U.S. Department of Education Negotiated Rulemaking – Program Integrity and Improvement

Issue 4: Cash Management

Submission to the Department of Education
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The Offices of the New York and Massachusetts Attorneys General would like to thank the Department of Education for examining issues involving cash management of funds provided under the Title IV Federal Student Aid programs. We address our comments to arrangements between institutions of higher education and financial services providers for disbursement of Title IV credit balances through debit cards, pre-paid cards, or bank accounts offered by the financial services provider. Such arrangements create potential risks of harm to students. To minimize those risks, we recommend that the Department of Education issue regulations that require schools to base decisions to enter into such arrangements solely on the best interest of students.

I. Arrangements to Disburse Credit Balances

A growing number of schools are entering into arrangements with banks or other financial services providers to disburse Title IV credit balances through debit cards, pre-paid cards, or bank accounts offered by the financial services provider. Such arrangements have the potential to benefit students because schools may be able to use their bargaining power to negotiate for financial products with superior terms, including comparatively lower costs and better consumer protections. However, where schools choose financial services providers based on a consideration of the benefits to the school (*e.g.*, free or discounted services or products; commissions earned through students' enrollment in the service), rather than solely on consideration of the students' interests, the benefits to the school may come at a cost to students, either of higher-priced financial products and/or products with inadequate consumer protections.

II. Parallels with Preferred Lender Arrangements

The risks to students arising from such arrangements mirror those identified in arrangements between schools and student lenders. Several years ago, an investigation by the New York State Attorney General (and a similar investigation by the Massachusetts Attorney General) revealed that some schools and their employees had entered into arrangements with student lenders that provided benefits to the school or employee in return for the lender's inclusion on the school's list of "preferred lenders." Some schools entered into "revenue sharing" arrangements that provided the school with a monetary award proportional to the number or volume of loans to their students. In some cases, these arrangements steered students into high-cost private loans. Benefits to the school were not disclosed to students, leaving students with the false impression that the school's recommendation was based solely on consideration of the best interests of the students. Because students place great trust in their schools' recommendations, preferred lender lists were extremely influential in students' decision-making. In addition, some schools entered into arrangements with certain lenders that permitted the lenders to use the schools' name, logo, and/or mascot in marketing to students. This co-branded advertising was also influential in steering students to particular lenders. Schools' decisions to enter preferred lender, revenue sharing, or co-branding arrangements frequently hinged on consideration of benefits to the school, rather than on whether the loans were a good deal for students.

The New York Attorney General's Office developed a Code of Conduct to address these practices that was adopted by 28 schools. The Code required schools to choose lenders for inclusion on their preferred lender list based on a consideration of the best interests of students. The Code also prohibited revenue sharing, co-branded marketing, and the provision of free or discounted services or products to the school in exchange for inclusion on a preferred lender list. The Code became the basis for a new state law (New York Education Law, Article 13-B), and elements of the Code were subsequently incorporated into amendments to federal law and Department regulations concerning preferred lender arrangements. *See* 20 U.S.C. §§ 1019a(1)(A) and 1019b(c); 34 CFR §§ 601.10 and 601.21. Importantly, the Department's Preferred Lender regulations articulated the principal that institutions of higher education should consider the best interests of students when entering into preferred lender arrangements.

Specifically, the Department's Preferred Lender regulations require schools to "exercise a duty of care and duty of loyalty" when they choose to enter into arrangements with student lenders and to enter into such arrangements "for the sole benefit of the students attending the institution." 34 CFR 601.10(d)(4). The Preferred Lender regulations also require schools to disclose both the method and criteria used by the institution in selecting student lender partners, "to ensure that such lenders are selected on the basis of the best interest of the borrowers." 34 CFR 601.10(d)(3). Similar language should be included in regulations governing arrangements between schools and financial service providers involving disbursement of Title IV credit balances through debit cards, pre-paid cards or bank accounts offered by the financial services provider.

III. Recommendations

To prevent harm to students arising from arrangements between schools and financial services providers to disburse Title IV credit balances, we make the following recommendations:

- The Department should issue regulations that require schools to provide students with the option of receiving Title IV credit balances through their own bank accounts rather than a debit card, pre-paid card, or bank account offered by the school's partner financial services company. Disclosure of this option should be clear and conspicuous.

- Because a debit card or pre-paid card may be beneficial for certain students who cannot open a bank account, the Department should consider offering a federally-provided card for disbursement of credit balances. In the alternative, the Department should issue regulations that impose minimum standards and consumer protections for such financial products, including prohibiting or limiting the fees on such cards.
- The Department should issue regulations requiring that schools that enter into arrangements with banks or financial service providers to disburse Title IV credit balances through debit cards, pre-paid cards or bank accounts base decisions to enter such arrangements solely on consideration of the best interests of students attending the institution.
- The Department should 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.
- The Department should issue regulations that require schools to exercise a duty of care and a duty of loyalty with regard to decisions to enter into arrangements with financial services companies to disburse Title IV credit balances. The proposed regulations should also prohibit revenue sharing and co-branded marketing in connection with such arrangements.