institutions with card agreements, 672 institutions had both tuition and fees and aid recipient data in the Department's dataset. A total of 1,322,615 students at the 672 institutions from this dataset were estimated to have a credit balance. The results from this subset were similar to the larger dataset. The public two-year institutions had the largest numbers of students with a credit balance, and the four-year institutions also had significant numbers (See Table [3]). The less-than two-year institutions had inconclusive

[186] Based on information available at financial institution websites including: http://www.higheronecard.com/landing/start.jsp https://www.pnc.com/en/personal-banking/banking/student-banking.html https://www.usbank.com/student-banking/campus-partners/index.html https://na.enroll.citiprepaid.com/login/logindisplay.do http://www.siue.edu/bursar/CitiFeeSched.shtml http://www.broward.edu/financialaid/Pages/Refund-Information.aspx http://www.citibank.com/transactionservices/home/public_sector/higher_edu/docs/maricopa_case_study.pdf http://fsucard.fsu.edu/suntrust-banking http://www.southwestgatech.edu/Content/Default/6/1700/0/financial-aid/swgtc-preloaded-financial-aid-debit-card.html https://www.tcfbank.com/account_campus-banking_disclosure.aspx

data. Again, this subset provided no additional information on a clear de minimis amount.

Table 3: Students with a Credit Balance at Institutions Known to Have Card Agreements.

Students with a credit balance at known institutions that have card agreements.		
Sector	**Number of Institutions**	**Students with a Credit Balance**
Public, 2-year	304	996,107
Public, 4-year or above	200	280,467
Private for-profit, 4-year or above	38	29,593
Private not-for-profit, 4-year or above	113	10,001
Private for-profit, 2-year	17	6,447
Private not-for-profit, 2-year	N/A	N/A
Public, less-than 2-year	N/A	N/A
Private for-profit, less-than 2-year	N/A	N/A
Private not-for-profit, less-than 2-year	N/A	N/A
Total	**672**	**1,322,615**

In a final attempt to analyze the data, the Department took the subset and identified only those institutions that had a T2 arrangement. This narrowed down the data to 191,242 students at 160 institutions. The identified institutional data was further analyzed by sector with data available for public two-year, public four-year or above, and private not-for-profit, four-year or above institutions. The data was similar to the larger datasets

(see Table [4]) and produced inconclusive results on a threshold to reduce burden.

Table 4: Students with a Credit Balance at Institutions Known to Have T2 Arrangements.

Students with a credit balance at institutions known to have T2 arrangements.		
Sector	**Number of Institutions**	**Students with a Credit Balance**
Public, 2-year	36	135,108
Public, 4-year or above	70	56,066
Private not-for-profit, 4-year or above	54	68
Total	**160**	**191,242**

As described in the Data and Methodology section, we analyzed the available data to determine if we could identify a clear percentage threshold or minimum number of students who had a credit balance before the proposed regulations relating to T2 arrangements would apply. We believed that applying a threshold amount would reduce the burden on institutions where small percentages of students received a credit balance. However, we could not conclusively identify a clear cut-off amount as the data was evenly distributed in each of the datasets and subsets we analyzed. We request comment on whether we should establish a de minimis amount and, if so, what that amount should be, supporting data, and how this amount should be established.

We also reviewed reports related to campus card use for information on affected students and their account usage patterns. The GAO, USPIRG, and Consumers Union, among others, have analyzed the issue of student accounts and the use of college cards. Results from those reports that were used in the Department's calculations are noted in the discussion of specific provisions throughout this section.

Fee-Related Provisions Applicable to Institutions with T1 Arrangements

Institutions with T1 arrangements are required to mitigate fees incurred by student aid recipients by prohibiting PoS and overdraft fees charged to students and parents. Additionally, these institutions must ensure that students have surcharge-free access to a national or regional ATM network that has ATMs on or near each campus of the institution. Little information is currently available on the total amount of college card fees paid by students. Most financial account providers are unwilling or unable to provide information on fees to the Department. The GAO report reviewed fee schedules from eight financial institutions and found that while college cards do not have monthly maintenance fees, fees for out-of-network ATM use, wire transfers, and overdraft fees were similar to the

financial products marketed to non-students. Credit unions' fees were typically lower than those charged by college cards (see Table [5]). However, college card fees were lower than alternative financial products, such as check-cashing services.[187]

Table 5: Account Fees by Provider Type.[188]

Account Fees by Provider Type			
Fee	**College Cards**	**Large Banks, General Checking Accounts**	**Credit Unions**
Monthly Maintenance	$0	standard account: $6-$12 student account: $0-$5	$0
Out-of-network ATM Transaction	$2-$3	$2-$2.50	$1
PIN	$0-$0.50	$0	$0
Overdraft	$29-$36	$34-$36	$25
Outgoing Wire Transfer	$25-$30	$24-$30	$15

While we do not know the total amount of college card fees paid by students annually, we do know the amounts are substantial. A review of the annual SEC filings by one market participant, Higher One, indicates that account revenue from a variety of fees totaled $135.8 million in FY 2013, which represented 64.3 percent of total revenues for FY 2013.[189] Not all of those fees would be subject to the provisions of the proposed regulations, but the amount of

[187] Ibid. at 18.
[188] Ibid. at 19.
[189] Higher One Holdings, Inc. "SEC Form 10-K." [Pages 41-42](2014), available at www.sec.gov/Archives/edgar/data/1486800/000148680014000018/one10k.htm.

student account revenue across the industry affected by the proposed changes would be significant.

In addition to the uncertainty regarding the total amount of college card fees paid by students, consumer behavior is unpredictable, and the responses of students and parents to the proposed disclosures about account options and costs will significantly contribute to the effect of the proposed regulations. While it is assumed that consumers with appropriate information will make rational decisions, such as avoiding fees imposed on withdrawals from out-of-network ATMs or debit transactions that require a PIN rather than a signature, some students may not make the optimal choices in managing their accounts. We do not have data on the distribution of students in accounts with specific fee arrangements, student usage patterns, or the responsiveness of students to the information that would be provided under the proposed regulations, and therefore it is difficult to estimate the exact transfers that would occur if certain fees on student accounts were prohibited. However, there is some third-party analysis of account usage that can be used to establish a range of possible effects of the proposed regulations. In its August 2014 report, Consumers Union developed minimal, moderate, and heavy usage profiles

and determined that the accounts it analyzed would cost minimal users from $0 to $59.40, moderate users from $10.20 to $95.00, and heavy users from $59.40 to $520.00 on an annual basis.[190] This range of outcomes demonstrates how the distribution of students in accounts and the student response to account information disclosed under the proposed regulations would affect the fee revenue transfers under the proposed regulations.

An additional analysis by U.S. PIRG included data on overdraft behavior by age range with adults in the 18-25 age range having the highest incidence of paying overdraft fees with 53.6% paying zero, 21.5 percent paying 1 to 4, 10.3 percent paying 5-9, 7.9 percent paying 10 to 19, and 6.8 percent paying 20 or more overdraft fees.[191] While not all students will fall within this age range, given the high percentage of adults in this age range that pays at least one overdraft fee and the amount of overdraft fees ranging from $25 to $38 when applied, the revenue affected by the overdraft fee prohibition is significant. Further analysis recently released by the Center for Responsible Lending analyzed similar data on overdrafts for adults in three categories and found average annual costs in

[190] Consumers Union at 16.
[191] Ibid.

overdraft fees of $67 for the 15 percent of young adults with two overdrafts per year, $264 for the 13 percent of adults with seven overdrafts per year, and $710 for the 11 percent of adults that overdraw about 19 times per year.[192]

Another element that complicates the analysis of the effects of the proposed regulations is the response of financial institutions and institutions. The proposed fee limitations relating to T1 arrangements would have cost implications for affected servicers. One purpose of the proposed regulations is to allow students to access financial aid funds without burden from fees or other costs; however we acknowledge that many third-party servicers in T1 arrangements could restructure their accounts to earn some of those funds through fees that would not be affected by the proposed regulations. Over time, as contracts are renewed or entered into, financial institutions could also increase the revenue they receive from institutions, but the split between the revenue that can be recaptured and that which might be lost to financial institutions is not estimated in this analysis.

Disclosure Provisions and Student Choice

[192] Center for Responsible Lending, "Overdraft U.: Student Bank Accounts Often Loaded with High Overdraft Fees", March 30, 2015.

As noted in the Summary of Proposed Regulations section, under the proposed regulations, institutions with T1 and T2 arrangements would be subject to several provisions designed to increase the disclosure of information related to student accounts and emphasize the availability of options for students to receive credit balances. We believe this access to account disclosures and other critical information would allow students and parents to make informed decisions regarding the handling and distribution of their title IV funds. The fee and contract disclosures would help students and parents determine whether the financial products marketed by financial institutions with relationships to their school are the best option for them. These disclosures would also help prevent students from being misled into believing that they must use those financial products.

Furthermore, the proposed regulations would require institutions to disclose the prices of books and other materials that they include as part of tuition and fees. We believe this will encourage schools to make one of two student-friendly changes: for schools that cannot justify including the price of books and supplies in tuition charges because it is not in students' best financial interest, students and parents will be able to compare

prices to determine if there are other, more economically viable options available and buy materials available in the marketplace. Alternatively, students benefit from the buying power of the school in cases where the school can source the materials for lower-than-market costs.

The proposed regulations would also help protect both students and parents from deceptive marketing practices aimed at encouraging them to do business with a particular financial institution without presenting options. When students are not presented with clear choices or information, they may be pushed into using financial accounts with higher fees or less access than other options available to them. By requiring clear and neutral disclosures to students and parents, the student choice provisions would aid students and parents in identifying accounts with lower fees. Students who select accounts with lower fees would save money and be able to use all or more of their title IV aid for expenses critical to their educational needs.

Reasonable Access to Funds

As noted in the discussion of fee provisions related to T1 arrangements, under the proposed regulations, a third-party servicer with a T1 arrangement would have additional obligations with respect to the requirement that

it provide students with convenient access to surcharge free regional or national ATM network. As under the current regulations, financial institutions must provide students convenient access to in-network ATMs. The proposed regulations would clarify that "convenient access" means ATMs are sufficient in number at each of the institution's locations such that funds are reasonably available from them. The provisions specifying what constitutes "convenient access" are designed for the benefit of students and could have cost implications for some third-party servicers and financial institutions. These servicers/financial institutions could have to deploy new ATMs or pay to be associated with a surcharge-free ATM network to meet these requirements. Students who open accounts under a T1 or T2 arrangement would benefit from having more surcharge-free ATMs from which to access their title IV credit balances.

T2 Arrangements

The direct marketing methods employed by financial institutions, third-party servicers, and postsecondary institutions have proven to be fairly effective. As mentioned earlier in the Need for Regulatory Action section, 10 million students (Chart 1) are at title IV participating schools where card agreements are prevalent.

While some information is available about these agreements, it is insufficient to support a comprehensive analysis on the costs of the proposed regulations. We do not have data on the total number of institutions with card agreements with financial institutions or the details of those agreements. There is also a lack of data on the total number of students who receive credit balances and in what form those students receive that aid.

Beyond the data limitations, forecasting the future behavior of students under the proposed regulations also presents another challenge in estimating costs. Students have a variety of choices on how to receive their aid. Based on data from the National Postsecondary Student Aid Study (NPSAS) conducted by the National Center for Education Statistics, we know that a majority of students receive a refund by depositing a refund directly to a bank account (37.2 percent) or by cashing or depositing a refund check at a bank themselves (38.5 percent). The remaining 24.3 percent of students receive refunds by cashing the check somewhere other than a bank, receive refunds on a prepaid debit card, receive a refund through student ID

cards, or do something else not listed.[193] While direct marketing affects the choices a student might make, we lack data on predicting whether students would move away from those marketed accounts if all options were clearly presented to them. Consequently, quantifying the costs of the proposed regulations is difficult.

Cash Management Provisions

Interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually. The proposed regulations would increase the amount allowed to be retained by non-Federal entities for administrative expenses from $250 to $500. By doing so, some institutions would see a minor benefit from being able to keep the first $500 in interest accrued on accounts holding title IV funds. Other updates to subpart K reflect technological changes and current practices in managing title IV funds.

Retaking Coursework

The proposed regulations would eliminate provisions that prevent institutions from counting previously passed courses towards enrollment where the repetition is due to the student failing other coursework. This change would

[193] U.S. Department of Education, National Center for Education Statistics, 2011-12 National Postsecondary Student Aid Study (NPSAS:12).

benefit a limited number of undergraduate, graduate, and professional students. Students in these circumstances would no longer be denied title IV aid and therefore would be less likely to drop out or need less desirable private education loans to continue their coursework. Institutions and students would benefit as students would be able to continue paying for educational costs with title IV aid.

Clock-to-Credit-Hour Conversion

By streamlining the clock-to-credit-hour conversion provisions, institutions would benefit from the simplification of regulations affecting institutional determinations relating to title IV eligibility.

Net Budget Impacts

We estimate that the proposed regulations would not have a significant net budget impact. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. A cohort reflects all loans originated in a given fiscal year.

The proposed regulations would require institutions to disclose agreements with financial services providers through which students may opt to receive title IV credit

balances, and restrict the fees students could be charged for accounts offered pursuant to T1 arrangements. Additionally, the proposed regulations would make technical changes to subpart K cash management rules to reflect technological advances and improved disbursement practices. The proposed regulations also would simplify the clock-to-credit-hour conversion for title IV purposes by eliminating the reference to any State requirement or role in approving or licensing a program. Finally, the proposed regulations would eliminate the provision that prevents institutions from counting previously passed courses towards enrollment where the repetition is due to the student failing other coursework.

Although the proposed regulations would affect the arrangements among institutions, students, and financial service providers, they are not expected to affect the volume of title IV aid disbursed or the repayment patterns of students, and therefore, no significant budget impact on title IV programs is estimated.

We welcome comments on the estimates provided and will consider them in developing the RIA for the final regulations.

Accounting Statement

As required by OMB Circular A-4 (available at www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf), in Table [6], we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations.

Table [6]: Accounting Statement: Classification of Estimated Expenditures (in millions)

Category	**Benefits**
Greater disclosure of arrangements between institutions and financial service providers and clearer disclosure of fees and conditions of student accounts	Not Quantified
Category	**Costs**
	7% Discount Rate / **3% Discount Rate**
Costs of compliance with paperwork requirements	$21.0 / $21.2
Category	**Transfers**

Alternatives Considered

As part of the development of the proposed regulations, the Department reviewed and considered various internal proposals, as well as proposals from non-Federal negotiators. In the following paragraphs we summarize the

major proposals that we considered but ultimately declined to incorporate in the proposed regulations.

The Department initially considered prohibiting institutions from including books and supplies as part of tuition and fees. However, some of the non-Federal negotiators argued that institutions, for pedagogical or safety reasons, are increasingly developing course-specific or course-embedded materials that students must access and purchase from the school and that those materials should be included in tuition and fees. After a thorough discussion, the Department decided against a total prohibition on including books and supplies as part of tuition and fees, and agreed to a compromise position that would still benefit students, allow institutional flexibility when materials are integral to the course, and hold institutions accountable through cost transparency.

The Department initially proposed to the negotiated rulemaking committee regulations that would have prevented institutions from sharing with a servicer any information about a student or parent until the student or parent affirmatively consented to open an account. Because the proposals considered during negotiated rulemaking did not separate T1 and T2 arrangements, the ban on information

sharing would have affected both third-party servicers and financial institutions.

After multiple negotiation sessions and working with non-Federal negotiators representing third-party servicers, we elected to permit the sharing of only limited information--name, address, and email address—prior to receiving student or parent consent to open an account. We have also decided to apply the limitation to both T1 and T2 arrangements, under definitions more focused than those proposed to the negotiated rulemaking committee.

To clarify our position, we have also altered our phrasing to require that a student or parent must provide consent to actually open an account, rather than simply select an option for receiving direct payments of financial aid before more than this basic contact information with a third-party servicer or financial institution.

After the first negotiated rulemaking session, we proposed provisions that would allow an institution to send a debit card, prepaid card, or access device associated with the account to a student or parent only after the student or parent specifically requests it after providing consent to open an account. We modified this initial approach by removing the requirement for the student or parent to specifically request the card while retaining a

requirement that the student or parent consent to opening the account before the card is sent. While we understand that the requirement to obtain consent to open a financial account before sending an access device to a student or parent may slow the speed with which a student or parent could access his or her credit balance, we believe that requiring student or parent consent to an account first helps to dispel the implication that the access device and its associated financial account are required by the institution. We also believe it reinforces the notion that use of the access device and its associated account is, in fact, a choice.

We also considered several proposals regarding the disclosure of the contracts between institutions of higher education and financial institutions, along with contract summaries, as described in other parts of the preamble. However, to reduce burden on institutions, we propose that an institution must only provide to the Secretary, with respect to a contract for a T1 or T2 arrangement, the following information: the total consideration for the most recently completed award year, monetary and non-monetary, paid or received by the parties under the terms of the contract; the number of students and parents who had financial accounts under the contract at any time during

the most recently completed award year; and the mean and median of the actual costs incurred by those account holders.

Initial Regulatory Flexibility Act Analysis

The proposed regulations will affect institutions that participate in the title IV, HEA programs, financial institutions, and individual borrowers. The U.S. Small Business Administration (SBA) Size Standards define "for-profit institutions" as "small businesses" if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000. The SBA Size Standards define "not-for-profit institutions" as "small organizations" if they are independently owned and operated and not dominant in their field of operation, or as "small entities" if they are institutions controlled by governmental entities with populations below 50,000. The revenues involved in the sector that would be affected by the proposed regulations, and the concentration of ownership of institutions by private owners or public systems, means that the number of title IV, HEA eligible institutions that are small entities would be limited but for the fact that the not-for-profit entities fit within the definition of a "small organization" regardless of revenue. Given the definitions

above, several of the entities that would be subject to the proposed regulations are small, leading to the preparation of the following Initial Regulatory Flexibility Analysis.

Description of the Reasons that Action by the Agency Is Being Considered

Over the past several years, a number of changes have occurred in the student financial products marketplace and in budgets of postsecondary institutions that have led to a proliferation of agreements between postsecondary institutions and "college card" providers. These cards, usually in the form of debit or prepaid cards and sometimes cobranded with the institution's logo or combined with student IDs, are marketed to students as a way to receive their title IV credit balances via more convenient electronic means. However, a number of government and consumer group reports have documented troubling practices employed by some of the providers of these college cards. Legal actions against the sector's largest provider further substantiate these reports' findings.

The Secretary proposes to amend the cash management regulations under subpart K and other sections of the Student Assistance General Provisions regulations issued under the HEA, to address the findings in multiple government and consumer group reports that students are not

able to conveniently access their title IV, HEA program funds without onerous paper submissions and unnecessary waiting periods, unreasonable and uncommon financial account fees, or receiving misleading information indicating that a particular financial account is required to receive student aid. The proposed regulations also make a number of changes to update subpart K consistent with contemporary disbursement practices. Finally, the proposed regulations update two additional, unrelated provisions: revising the way previously passed coursework is treated for title IV eligibility purposes so students remain in programs and do not have to find alternatives to title IV funding; and streamlining the requirements for converting clock hours to credit hours.

Succinct Statement of the Objectives of, and Legal Basis for, the Regulations

Given the number of students affected by these agreements, the amount of taxpayer-funded title IV aid at stake, and the troubling practices and expanding breadth of the college card market, we believe regulatory action governing the manner in which title IV student aid is disbursed is warranted.

In addition, it has been 20 years since subpart K was comprehensively updated, and in that time a number of

technological improvements and changes in authorized title IV programs have occurred. We have therefore proposed a number of more minor changes throughout subpart K.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to which the Proposed Regulations Would Apply

The proposed regulations would affect institutions, financial services providers, and students. Students are not considered small entities for the purpose of this analysis and the Department does not expect the financial institutions to meet the applicable definition of a small entity. However, a significant portion of institutions of higher education are considered to meet the applicable definition of a small entity, and therefore, this analysis focuses on those institutions. As discussed above, private non-profit institutions that do not dominate in their field are defined as small entities and some other institutions that participate in title IV, HEA programs do not have revenues above $7 million and are also categorized as small entities. Table [7] summarizes the distribution of small entities affected by the proposed regulation by sector.

Table [7]: Distribution of Small Entities by Sector

	Small Entity	Total	%
Public 4-year	0	749	0%
Private NFP 4-year		1,648	100%

	1,648		
Private For-Profit 4-year	278	827	34%
Public 2-year	0	1,074	0%
Private NFP 2-year	162	162	100%
Private For-Profit 2-year	667	1,035	64%
Public less than 2-year	0	262	0%
Private NFP less than 2-year	87	87	100%
Private For-Profit less than 2-year	1,411	1,695	83%
Total	**4,253**	**7,539**	**56%**

The Secretary invites comments from small entities as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Regulations, Including an Estimate of the Classes of Small Entities that Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The various provisions in the proposed regulations require disclosures by institutions as discussed in the Paperwork Reduction Act section of this preamble. Table [8] summarizes the estimated burden on small entities from the paperwork requirements associated with the proposed regulations.

Table [8]: Summary of Paperwork Requirements for Small Entities

Provision	Reg Section	OMB Control Number	Hours	Costs
Require institutions to establish an account selection process	668.164(d)(4)	OMB 1845-0106	3,920	143,276
Compliance with T1 requirements: provide the terms and conditions of the financial accounts, provide convenient access to ATMs, cannot be converted to a credit instrument, must disclose the contract, must disclose the mean and median costs incurred over the prior year as well as the number of students and parents with these financial accounts.	668.164e	OMB 1845-0106	6,710	245,251
Compliance with T2 requirements: Must obtain consent to open an account,provide terms and conditions, disclose the contract, the number of students and parents participating, the mean and median actual costs for the prior year.	668.164(f)	OMB 1845-0106	3,330	121,712
Total			**13,960**	**510,238**

Identification, to the Extent Practicable, of All Relevant Federal Regulations that May Duplicate, Overlap, or Conflict With the Proposed Regulations

The proposed regulations are unlikely to conflict with or duplicate existing Federal regulations. We consulted Federal banking regulators at FDIC, OCC and the Bureau of the Fiscal Service at the Treasury Department, and CFPB, for help in understanding Federal banking regulations and the Federal bank regulatory framework. We believe we have crafted these regulations in a way that will complement, rather than conflict with, existing banking regulations. The most significant risk of potential conflict is with respect to account disclosure requirements, described in more detail in the "Disclosure of account information" section of this preamble.

Alternatives Considered

As described above, the Department participated in negotiated rulemaking when developing the proposed regulations, and considered a number of options for some of the provisions. No alternatives were aimed specifically at small entities.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general

public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents. The table at the end of this section summarizes the estimated burden on small entities, primarily institutions and applicants, arising from the paperwork associated with the proposed regulations.

Section 668.164 contains information collections requirements. Under the PRA, the Department has submitted a copy of this section, and an Information Collections Request (ICR) to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to

penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations, we will display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

Discussion

Section 668.164 Disbursing Funds.

Requirements: Student and parent choice.

Under proposed §668.164(d)(4)(i), an institution that makes direct payments to a student or parent by EFT and that chooses to enter into an arrangement described in §668.164(e) or §668.164(f) , must establish a selection process under which the student or parent chooses one of several options for receiving those payments. Alternatively, an institution that does not offer accounts under a Tier 1 (T1) or Tier 2 (T2) arrangement is not required to establish a student choice process and instead, may make direct payments to an existing account designated by the student or parent, issue a check, or disburse cash to the student or parent.

For institutions required to establish a student choice process under proposed §668.164(d)(4)(i), the

proposed regulations would establish requirements that must be met in implementing the process.

The institution must inform the student or parent in writing that he or she is not required to open or obtain a specific financial account or access device in order to receive title IV funds. The institution must ensure that the options listed are presented in a clear, fact-based, and neutral manner (except that a pre-existing account must be listed as the first, most prominent, and default option). The institution must ensure that initiating direct payments electronically to an existing account is as timely as, and no more onerous than initiating direct payments to an account offered pursuant to a T1 or T2 arrangement. The institution must allow the student or parent the option to change his or her account preference with reasonable written notice.

In addition to these requirements for establishing a student choice process, the proposed regulations under §668.164(d)(4)(i)(B) contain the following provisions governing the description of account options under the student choice process.

The institution must present, prominently and as the first and default option, the ability to receive funds in a student's or parent's pre-existing financial account or

pre-existing access device. The institution must list and identify the major features and commonly assessed fees associated with all accounts offered pursuant to a T1 or T2 arrangement (using a format published by the Secretary in the Federal Register which would constitute compliance with this provision under the proposed regulations), as well as a Universal Resource Locator (URL) linked to the terms and conditions of these accounts. Finally, the institution must list issuing a check as an option for a student or parent to receive payments.

Burden Calculation: The Department calculated the incidence and distribution of credit balance recipients. The numbers of students who received title IV aid in the 2013-2014 cohort (from FSA) were matched by institution to the IPEDS tuition, fees, and room and board data. The credit balance calculation established an institutional cost that included an estimated average tuition, fees, and room and board amount (which took into account the percentage of students who lived in-district, in-state, and out of state for tuition and fees expense, and the percentage of students who lived on-campus for room and board charges). Aid recipients were grouped by the amount of aid received (rounded into $500 ranges). To determine the number of students at each institution who received a

credit balance, we looked at the number of students who fell within the aid ranges above the estimated institutional cost.

We looked only at title IV participating institutions and aid recipients. From the data obtained, 3,400 institutions (out of the total 7,539 participating in title IV, HEA programs) had both tuition estimates and aid recipient information. Unsurprisingly, there was an inverse relationship between an institution's tuition and fees and the percentage of students receiving a title IV credit balance. The Department's findings were consistent with findings from GAO and USPIRG. In an effort to thoroughly analyze all of the available data, we also applied the same methodology described above to a subset of institutions. Utilizing publically available sources and working with the CFPB the Department identified a listing of institutions that were known to have card agreements with financial institutions from CFPB. If commenters have other sources for the number of institutions with these financial agreements, we invite them to provide those sources for our examination. The Department's NSLDS data, when combined with the IPED's data and the CFPB data the list of institutions that were known to have agreements (NSLDS-IPEDS-CFPB) had tuition and fees and aid recipient

data for 672 of the 914 institutions identified by CFPB. From the data for 672 institutions, we projected the number of students with a title IV credit balance at the 914 institutions proportionately. As a result, there were a total of 1,798,756 students at the 914 institutions from this dataset who received a credit balance.

Of the 914 institutions with arrangements, the NSLDS-IPEDS-CFPB data show that 685 institutions would be public institutions. On average, we estimate the burden associated with developing and implementing the proposed student and parent choice options would increase by 20 hours per institution and therefore total burden of 13,700 hours (685 institutions times 20 hours per institution) under OMB Control Number 1845-0106.

Of the 914 institutions with financial arrangements, the NSLDS-IPEDS-CFPB data show that 154 institutions would be private not-for-profit institutions. On average, we estimate the burden associated with developing and implementing the student and parent choice options would increase by 20 hours per institution and therefore total burden of 3,080 hours (154 institutions times 20 hours per institution) under OMB Control Number 1845-0106.

Of the 914 institutions with arrangements, the NSLDS-IPEDS-CFPB data show that 75 would be private for-profit

institutions. On average, we estimate the burden associated with developing and implementing the student and parent choice options would increase by 20 hours per institution and therefore total burden of 1,500 hours (75 institutions times 20 hours per institution) under OMB Control Number 1845-0106.

Overall, burden to institutions would increase by 18,280 hours (the sum of 13,700 hours, 3,080 hours, and 1,500 hours).

The NSLDS-IPEDS-CFPB data indicates that 1,798,756 title IV recipients with credit balances for the 2013-14 award year would be impacted by this proposed regulation. We estimate that each of the affected title IV recipients would take, on average, 20 minutes (.33 hours) to review the options presented by the institution or their third-party servicer and to make their selection.

Of the total number of title IV recipients with a credit balance, the data show that 1,736,141 recipients were enrolled in public institutions. On average, each recipient would take 20 minutes (.33 hours) to read the materials and make their selection, increasing burden by 572,927 hours (1,736,141 times .33 hours) under OMB Control Number 1845-0106.

Of the total number of title IV recipients with a credit balance, the data show that 13,601 recipients were enrolled in private not-for-profit institutions. On average each recipient would take 20 minutes (.33 hours) to read the materials and make their selection, increasing burden by 4,488 hours (13,601 recipients times .33 hours) under OMB Control Number 1845-0106.

Of the total number of title IV recipients with a credit balance, the data show that 49,014 recipients were enrolled in private for-profit institutions. On average each recipient would take 20 minutes (.33 hours) to read the materials and make their selection, increasing burden by 16,175 hours (49,014 recipients times .33 hours) under OMB Control Number 1845-0106.

Overall, burden to title IV recipients would increase by 593,590 hours (the sum of 572,927 hours, 4,488 hours, and 16,175 hours).

Requirements: T1 arrangements

Under the proposed regulations in §668.164(e), when an institution enters into a contract with a third-party servicer under which the servicer performs the functions of processing direct payments of title IV, HEA program funds on behalf of the institution to one or more financial accounts that are offered under the contract or by the

third-party servicer, or by an entity contracting with or affiliated with the third party servicer to students and their parents, this would be considered a T1 arrangement between the institution and the third-party servicer.

Under a T1 arrangement the institution must comply with the following requirements:

1. The institution must obtain the student's or parent's consent to open the financial account before the institution provides any information about the student or parent, except for name, address, and email address, to the third-party servicer, the financial institution at which the financial account's funds would be deposited, or the agents of either an access device, or and before any representation of an access device, is sent to the student or parent; and before a card or tool provided to the student or parent for institutional purposes, such as a student ID card, is associated with the financial account;

2. The institution must inform the student or parent of the terms and conditions of the financial account, in a manner consistent with disclosure requirements specified by the Secretary in a notice published in the Federal Register following consultation with the CFPB, before the financial account is opened;

3. The institution must ensure that the student or parent has convenient access to the financial account through surcharge-free national or regional ATM network that has ATMs located on or near each location of the institution, and that those ATMs are sufficient in number and housed and serviced such that the funds are reasonably available from them, including at the times the institution or its third-party servicer makes direct payments into them. The institution must also ensure that students and parents do not incur any cost for opening the financial account or initially receiving an access device, assessed by the institution, third-party servicer, or associated financial institution on behalf of the third-party servicer, when the student or parent conducts point-of-sale transactions; or for conducting any transaction on an ATM that belongs to the regional or national network;

4. The institution must ensure that students and parents do not incur a charge initiated by the institution, third-party servicer, or associated financial institution on behalf of the third-party servicer for at least 30 days following the date that title IV, HEA program funds are deposited or transferred to the financial account;

5. The institution must ensure that the financial account or access device is not marketed or portrayed as,

or converted into a credit card; that the financial account or access device is not marketed or portrayed as, or converted into a credit instrument, that no credit may be extended or associated with the account, and that any transaction exceeding the balance on the card must be denied without charging the student or parent any fee for such denial;

6. No later than 60 days after the most recently completed award year, the institution must provide to the Secretary and disclose conspicuously on the institution's Web site, the contract between the institution and financial institution in its entirety, except for any portions that, if disclosed, would compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities; the total consideration, monetary and non-monetary, paid or received by the parties under the terms of the contract, as well as the number of students and parents who had financial accounts under the contract at any time during the most recently completed award year, and the mean and median of the actual costs incurred by those account holders; and to annually provide a URL linking from the institution's Web site to the agreement and provide basic information about the agreement;

7. The institution must ensure that the terms of the T1 financial accounts are not inconsistent with the best financial interests of the students and parents opening them. The Secretary considers this requirement to be met if the institution documents that it periodically conducts reasonable due diligence reviews to ascertain whether the fees imposed under the T1 arrangement are, considered as a whole, excessive, in light of prevailing market rates; and all contracts for the marketing or offering of T1 accounts to the institution's students or parents provide for termination of the arrangement at the discretion of the institution based on complaints received from students or parents or a determination by the institution that the fees assessed under the T1 account are excessive;

8. The institution must take affirmative steps, by way of contractual arrangements with the third-party servicer as necessary, to ensure that these requirements are met with respect to all T1 financial accounts offered.

Burden Calculation: Based upon our examination of the 2013-14 NSLDS and IPEDS data that was further refined by examining the CFPB listing of 914 institutions known to have arrangements that would be considered either T1 and T2 arrangements under the proposed regulations, the data indicate that there were 541 public institutions with a T1

arrangement. We expect that these institutions would have to modify their systems or procedures to ensure compliance with these proposed regulations including, but not limited to, establish a consent process; provide account terms and conditions disclosures; ensure compliance with the 30-day prohibition for charges made to an account following the date that title IV, HEA program funds are deposited or transferred into the account; provide the proposed disclosures, contract disclosures, and use and cost data within 60 days after the end of the award year. In addition, it is likely that institutions would make other changes in order to conduct their proposed periodic due diligence and updating of third-party servicer contracts to allow for termination of the contract based upon student complaints or the institution's assessment that third-party servicer fees have become excessive. We estimate that the changes required by the proposed regulations would add an additional 55 hours of burden per institution, increasing burden by 29,755 hours (541 institutions times 55 hours per institution) under OMB Control Number 1845-0106.

Based upon our examination of the 2013-14 NSLDS and IPEDS data that was further refined by examining the CFPB listing of 914 institutions known to have arrangements that would be considered either T1 and T2 arrangements under the

proposed regulations, the data indicate that there were 80 private not-for-profit institutions with a T1 arrangement. We expect that these institutions would have to modify their systems or procedures to ensure compliance with these proposed regulations. Specifically, we expect that modifications would be required including, but not limited to: the establishment of a consent process; provide account terms and conditions disclosures; ensure compliance with the 30-day prohibition on charges made to an account following the date that title IV, HEA program funds are deposited or transferred into the account; and provide the proposed disclosures, contract disclosures, and use and cost data within 60 days after the end of the award year. In addition, other modifications would likely be needed with regard to how the institutions plan to conduct their proposed periodic due diligence and updating of third-party servicer contracts to allow for termination of the contract based upon student complaints or the institution's assessment that third-party servicer fees have become excessive. We estimate that the changes required by the proposed regulations would add an additional 55 hours of burden per institution, increasing burden by 4,400 hours

(80 institutions times 55 hours per institution) under OMB Control Number 1845-0106.

Based upon our examination of the 2013-14 NSLDS and IPEDS data that was further refined by examining the CFPB listing of 914 institutions known to have arrangements that would be considered either T1 and T2 arrangements under the proposed regulations, the data indicate that there were 75 private for-profit institutions with a T1 arrangement. We expect that institutions would have to modify their systems or procedures to ensure compliance with these proposed regulations. Specifically, we expect that modifications would be required including, but not limited to: the establishment of a consent process; provide account terms and condition disclosures; ensure compliance with the 30-day prohibition for charges made to an account following the date that title IV, HEA program funds are deposited or transferred into the account; and provide the proposed disclosures, contract disclosures, and use and cost data within 60 days after the end of the award year. In addition, it is likely that institutions would make other changes regarding how they will conduct their proposed periodic due diligence and updating of third-party contracts to allow for termination of the contract based upon student complaints or the institution's assessment

that third-party fees have become excessive. We estimate that the changes required by the proposed regulations would add an additional 55 hours of burden per institution, increasing burden by 4,125 hours (75 institutions times 55 hours per institution) under OMB Control Number 1845-0106.

Overall, burden to title IV institutions would increase by 38,280 (the sum of 29,755 hours, 4,400 hours, and 4,125 hours).

The NSLDS–IPEDS-CFPB data showed that there were 1,538,667 title IV recipients at the with credit balances at institutions with a T1 arrangement in the 2013-14 award year. Of that number of recipients, the data showed that 1,476,144 were enrolled at public institutions. We estimate that, on average, each recipient would take 15 minutes (.25 hours) to read the about the major features and fees associated with the financial account, information about the monetary and non-monetary remuneration received by the institution for entering into the T1 arrangement, along with the number of students and parents who had financial accounts under the T1 arrangement for the most recent completed year, the mean and median costs incurred by account holders, and whether to provide their consent to the institution. Therefore, the additional burden on title

IV recipients would increase by 369,036 hours (1,476,144 times .25 hours) under OMB Control Number 1845-0106.

The data showed that 13,509 title IV recipients with credit balances were enrolled at private not-for-profit institutions. We estimate that, on average, each recipient would take 15 minutes (.25 hours) to read the about the major features and fees associated with the financial account, information about the monetary and non-monetary remuneration received by the institution for entering into the T1 arrangement, along with the number of students and parents who had financial accounts under the T1 arrangement for the most recent completed year, the mean and median costs incurred by account holders, and whether to provide their consent to the institution. Therefore, the additional burden on title IV recipients would increase by 3,377 hours (13,509 times .25 hours) under OMB Control Number 1845-0106.

The data showed that 49,014 title IV recipients with credit balances were enrolled at private for-profit institutions. We estimate that, on average, each recipient would take 15 minutes (.25 hours) to read the about the major features and fees associated with the financial account, information about the monetary and non-monetary remuneration received by the institution for entering into

the T1 arrangement, along with the number of students and parents who had financial accounts under the T1 arrangement for the most recent completed year, the mean and median costs incurred by account holders, and whether to provide their consent to the institution. Therefore, the additional burden on title IV recipients would increase by 12,254 hours under OMB Control Number 1845-0106.

Overall, burden to recipients would increase by 384,667 hours (the sum of 369,036 hours, 3,377 hours, and 12,254 hours).

Requirements: T2 arrangements.

Under the proposed regulations in §668.164(f), when an institution enters into a contract with a financial institution under which financial accounts, into which title IV, HEA program funds will be transferred or deposited, are offered and marketed directly to students or their parents, the agreement would be considered a T2 arrangement. The Secretary considers that title IV, HEA program funds would be transferred or deposited into financial accounts that are offered under a contract between an institution and a financial institution if students or parents that receive credit balance funds are subject to the direct marketing. The Secretary considers that a financial account is marketed directly if the

institution communicates information directly to its students or their parents about the financial account and how it may be opened; the financial account or access device is co-branded with the institution's name, logo, mascot, or other affiliation; or a card or tool that is provided to the student or parent for institutional purposes, such as a student ID card, is linked with the financial account or access device.

Under a T2 arrangement, the institution must comply with the following requirements:

1. The institution must obtain the student's or parent's consent to open the financial account before the institution provides, or permits a third-party servicer to provide, any information about the student or parent, except for name, address, and email address, to the financial institution or its agents; and before an institution provides any access device, or any representation of an access device, is sent to the student or parent; and before a card or tool provided to the student or parent for institutional purposes, such as a student ID card, is linked to the financial account;

2. The institution must inform the student or parent of the terms and conditions of the financial account, in a manner consistent with the disclosure requirements

specified by the Secretary in a notice published in the Federal Register following consultation with the CFPB, before the financial account is opened if the institution includes the financial account in its student choice process under proposed paragraph (d);

3. No later than 60 days after the most recently completed award year, the institution must provide to the Secretary and disclose conspicuously on the institution's Web site the contract between the institution and financial institution in its entirety, except for any portions that, if disclosed, would compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities; as well as, the total consideration, monetary and non-monetary, paid or received by the parties under the terms of the contract; and the number of students and parents who had financial accounts under the contract at any time during the most recently completed award year, and the mean and median of the actual costs incurred by those account holders;

4. The institution must ensure that the funds deposited in the financial accounts are accessible through surcharge free in-network ATMs convenient to each of the institution's locations, and that those ATMs are sufficient

in number and housed and serviced such that the funds are reasonably available from them, including at the times the institution or its third-party servicer makes direct payments into them;

5. The institution must ensure that the financial accounts are not marketed or portrayed as or converted into credit cards.

6. The institution must ensure that the terms of the T2 financial accounts are not inconsistent with the best financial interests of the students and parents opening them. The Secretary considers this requirement to be met if the institution documents that it periodically conducts reasonable due diligence reviews to ascertain whether the fees imposed under the T2 financial account are, considered as a whole, excessive, in light of prevailing market rates; and all contracts for the marketing or offering of T2 accounts to the institution's students or parents provide for termination of the arrangement at the discretion of the institution based on complaints received from students or parents or a determination by the institution under (B) that the fees assessed under the T2 account are excessive;

7. The institution must take affirmative steps, by way of contractual arrangements with the financial

institution as necessary, to ensure that these requirements are met with respect to all T2 financial accounts offered.

Burden calculation: Based upon our examination of the 2013-14 NSLDS and IPEDS data on title IV recipients there were 7,539 institutions of higher education participating in title IV, HEA programs.

Of the total number of 7,539 institutions in the 2013-14 award year, the NSLDS-IPEDS-CFPB data showed that there would be 144 public institutions with T2 arrangements. Under these proposed regulations, we estimate that an institutions would have to modify its systems or procedures to ensure compliance with these proposed regulation regulations by, among other things, including, but not limited to, establish a consent process; provide account terms and conditions disclosures; ensure compliance with the 30-day prohibition for charges made to an account following the date that title IV, HEA program funds are deposited or transferred into the account; as well as provide the proposed disclosures, contract disclosures, and use and cost data within 60 days after the end of the award year. In addition, other changes regarding how the institution will to conduct its proposed periodic due diligence and updating of third-party servicer contracts to allow for termination of the contract based upon student

complaints or the institution's assessment that third-party servicer fees have become excessive. We estimate that the changes required by the proposed regulations would add an additional 45 hours of burden per institution, increasing burden by 6,480 hours under OMB Control Number 1845-0106.

Of the total number of 7,539 institutions, the NSLDS-IPEDS-CFPB data showed that there would be 74 private not-for-profit institutions that had a T2 arrangement. We estimate that an institutions would have to modify its systems or procedures to ensure compliance with these proposed regulation including, but not limited to, establish a consent process; provide account terms and condition disclosures; ensure compliance with the 30-day prohibition for charges made to an account following the date that title IV, HEA program funds are deposited or transferred into the account; as well as provide the proposed disclosures, contract disclosures, and use and cost data within 60 days after the end of the award year. In addition, other changes regarding how the institution will conduct its proposed periodic due diligence and updating of third-party servicer contracts to allow for termination of the contract based upon student complaints or the institution's assessment that third-party servicer fees have become excessive. We estimate that the changes

required by the proposed regulations would add an additional 45 hours of burden per institution, increasing burden by 3,330 hours under OMB Control Number 1845-0106.

Of the total number of 7,539 institutions, the NSLDS-IPEDS-CFPB data showed that there would be 0 private for-profit institutions where title IV recipients had credit balances had a T2 arrangement.

Overall, burden to institutions would increase by 9,810 hours (the sum of 6,480 hours and 3,330 hours).

From the NSLDS-IPEDS-CFPB data, we projected that there were 260,089 title IV recipients with credit balances at institutions with T2 arrangements. Of that number of recipients, the data showed that 259,997 were enrolled at public institutions. We estimate that, on average, each recipient would take 15 minutes (.25 hours) to read the institution's consent information and decide whether to provide it or not. Therefore, the additional burden on title IV recipients would increase by 64,999 hours under OMB Control Number 1845-0106.

Of the total 260,089 title IV recipients with credit balances at institutions that had a T2 arrangement, we estimated that 92 were enrolled at private not-for-profit institutions. We estimate that, on average, each recipient would take 15 minutes (.25 hours) to read the institution's

consent information and decide whether to provide it or not. Therefore, the additional burden on title IV recipients would increase by 23 hours under OMB Control Number 1845-0106.

Of the total 260,089 title IV recipients with credit balances at institutions with T2 arrangements, the data showed that zero were enrolled at private for-profit institutions.

Overall, burden to institutions would increase by 65,022 hours (the sum of 64,999 hours and 23 hours).

Collectively, the total increase in burden for §668.164 would be 1,109,649 hours under OMB Control Number 1845-0106.

Consistent with the discussion above, the following chart describes the sections of the proposed regulations involving information collections, the information being collected, and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net costs of the increased burden on institutions and borrowers, using wage data developed using BLS data, available at www.bls.gov/ncs/ect/sp/ecsuphst.pdf, is $19,431,272 as

shown in the chart below. This cost was based on an hourly rate of $36.55 for institutions and $16.30 for students.

Collection of Information

Regulatory Section	**Information Collection**	**OMB Control Number and Estimated Burden [change in burden]**	**Estimated Costs**
668.164–Disbursing Funds	The proposed regulations would require institutions to establish a account selection process if the institution prefers to send EFT payments to an account described in	OMB 1845-0106 This would be a revised collection. We estimate that the burden would increase by 1,109,649 hours	$19,431,272

	proposed §§668.164(e) and (f). Under proposed §668.164(e), when an institution enters into a contract with a third-party servicer to make direct payments of title IV, HEA program funds as a T1 arrangement, the institution must meet certain requirements that include,		

	but are not limited to, provide the terms and conditions of the financial accounts, provide convenient access to ATMs, cannot be converted to a credit instrument, must disclose the details of the contract with the public via the institution's Web site by providing a URL to a link		

	showing the contract, including the mean and median costs incurred over the prior year as well as the number of students and parents with these financial accounts. Under proposed §668.164(f), when an institution enters into a contract or marketing agreement with a financial		

	institution under which title IV, HEA program funds would be transferred or deposited and are directly offered or marketed to students and their parents as a T2 arrangement, the institution must meet certain requirements that include but are not limited to, obtaining		

	consent to open an financial account or access device that is co-branded with the institution's name, logo, mascot, or other affiliation, or a card or tool that is provided to the student or parent for institutional purposes such as a student ID card that is linked to		

	the financial account, provide the terms and conditions of the account, disclose the contract between the institution and the financial institution.		

The total burden hours and change in burden hours associated with each OMB Control number affected by the proposed regulations follows:

Control number	Total Proposed Burden Hours	Proposed Change in Burden Hours
1845-0106	4,282,188	+ 3,599,340
Total	4,282,188	= 3,599,340

We have prepared an Information Collection Request (ICR) for these information collection requirements. If you want to review and comment on the ICR, please follow the instructions in the ADDRESSES section of this notice. Note: The Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB), and the Department of Education review all comments posted at www.regulations.gov.

In preparing your comments, you may want to review the ICR in by using the Docket ID number specified in this notice. This proposed collection is identified as proposed collection OMB 1845-0106.

We consider your comments on this proposed collection of information in--

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;

- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Between 30 and 60 days after publication of this document in the Federal Register, OMB is required to make a decision concerning the collection of information contained in these proposed regulations. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This does not affect the deadline for your comments to us on the proposed regulations.

If your comments relate to the ICR for these proposed regulations, please specify the Docket ID number and indicate "Information Collection Comments" on the top of your comments.

Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e-4, the Secretary particularly requests comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the Federal Register, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the Federal Register by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs--education, Loan programs--education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Dated: May 13, 2015

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Arne Duncan,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to amend part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

AUTHORITY: 20 U.S.C. 1070g, 1091, and 1094, unless otherwise noted.

2. Section 668.2 is amended by revising the definition of full-time student in paragraph (b) to read as follows:

§668.2 General definitions.

* * * * *

(b) * * *

Full-time student: An enrolled student who is carrying a full-time academic workload, as determined by the institution, under a standard applicable to all students enrolled in a particular educational program. The student's workload may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student. For a term-based program, the student's workload may include repeating any coursework previously taken in the program but may not include more than one repetition of

a previously passed course. However, for an undergraduate student, an institution's minimum standard must equal or exceed one of the following minimum requirements:

(1) For a program that measures progress in credit hours and uses standard terms (semesters, trimesters, or quarters), 12 semester hours or 12 quarter hours per academic term.

(2) For a program that measures progress in credit hours and does not use terms, 24 semester hours or 36 quarter hours over the weeks of instructional time in the academic year, or the prorated equivalent if the program is less than one academic year.

(3) For a program that measures progress in credit hours and uses nonstandard terms (terms other than semesters, trimesters or quarters) the number of credits determined by--

(i) Dividing the number of weeks of instructional time in the term by the number of weeks of instructional time in the program's academic year; and

(ii) Multiplying the fraction determined under paragraph (3)(i) of this definition by the number of credit hours in the program's academic year.

(4) For a program that measures progress in clock hours, 24 clock hours per week.

(5) A series of courses or seminars that equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

(7) For correspondence coursework, a full-time course load must be--

(i) Commensurate with the full-time definitions listed in paragraphs (1) through (6) of this definition; and

(ii) At least one-half of the coursework must be made up of non-correspondence coursework that meets one-half of the institution's requirement for full-time students.

3. In § 668.8, paragraphs (k) and (l) are revised to read as follows:

§668.8 Eligible program.

* * * * *

(k) *Undergraduate educational program in credit hours.* If an institution offers an undergraduate educational program in credit hours, the institution must use the formula contained in paragraph (l) of this section to determine whether that program satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and

the number of credit hours in that educational program for purposes of the title IV, HEA programs, unless—

(1) The program is at least two academic years in length and provides an associate degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by the Secretary; or

(2) Each course within the program is acceptable for full credit toward that institution's associate degree, bachelor's degree, professional degree, or equivalent degree as determined by the Secretary provided that—

(i) The institution's degree requires at least two academic years of study; and

(ii) The institution demonstrates that students enroll in, and graduate from, the degree program.

(l) *Formula.* (1) Except as provided in paragraph (l)(2) of this section, for purposes of determining whether a program described in paragraph (k) of this section satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and of determining the number of credit hours in that educational program with regard to the title IV, HEA programs--

(i) A semester hour must include at least 37.5 clock hours of instruction;

(ii) A trimester hour must include at least 37.5 clock hours of instruction; and

(iii) A quarter hour must include at least 25 clock hours of instruction.

(2) The institution's conversions to establish a minimum number of clock hours of instruction per credit may be less than those specified in paragraph (l)(1) of this section if the institution's designated accrediting agency, or recognized State agency for the approval of public postsecondary vocational institutions, for participation in the title IV, HEA programs has not identified any deficiencies with the institution's policies and procedures, or their implementation, for determining the credit hours that the institution awards for programs and courses, in accordance with 34 CFR 602.24(f), or, if applicable, 34 CFR 603.24(c), so long as--

(i) The institution's student work outside of class combined with the clock hours of instruction meet or exceed the numeric requirements in paragraph (l)(1) of this section; and

(ii)(A) A semester hour must include at least 30 clock hours of instruction;

(B) A trimester hour must include at least 30 clock hours of instruction; and

(C) A quarter hour must include at least 20 hours of instruction.

* * * * *

4. Subpart K is revised to read as follows:

Subpart K—Cash Management

Sec.

668.161 Scope and institutional responsibility.

668.162 Requesting funds.

668.163 Maintaining and accounting for funds.

668.164 Disbursing funds.

668.165 Notices and authorizations.

668.166 Excess cash.

668.167 Severability.

§ 668.161 Scope and institutional responsibility.

(a) General. (1) This subpart establishes the rules under which a participating institution requests, maintains, disburses, and otherwise manages title IV, HEA program funds.

(2) As used in this subpart—

(i) Access device means a card, code, or other means of access to a financial account, or any combination thereof, that may be used by the student or parent to initiate electronic fund transfers.

(ii) Day means a calendar day, unless otherwise specified;

(iii) Depository account means an account at a depository institution described in 12 U.S.C. 461(b)(1)(A), or an account maintained by a foreign institution at a comparable depository institution that meets the requirements of § 668.163(a)(1);

(iv) EFT (Electronic Funds Transfer) means a transaction initiated electronically instructing the crediting or debiting of a financial account, or an institution's depository account. For purposes of transactions initiated by the Secretary, the term "EFT" includes all transactions covered by 31 CFR 208.2(f). For purposes of transactions initiated by or on behalf of an institution, the term "EFT" includes, from among the transactions covered by 31 CFR 208.2(f), only Automated Clearinghouse transactions;

(v) Financial account means a student's or parent's checking or savings account, prepaid card account, or other consumer asset account held directly or indirectly by a financial institution;

(vi) Financial institution means a bank, savings association, credit union, or any other person or entity that directly or indirectly holds a financial account

belonging to a student or parent that issues an access device associated with a financial account and agrees with a student or parent to provide EFT services;

(vii) Parent means the parent borrower of a Direct PLUS Loan;

(viii) Student ledger account means a bookkeeping account maintained by an institution to record the financial transactions pertaining to a student's enrollment at the institution;

(ix) Title IV, HEA programs include the Federal Pell Grant, Iraq-Afghanistan Service Grant, TEACH Grant, FSEOG, Federal Perkins Loan, FWS, and Direct Loan programs, and any other program designated by the Secretary.

(b) Federal interest in title IV, HEA program funds. Except for funds provided by the Secretary for administrative expenses, and for funds used for the Job Location and Development Program under subpart B of the FWS regulations, funds received by an institution under the title IV, HEA programs are held in trust for the intended beneficiaries or the Secretary. The institution, as a trustee of those funds, may not use or hypothecate (i.e., use as collateral) the funds for any other purpose or otherwise engage in any practice that risks the loss of those funds.

(c) Standard of conduct. An institution must exercise the level of care and diligence required of a fiduciary with regard to managing title IV, HEA program funds under this subpart.

§ 668.162 Requesting funds.

(a) General. The Secretary has sole discretion to determine the method under which the Secretary provides title IV, HEA program funds to an institution. In accordance with procedures established by the Secretary, the Secretary may provide funds to an institution under the advance payment method, reimbursement payment method, or cash monitoring payment method.

(b) Advance payment method. (1) Under the advance payment method, an institution submits a request for funds to the Secretary. The institution's request may not exceed the amount of funds the institution needs immediately for disbursements the institution has made or will make to eligible students and parents.

(2) If the Secretary accepts that request, the Secretary initiates an EFT of that amount to the depository account designated by the institution.

(3) The institution must disburse the funds requested as soon as administratively feasible but no later than

three business days following the date the institution received those funds.

(c) Reimbursement payment method. (1) Under the reimbursement payment method, an institution must credit a student's ledger account for the amount of title IV, HEA program funds that the student or parent is eligible to receive, and pay the amount of any credit balance due under §668.164(h), before the institution seeks reimbursement from the Secretary for those disbursements.

(2) An institution seeks reimbursement by submitting to the Secretary a request for funds that does not exceed the amount of the disbursements the institution made to students or parents included in that request.

(3) As part of its reimbursement request, the institution must--

(i) Identify the students or parents for whom reimbursement is sought; and

(ii) Submit to the Secretary, or an entity approved by the Secretary, documentation that shows that each student or parent included in the request was--

(A) Eligible to receive and has received the title IV, HEA program funds for which reimbursement is sought; and

(B) Paid directly any credit balance due under §668.164(h).

(4) The Secretary will not approve the amount of the institution's reimbursement request for a student or parent and will not initiate an EFT of that amount to the depository account designated by the institution, if the Secretary determines with regard to that student or parent, and in the judgment of the Secretary, that the institution has not--

(i) Accurately determined the student's or parent's eligibility for title IV, HEA program funds;

(ii) Accurately determined the amount of title IV, HEA program funds disbursed, including the amount paid directly to the student or parent; and

(iii) Submitted the documentation required under paragraph (c)(3) of this section.

(d) Heightened cash monitoring payment method. Under the heightened cash monitoring payment method, an institution must credit a student's ledger account for the amount of title IV, HEA program funds that the student or parent is eligible to receive, and pay the amount of any credit balance due under § 668.164(h), before the institution--

(1) Submits a request for funds under the provisions of the advance payment method described in paragraph (b)(1) and (2) of this section, except that the institution's

request may not exceed the amount of the disbursements the institution made to the students included in that request; or

(2) Seeks reimbursement for those disbursements under the provisions of the reimbursement payment method described in paragraph (c) of this section, except that the Secretary may modify the documentation requirements and review procedures used to approve the reimbursement request.

§ 668.163 Maintaining and accounting for funds.

(a)(1) Institutional depository account. An institution must maintain title IV, HEA program funds in a depository account. For an institution located in a State, the depository account must be insured by the FDIC or NCUA. For a foreign institution, the depository account may be insured by the FDIC or NCUA, or by an equivalent agency of the government of the country in which the institution is located. If there is no equivalent agency, the Secretary may approve a depository account designated by the foreign institution.

(2) For each depository account that includes title IV, HEA program funds, an institution must clearly identify that title IV, HEA program funds are maintained in that account by--

(i) Including in the name of each depository account the phrase "Federal Funds"; or

(ii)(A) Notifying the depository institution that the depository account contains title IV, HEA program funds that are held in trust and retaining a record of that notice; and

(B) Except for a public institution located in a State or a foreign institution, filing with the appropriate State or municipal government entity a UCC–1 statement disclosing that the depository account contains Federal funds and maintaining a copy of that statement.

(b) Separate depository account. The Secretary may require an institution to maintain title IV, HEA program funds in a separate depository account that contains no other funds if the Secretary determines that the institution failed to comply with--

(1) The requirements in this subpart;

(2) The recordkeeping and reporting requirements in subpart B of this part; or

(3) Applicable program regulations.

(c) Interest-bearing depository account. (1) An institution is required to maintain its title IV, HEA program funds in an interest-bearing depository account, except as provided in 2 CFR 200.305(b)(8).

(2) Any interest earned on Federal Perkins Loan program funds is retained by the institution as provided under 34 CFR 674.8(a).

(3) An institution may keep the initial $500 in interest it earns during the award year on other title IV, HEA program funds it maintains in accordance with paragraph (c)(1) of this section. By June 30 of that award year, the institution must remit to the Department of Health and Human Services, Payment Management System, Rockville, MD 20852 any interest over $500.

(d) Accounting and fiscal records. An institution must--

(1) Maintain accounting and internal control systems that identify the cash balance of the funds of each title IV, HEA program that are included in the institution's depository account or accounts as readily as if those funds were maintained in a separate depository account;

(2) Identify the earnings on title IV, HEA program funds maintained in the institution's depository account or accounts; and

(3) Maintain its fiscal records in accordance with the provisions in § 668.24.

§ 668.164 Disbursing funds.

(a) Disbursement. (1) Except as provided under paragraph (a)(2) of this section, a disbursement of title IV, HEA program funds occurs on the date that the institution credits the student's ledger account or pays the student or parent directly with--

(i) Funds received from the Secretary; or

(ii) Institutional funds used in advance of receiving title IV, HEA program funds.

(2)(i) For a Direct Loan for which the student is subject to the delayed disbursement requirements under 34 CFR 685.303(b)(4), if an institution credits a student's ledger account with institutional funds earlier than 30 days after the beginning of a payment period, the Secretary considers that the institution makes that disbursement on the 30th day after the beginning of the payment period; or

(ii) If an institution credits a student's ledger account with institutional funds earlier than 10 days before the first day of classes of a payment period, the Secretary considers that the institution makes that disbursement on the 10th day before the first day of classes of a payment period.

(b) Disbursements by payment period. (1) Except for paying a student under the FWS program or unless 34 CFR 685.303 applies, an institution must disburse during the

current payment period the amount of title IV, HEA program funds that a student enrolled at the institution, or the student's parent, is eligible to receive for that payment period.

(2) An institution may make a prior year, late, or retroactive disbursement, as provided under paragraph (c)(3), (j), or (k) of this section, respectively, during the current payment period as long as the student was enrolled and eligible during the payment period covered by that prior year, late, or retroactive disbursement.

(3) At the time that a disbursement is made for a payment period, the institution, along with the third-party servicer engaged by the institution to draw down title IV, HEA program funds or otherwise perform activities leading to or supporting that disbursement, must confirm that the student is enrolled at the institution, and that the student, or the student's parent, is eligible for that disbursement.

(c) Crediting a student's ledger account. (1) An institution may credit a student's ledger account with title IV, HEA program funds to pay for allowable charges associated with the current payment period. Allowable charges are—

(i) The amount of tuition, fees, and institutionally provided room and board assessed the student for the payment period or, as provided in paragraph (c)(5) of this section, the prorated amount of those charges if the institution debits the student's ledger account for more than the charges associated with the payment period; and

(ii) The amount incurred by the student for the payment period for purchasing books, supplies, and other educationally related goods and services provided by the institution for which the institution obtains the student's or parent's authorization under §668.165(b).

(2) If an institution includes the cost of books and supplies as part of tuition and fees under paragraph (c)(1)(i) of this section, it must separately disclose those costs and explain why including them is in the best financial interests of students.

(3)(i) An institution may include in one payment period for the current year, prior year charges of not more than $200 for--

(A) Tuition, fees, and institutionally provided room and board, as provided under paragraph (c)(1)(i) of this section, without obtaining the student's or parent's authorization; and

(B) Educationally related goods and services provided by the institution, as described in paragraph (c)(1)(ii) of this section, if the institution obtains the student's or parent's authorization under §668.165(b).

(ii) For purposes of this section—

(A) The current year is the current loan period for any student or parent who received a Direct Loan, or the current award year for any student who did not receive a Direct Loan; and

(B) A prior year is any loan period or award year prior to the current loan period or award year, as applicable.

(4) An institution may include in the current payment period allowable charges stemming from any previous payment period in the current award year or loan period for which the student was eligible, if the student was not already paid for such previous payment period.

(5) For purposes of this section, an institution determines the prorated amount of charges associated with the current payment period by--

(i) For a program with substantially equal payment periods, dividing the total institutional charges for the program by the number of payment periods in the program; or

(ii) For other programs, dividing the number of credit or clock hours the student enrolls in, or is expected to complete, in the current payment period, by the total number of credit or clock hours in the program and multiplying that result by the total institutional charges for the program.

(d)(1) Direct payments. Except as provided under paragraph (d)(3) of this section, an institution makes a direct payment--

(i) To a student, for the amount of the title IV, HEA program funds that a student is eligible to receive, including Direct PLUS Loan funds that the student's parent authorized the student to receive, by—

(A) Initiating an EFT of that amount to the student's financial account;

(B) Issuing a check for that amount payable to, and requiring the endorsement of, the student; or

(C) Dispensing cash for which the institution obtains a receipt signed by the student;

(ii) To a parent, for the amount of the Direct PLUS Loan funds that a parent does not authorize the student to receive, by—

(A) Initiating an EFT of that amount to the parent's financial account;

(B) Issuing a check for that amount payable to and requiring the endorsement of the parent; or

(C) Dispensing cash for which the institution obtains a receipt signed by the parent.

(2) Issuing a check. An institution issues a check on the date that it—

(i) Mails the check to the student or parent; or

(ii) Notifies the student or parent that the check is available for immediate pick-up at a specified location at the institution. The institution may hold the check for no longer than 21 days after the date it notifies the student or parent. If the student or parent does not pick up the check, the institution must immediately mail the check to the student or parent, pay the student or parent directly by other means, or return the funds to the appropriate title IV, HEA program.

(3) Payments by the Secretary. The Secretary may pay title IV, HEA credit balances under paragraphs (h) and (m) of this section directly to a student or parent using a method established or authorized by the Secretary and published in the Federal Register.

(4) Student or parent choice. (i) An institution that makes direct payments to a student or parent by EFT and that chooses to enter into an arrangement described in

paragraph (e) or (f) of this section, including an institution that uses a third-party servicer to make those payments, must establish a selection process under which the student or parent chooses one of several options for receiving those payments.

(A) In implementing its selection process, the institution must--

(1) Inform the student or parent in writing that he or she is not required to open or obtain a financial account or access device offered by or through a specific financial institution;

(2) Ensure that the student's or parent's options for receiving direct payments are described and presented in a clear, fact-based, and, except as provided in paragraph (d)(4)(i)(B)(1) of this section, neutral manner;

(3) Ensure that initiating direct payments electronically to a financial account or access device associated with an existing student or parent financial account is as timely and no more onerous to the student or parent as initiating direct payments to an account described in paragraph (e) or (f) of this section; and

(4) Allow the student or parent the option to change, at any time, his or her choice as to how direct payments are made, as long as the student or parent provides the

institution with written notice of the change within a reasonable time.

(B) In describing the options under its selection process, the institution--

(1) Must present prominently as the first and default option, the financial account or access device associated with an existing financial account belonging to the student or parent;

(2) Must list and identify the major features and commonly assessed fees associated with all financial accounts described in paragraphs (e) and (f) of this section, as well as a Universal Resource Locator (URL) for the terms and conditions of those accounts. For each account, if an institution follows the format and content requirements specified by the Secretary in a notice published in the Federal Register following consultation with the CFPB, it will be in compliance with this requirement with respect to the major features and assessed fees associated with the account;

(3) May provide information about available financial accounts other than those described in paragraphs (e) and (f) of this section that have deposit insurance under 12 CFR part 330, or share insurance in accordance with 12 CFR part 745, for the benefit of the student or parent; and

(4) Must include issuing a check as an option for a student or parent to receive payments.

(ii) An institution that does not offer or use any financial accounts described in paragraphs (e) or (f) of this section may make direct payments to a student's or parent's existing financial account, or issue a check or disburse cash to the student or parent without establishing the selection process described in paragraph (d)(4)(i) of this section.

(e) Tier one arrangement. (1) In a Tier one (T1) arrangement, an institution has a contract with a third-party servicer under which the servicer performs one or more of the functions associated with processing direct payments of title IV, HEA program funds on behalf of the institution to one or more financial accounts that are offered under the contract or by the third-party servicer, or by an entity contracting with or affiliated with the third party servicer to students and their parents.

(2) Under a T1 arrangement, the institution must--

(i) Obtain the student's or parent's consent to open the financial account before--

(A) The institution provides any information about the student or parent, except for name, address, and email address, to the third-party servicer, to the financial

institution at which the financial account's funds would be deposited, or the agents of either;

(B) An access device, or any representation of an access device, is sent to the student or parent; or

(C) A card or tool provided to the student or parent for institutional purposes, such as a student ID card, is linked to the financial account;

(ii) Inform the student or parent of the terms and conditions of the financial account, as required under § 668.164(d)(4)(i)(B)(2), before the financial account is opened;

(iii) Ensure that the student or parent--

(A) Has convenient access to the financial account through a surcharge-free national or regional ATM network that has ATMs located on or near each location of the institution, and that those ATMs are sufficient in number and housed and serviced such that the funds are reasonably available from them, including at the times the institution or its third-party servicer makes direct payments into the student or parent financial accounts;

(B) Does not incur any cost--

(1) For opening the financial account or initially receiving an access device;

(2) Assessed by the institution, third-party servicer, or third-party servicer's associated financial institution when the student or parent conducts point-of-sale transactions;

(3) For conducting any transaction on an ATM that belongs to the surcharge free regional or national network; and

(4) For a charge initiated by the institution, third-party servicer, or third-party servicer's associated financial institution for at least 30 days following the date that title IV, HEA program funds are deposited or transferred to the financial account;

(iv) Ensure that--

(A) The financial account or access device is not marketed or portrayed as or converted into a credit card; and

(B) No credit may be extended or associated with the financial account, and that no fee is charged to the student or parent for any transaction that exceeds the balance on the card, regardless of whether the full amount of the transaction is established at the time the transaction is authorized by the financial institution;

(v) No later than 60 days after the most recently completed award year disclose conspicuously on the institution's Web site--

(A) The contract(s) establishing the T1 arrangement between the institution and third-party servicer and financial institution acting on behalf of the third-party servicer, as applicable, except for any portions that, if disclosed, would compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities;

(B) The total consideration for the most recently completed award year, monetary and non-monetary, paid or received by the parties under the terms of the contract; and

(C) The number of students and parents who had financial accounts under the contract at any time during the most recently completed award year, and the mean and median of the actual costs incurred by those account holders;

(vi) Annually provide to the Secretary the URL for the items under paragraph (e)(2)(v) of this section for publication in a centralized database;

(vii) Ensure that the terms of the accounts offered pursuant to a T1 arrangement are not inconsistent with the

best financial interests of the students and parents opening them. The Secretary considers this requirement to be met if--

(A) The institution documents that it periodically conducts reasonable due diligence reviews to ascertain whether the fees imposed under the T1 arrangement are, considered as a whole, not excessive in light of prevailing market rates; and

(B) All contracts for the marketing or offering of accounts pursuant to T1 arrangements to the institution's students or parents make provision for termination of the arrangement by the institution based on complaints received from students or parents or a determination by the institution under paragraph (e)(2)(vi)(A) of this section that the fees assessed under the T1 arrangement are excessive; and

(viii) Take affirmative steps, by way of contractual arrangements with the third-party servicer as necessary, to ensure that requirements of this section are met with respect to all accounts offered pursuant to T1 arrangements.

(f) Tier two arrangement. (1) In a Tier two (T2) arrangement, an institution has a contract with a financial institution or entity that offers financial accounts

through a financial institution, under which financial accounts are offered and marketed directly to students or their parents.

(2) The Secretary presumes that title IV, HEA program funds are deposited or transferred into the financial accounts offered and marketed under paragraph (f)(1) of this section. However, the institution does not have to comply with the requirements described in paragraph (f)(4) of this section if it documents that, for the most recently completed award year no student or parent received a credit balance.

(3) The Secretary considers that a financial account is marketed directly if--

(i) The institution communicates information directly to its students or their parents about the financial account and how it may be opened;

(ii) The financial account or access device is co-branded with the institution's name, logo, mascot, or other affiliation; or

(iii) A card or tool that is provided to the student or parent for institutional purposes, such as a student ID card, is linked with the financial account or access device.

(4) Under a T2 arrangement, the institution must--

(i) Obtain the student's or parent's consent to open the financial account before--

(A) The institution provides, or permits a third-party servicer to provide, any information about the student or parent, except for name, address, and email address, to the financial institution or its agents;

(B) An access device, or any representation of an access device, is sent to the student or parent; or

(C) A card or tool provided to the student or parent for institutional purposes, such as a student ID card, is linked to the financial account;

(ii) Inform the student or parent of the terms and conditions of the financial account as required under §668.164(d)(4)(i)(B)(2), before the financial account is opened;

(iii) No later than 60 days after the most recently completed award year, provide to the Secretary and disclose conspicuously on the institution's Web site--

(A) The contract(s) establishing the T2 arrangement between the institution and financial institution in its entirety, except for any portions that, if disclosed, would compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities;

(B) The total consideration for the most recently completed award year, monetary and non-monetary, paid or received by the parties under the terms of the contract; and

(C) The number of students and parents who had financial accounts under the contract at any time during the most recently completed award year, and the mean and median of the actual costs incurred by those account holders;

(iv) Annually provide to the Secretary the URL for the items under paragraph (f)(4)(iii) of this section for publication in a centralized database;

(v) Ensure that the funds deposited in the financial accounts are accessible through surcharge free in-network ATMs convenient to each of the institution's locations, and that those ATMs are sufficient in number and housed and serviced such that the funds are reasonably available from them, including at the times the institution or its third-party servicer makes direct payments into them; and

(vi) Ensure that the financial accounts are not marketed or portrayed as or converted into credit cards;

(vii) Ensure that the terms of the accounts offered pursuant to a T2 arrangement are not inconsistent with the best financial interests of the students and parents

opening them. The Secretary considers this requirement to be met if--

(A) The institution documents that it periodically conducts reasonable due diligence reviews to ascertain whether the fees imposed under the T2 arrangement are, considered as a whole, not excessive in light of prevailing market rates; and

(B) All contracts for the marketing or offering of accounts pursuant to T2 arrangements to the institution's students or parents make provision for termination of the arrangement by the institution based on complaints received from students or parents or a determination by the institution under paragraph (f)(4)(vi)(A) of this section that the fees assessed under the T2 arrangement are excessive;

(viii) Take affirmative steps, by way of contractual arrangements with the financial institution as necessary, to ensure that requirements of this section are met with respect to all accounts offered pursuant to T2 arrangements; and

(ix) Ensure students and parents incur no cost for opening the account or initially receiving an access device.

(g) Ownership of financial accounts opened through outreach to an institution's parents or students. Any financial account offered pursuant to an arrangement described in paragraphs (e) or (f) of this section must meet the requirements of either 31 CFR 210.5(a) or (b)(5), as applicable.

(h) Title IV, HEA credit balances. (1) A title IV, HEA credit balance occurs whenever the amount of title IV, HEA program funds credited to a student's account for a payment period exceeds the amount assessed the student for allowable charges associated with that payment period as provided under paragraph (c) of this section.

(2) A title IV, HEA credit balance must be paid directly to the student or parent as soon as possible, but no later than--

(i) 14 days after the balance occurred if the credit balance occurred after the first day of class of a payment period; or

(ii) 14 days after the first day of class of a payment period if the credit balance occurred on or before the first day of class of that payment period.

(i) Early disbursements. (1) Except as provided in paragraph (i)(2) of this section for a first-year, first-time borrower or a student employed under the FWS program,

the earliest an institution may disburse title IV, HEA funds to an eligible student or parent is--

(i) If the student is enrolled in a credit-hour program offered in terms that are substantially equal in length, 10 days before the first day of classes of a payment period; or

(ii) If the student is enrolled in a credit-hour program offered in terms that are not substantially equal in length, a non-term credit-hour program, or a clock-hour program, the later of--

(A) Ten days before the first day of classes of a payment period; or

(B) The date the student completed the previous payment period for which he or she received title IV, HEA program funds.

(2) An institution may not--

(i) Make an early disbursement of a Direct Loan to a first-year, first-time borrower who is subject to the 30-day delayed disbursement requirements in 34 CFR 685.303(b)(4). This restriction does not apply if the institution is exempt from the 30-day delayed disbursement requirements under 34 CFR 685.303(b)(4)(i)(A) or (B); or

(ii) Compensate a student employed under the FWS program until the student earns that compensation by performing work, as provided in 34 CFR 675.16(a)(5).

(j) Late disbursements. (1) Ineligible student. For purposes of this paragraph, an otherwise eligible student becomes ineligible to receive title IV, HEA program funds on the date that--

(i) For a Direct Loan, the student is no longer enrolled at the institution as at least a half-time student for the period of enrollment for which the loan was intended; or

(ii) For an award under the Federal Pell Grant, FSEOG, Federal Perkins Loan, Iraq-Afghanistan Service Grant, and TEACH Grant programs, the student is no longer enrolled at the institution for the award year.

(2) Conditions for a late disbursement. Except as limited under paragraph (i)(4) of this section, a student who becomes ineligible, as described in paragraph (i)(1) of this section, qualifies for a late disbursement (and the parent qualifies for a parent Direct PLUS Loan disbursement) if, before the date the student became ineligible--

(i) The Secretary processed a SAR or ISIR with an official expected family contribution for the student for the relevant award year; and

(ii)(A) For a loan made under the Direct Loan program or for an award made under the TEACH Grant program, the institution originated the loan or award; or

(B) For an award under the Federal Perkins Loan or FSEOG programs, the institution made that award to the student.

(3) Making a late disbursement. Provided that the conditions described in paragraph (i)(2) of this section are satisfied--

(i) If the student withdrew from the institution during a payment period or period of enrollment, the institution must make any post-withdrawal disbursement required under §668.22(a)(4) in accordance with the provisions of §668.22(a)(5);

(ii) If the student completed the payment period or period of enrollment, the institution must provide the student or parent the choice to receive the amount of title IV, HEA program funds that the student or parent was eligible to receive while the student was enrolled at the institution. For a late disbursement in this circumstance, the institution may credit the student's ledger account as

provided in paragraph (c) of this section, but must pay or offer any remaining amount to the student or parent; or

(iii) If the student did not withdraw but ceased to be enrolled as at least a half-time student, the institution may make the late disbursement of a loan under the Direct Loan program to pay for educational costs that the institution determines the student incurred for the period in which the student or parent was eligible.

(4) Limitations. (i) An institution may not make a late disbursement later than 180 days after the date the institution determines that the student withdrew, as provided in §668.22, or for a student who did not withdraw, 180 days after the date the student otherwise became ineligible, pursuant to paragraph (i)(1) of this section.

(ii) An institution may not make a late second or subsequent disbursement of a loan under the Direct Loan program unless the student successfully completed the period of enrollment for which the loan was intended.

(iii) An institution may not make a late disbursement of a Direct Loan if the student was a first-year, first-time borrower as described in 34 CFR 685.303(b)(4) unless the student completed the first 30 days of his or her program of study. This limitation does not apply if the

institution is exempt from the 30-day delayed disbursement requirements under 34 CFR 685.303(b)(4).

(iv) An institution may not make a late disbursement of any title IV, HEA program assistance unless it received a valid SAR or a valid ISIR for the student by the deadline date established by the Secretary in a notice published in the Federal Register.

(k) Retroactive payments. If an institution did not make a disbursement to an enrolled student for a payment period the student completed (for example, because of an administrative delay or because the student's ISIR was not available until a subsequent payment period), the institution may pay the student for all prior payment periods in the current award year or loan period for which the student was eligible.

(l) Returning funds. (1) Notwithstanding any State law (such as a law that allows funds to escheat to the State), an institution must return to the Secretary any title IV, HEA program funds, except FWS program funds, that it attempts to disburse directly to a student or parent that are not received by the student or parent. For FWS program funds, the institution is required to return only the Federal portion of the payroll disbursement.

(2) If an EFT to a student's or parent's financial account is rejected, or a check to a student or parent is returned, the institution may make additional attempts to disburse the funds, provided that those attempts are made not later than 45 days after the EFT was rejected or the check returned. In cases where the institution does not make another attempt, the funds must be returned to the Secretary before the end of this 45-day period.

(3) If a check sent to a student or parent is not returned but is not cashed, the institution must return the funds to the Secretary no later than 240 days after the date it issued the check.

(m) Provisions for books and supplies. (1) An institution must provide a way for a student who is eligible for title IV, HEA program funds to obtain or purchase, by the seventh day of a payment period, the books and supplies applicable to the payment period if, 10 days before the beginning of the payment period--

(i) The institution could disburse the title IV, HEA program funds for which the student is eligible; and

(ii) Presuming the funds were disbursed, the student would have a credit balance under paragraph (h) of this section.

(2) The amount the institution provides to the student to obtain or purchase books and supplies is the lesser of the presumed credit balance under this paragraph or the amount needed by the student, as determined by the institution.

(3) The institution must have a policy under which the student may opt out of the way the institution provides for the student to obtain or purchase books and supplies under this paragraph.

(4) If a student uses the method provided by the institution to obtain or purchase books and supplies under this paragraph, the student is considered to have authorized the use of title IV, HEA funds and the institution does not need to obtain a written authorization under paragraph (c) of this section and § 668.165(b) for this purpose.

§ 668.165 Notices and authorizations.

(a) Notices. (1) Before an institution disburses title IV, HEA program funds for any award year, the institution must notify a student of the amount of funds that the student or his or her parent can expect to receive under each title IV, HEA program, and how and when those funds will be disbursed. If those funds include Direct Loan program funds, the notice must indicate which funds

are from subsidized loans and which are from unsubsidized loans.

(2) Except in the case of a post-withdrawal disbursement made in accordance with §668.22(a)(5), if an institution credits a student's account at the institution with Direct Loan, Federal Perkins Loan, or TEACH Grant program funds, the institution must notify the student or parent of--

(i) The anticipated date and amount of the disbursement;

(ii) The student’s or parent’s right to cancel all or a portion of that loan, loan disbursement, TEACH Grant, or TEACH Grant disbursement and have the loan proceeds and TEACH Grant proceeds returned to the Secretary; and

(iii) The procedures and time by which the student or parent must notify the institution that he or she wishes to cancel the loan, loan disbursement, TEACH Grant, or TEACH Grant disbursement.

(3) The institution must provide the notice described in paragraph (a)(2) of this section in writing--

(i) No earlier than 30 days before, and no later than 30 days after, crediting the student's ledger account at the institution, if the institution obtains affirmative

confirmation from the student under paragraph (a)(6)(i) of this section; or

(ii) No earlier than 30 days before, and no later than seven days after, crediting the student's ledger account at the institution, if the institution does not obtain affirmative confirmation from the student under paragraph (a)(6)(i) of this section.

(4)(i) A student or parent must inform the institution if he or she wishes to cancel all or a portion of a loan, loan disbursement, TEACH Grant, or TEACH Grant disbursement.

(ii) The institution must return the loan or TEACH Grant proceeds, cancel the loan or TEACH Grant, or do both, in accordance with program regulations provided that the institution receives a loan or TEACH Grant cancellation request--

(A) By the later of the first day of a payment period or 14 days after the date it notifies the student or parent of his or her right to cancel all or a portion of a loan or TEACH Grant, if the institution obtains affirmative confirmation from the student under paragraph (a)(6)(i) of this section; or

(B) Within 30 days of the date the institution notifies the student or parent of his or her right to

cancel all or a portion of a loan, if the institution does not obtain affirmative confirmation from the student under paragraph (a)(6)(i) of this section.

(iii) If a student or parent requests a loan cancellation after the period set forth in paragraph (a)(4)(ii) of this section, the institution may return the loan or TEACH Grant proceeds, cancel the loan or TEACH Grant, or do both, in accordance with program regulations.

(5) An institution must inform the student or parent in writing regarding the outcome of any cancellation request.

(6) For purposes of this section--

(i) Affirmative confirmation is a process under which an institution obtains written confirmation of the types and amounts of title IV, HEA program loans that a student wants for the period of enrollment before the institution credits the student's account with those loan funds. The process under which the TEACH Grant program is administered is considered to be an affirmative confirmation process; and

(ii) An institution is not required to return any loan or TEACH Grant proceeds that it disbursed directly to a student or parent.

(b) Student or parent authorizations. (1) If an institution obtains written authorization from a student or parent, as applicable, the institution may--

(i) Use the student's or parent's title IV, HEA program funds to pay for charges described in § 668.164(c)(1)(ii) or (c)(3)(i)(B) that are included in that authorization; and

(ii) Unless the Secretary provides funds to the institution under the reimbursement payment method or the heightened cash monitoring payment method described in § 668.162(c)(2) or (d)(2), respectively, hold on behalf of the student or parent any title IV, HEA program, funds that would otherwise be paid directly to the student or parent as credit balance under § 668.164(h).

(2) In obtaining the student's or parent's authorization to perform an activity described in paragraph (b)(1) of this section, an institution--

(i) May not require or coerce the student or parent to provide that authorization;

(ii) Must allow the student or parent to cancel or modify that authorization at any time; and

(iii) Must clearly explain how it will carry out that activity.

(3) A student or parent may authorize an institution to carry out the activities described in paragraph (b)(1) of this section for the period during which the student is enrolled at the institution.

(4)(i) If a student or parent modifies an authorization, the modification takes effect on the date the institution receives the modification notice.

(ii) If a student or parent cancels an authorization to use title IV, HEA program funds to pay for authorized charges under paragraph (a)(4) of this section, the institution may use title IV, HEA program funds to pay only those authorized charges incurred by the student before the institution received the notice.

(iii) If a student or parent cancels an authorization to hold title IV, HEA program funds under paragraph (b)(1)(ii) of this section, the institution must pay those funds directly to the student or parent as soon as possible but no later than 14 days after the institution receives that notice.

(5) If an institution holds excess student funds under paragraph (b)(1)(ii) of this section, the institution must-

(i) Identify the amount of funds the institution holds for each student or parent in a subsidiary ledger account designed for that purpose;

(ii) Maintain, at all times, cash in its depository account in an amount at least equal to the amount of funds the institution holds for the student; and

(iii) Notwithstanding any authorization obtained by the institution under this paragraph, pay any remaining balance on loan funds by the end of the loan period and any remaining other title IV, HEA program funds by the end of the last payment period in the award year for which they were awarded.

§ 668.166 Excess cash.

(a) General. The Secretary considers excess cash to be any amount of title IV, HEA program funds, other than Federal Perkins Loan program funds, that an institution does not disburse to students by the end of the third business day following the date the institution--

(1) Received those funds from the Secretary; or

(2) Deposited or transferred to its Federal account previously disbursed title IV, HEA program funds, such as those resulting from award adjustments, recoveries, or cancellations.

(b) Excess cash tolerance. An institution may maintain for up to seven days an amount of excess cash that does not exceed one percent of the total amount of funds the institution drew down in the prior award year. The

institution must return immediately to the Secretary any amount of excess cash over the one-percent tolerance and any amount of excess cash remaining in its account after the seven-day tolerance period.

(c) Consequences for maintaining excess cash. Upon a finding that an institution maintained excess cash for any amount or time over that allowed in the tolerance provisions in paragraph (b) of this section, the actions the Secretary may take include, but are not limited to--

(1) Requiring the institution to reimburse the Secretary for the costs the Federal government incurred in providing that excess cash to the institution; and

(2) Providing funds to the institution under the reimbursement payment method or heightened cash monitoring payment method described in §668.162(c) and (d), respectively.

§ 668.167 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the section or the application of its provisions to any person, act, or practice shall not be affected thereby.

[FR Doc. 2015-11917 Filed: 5/15/2015 08:45 am; Publication Date: 5/18/2015]