

March 6, 2014

Dear Fellow Negotiators:

We are writing in follow-up to the letter distributed yesterday to all Program Integrity negotiators from Higher One. While we appreciated the opportunity to review suggestions from Higher One, and believe that at a high-level there is some common ground between Higher One's suggestions and the principles we have attempted to articulate, we have concerns with a number of the Higher One recommendations.

Our concerns center in these areas:

1. The **expansive definition of "endorse" or "recommend"** as presented would cover traditional credit union and banking products and services provided to students wholly outside Title IV credit balance refund services.
2. Some of the recommendations would create **duplicative regulatory requirements, and regulatory oversight** overlapping with authority of prudential regulators of banks and credit union, the Treasury Department, as well as the Consumer Financial Protection Bureau
3. Some of the recommendations would likely cause **reduced competition** in the campus based financial services marketplace and therefore hinder the prospects of students receiving the best value the marketplace can provide.
4. Some of the recommendations would likely create regulatory complexity beyond the minimum necessary to address concerns, adding **unnecessary burden on schools** and their staff.

#### **Expansive Definition of "Endorse" or "Recommend"**

Today the vast majority of students (often with the guidance of their parents) select a traditional checking and/or savings account to meet their financial needs. There are more than 10,000 community banks and credit unions in the United States. Most of these financial institutions provide services to college age consumers, but do not provide services in connection with Title IV credit balance refund services as described in 34 CFR Part 668, Subpart K. However, many of these financial institutions maintain contractor relationships with institutions of higher education. These relationships may include the leasing of space for a branch location, the placement of ATM Terminals, treasury management services, or cashiering functions. These traditional banking functions are subject to extensive regulation and should not become subject to further regulation under to Part 668 Subpart K since these and many other banking functions provided on campus are offered independent of the delivery of Title IV credit balances to students. Using 34 CFR Part 668, Subpart K to regulate unrelated traditional banking services will stifle competition, restrict the broad access student enjoy today to traditional credit union/banking product and services, and result in higher compliance costs borne by the higher education institutions. As we understand the problem statement, the issue of school endorsements arises when the school either directly or through a 3<sup>rd</sup> party service provider, promotes or offers *preferred or required* financial products within the processes they require to facilitate the delivery of Title IV credit balances. Simply being a "contractor" or having a branch presence "on campus" has not been identified as a concern. Students are under no requirement to enter a campus based branch office, in the same way they may be required to enter into a prescribed process in order to communicate their preference for the delivery of Title IV credit balances.

## **Regulatory Duplication**

We also believe that the Higher One proposals related to fee disclosures are highly problematic. The fee disclosure concerns raised by the GAO do not relate to students who may voluntarily walk into the campus branch of a bank or credit union in order to open a checking account. Rather they relate to the opening of financial products or accounts within the processes schools require to facilitate the collection of student payment preferences related to the refund of Title IV credit balances. Often students have reported that they didn't understand that such products were optional, that they had other choices, or what costs they would incur to make use of the various features of the product.

It is important to remember that banks and credit unions offering traditional checking, and savings account products already are under regulatory directives as to the advertising, delivery timing, form, and sufficiency of deposit account disclosures including the disclosure of fees. Generally, banks and credit unions do not open accounts in an integrated manner within the processes schools require to facilitate the collection of student payment preferences related to Title IV credit balance disbursements. Rather, students wishing to receive such credit balances via direct deposit are presented an upfront choice to designate an existing checking/savings account; and if the student who prefers direct deposit does not have an existing account, the student would need establish an account outside of the refund service following standard account-opening procedures and then return to the service to record her direct deposit preference. In this way, the timing of fee disclosures would solely and adequately, be provided under the directives provided by existing regulatory authorities. As an aside, it should be noted that PEW recently has published a disclosure format more specific to general purpose reloadable prepaid cards -- formatted to summarize the particular fees associated with those cards.

## **Unnecessary Burden on Schools**

The Higher One study included with their recommendations, attempts to quantify the number of students who may not have a traditional checking account in their own name. Considering the possible estimate range within the disclosed sampling error, it seems to support the general understanding that the overwhelming majority of students have a traditional checking account in their own name. We should be concerned that many consumers in our society are outside the traditional banking system. Given recent attention to this societal problem, it is encouraging to observe the introduction of new, innovative and affordable products targeted to those currently unbanked. However, when the overwhelming majority of students are served already by traditional banking products, and the problem of unbanked consumers does not uniquely exist within student populations, the Department should consider the burden on schools of mandating that they be required to offer a general purpose reloadable prepaid debit card in addition to direct deposit, or check. As mentioned at our in person Committee meeting, one Web search location, Nerd Wallet, currently presents the terms and conditions of 83 competing general purpose reloadable prepaid debit cards. The concerns presented by the GAO Report were not focused on a lack of marketplace options for unbanked students. An unintended consequence of mandating multiple electronic options is that the additional regulatory burden may lead more schools to outsource the refunding process to 3<sup>rd</sup> party providers or to add unnecessary complexity to existing Title IV refund outsourcing arrangements that already honor the principles of informed choice, equal prominence, unencumbered selection, and neutral enrollment communications. We also believe students are not best served by an additional electronic option that is single-sourced to a particular financial institution or 3<sup>rd</sup> party service provider - - that approach deviates

from promoting choice as a key consumer protection and delivering the benefits of competition to students.

### **Reduced Competition**

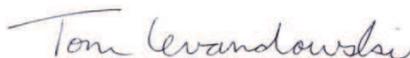
Consumers are the beneficiaries of marketplace competition. In this regard, we have concerns that a number of the Higher One recommendations when taken together would tend to discourage community banks and credit unions from entering the campus based market, and reduce their current competitive interest in meeting the needs of campuses. This would be unfortunate as the GAO Report generally indicated student consumers received better pricing from community based financial institutions. It is simply not economically possible for most banks and credit unions to offer checking account products under the mandate that they are prohibited from qualifying the student. This recommendation together with the expansive definition of "Endorse" or "Recommend" previously discussed, and the recommendation for fee disclosure requirements potentially different than those currently mandated by regulatory directives, is likely to cause community based financial institutions to reconsider whether they can economically serve student consumers as they do today. Likewise, many community banks and credit unions today which contract for the placement of campus based ATM terminals (or branches), while not participating in the Title IV credit balance refunding process, are likely to reconsider those relationships if those community services bring additional compliance complexity and costs.

While we understand this letter is perhaps beyond the time it might be of use to the Department, we felt we needed to write it only for the benefit of our fellow non-federal Negotiators, and our obligation to represent the perspective of our community of interests.

We appreciate your consideration and look forward to further discussion of this matter as we all progress through the rulemaking process.



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