

Blackboard Inc.
650 Massachusetts Ave NW
6th Floor
Washington DC 20001

P +1.202.463.4860
F +1.202.463.4863

blackboard.com



April 2, 2014


Ms. Pamela Moran
US Department of Education
Office of Postsecondary Education
1990 K Street, NW
Washington, DC 20006

Dear Ms. Moran:

Please find attached Blackboard's comments regarding Issue number 4. Thank you for your consideration, we look forward to contributing further as the process continues.

Very truly yours,

BLACKBOARD TRANSACT

By: 
David B. Marr,
Senior Vice President

Issue Paper 4

Program Integrity and Improvement Issues

Issue: Cash Management

Statutory Cites: §§484, 487, and 498 of the HEA

Regulatory Cites: 34 CFR Part 668, Subpart K

Summary of Change: The current regulations in 34 CFR Part 668, Subpart K, govern the ways that an institution requests, maintains, disburses, and otherwise manages title IV, HEA program funds. The proposed changes would revise existing regulations to address the allowable methods and procedures for institutions to pay students their title IV student aid credit balances; would prohibit fund sweeps or other practices that expose title IV funds to financial risk; would provide additional consumer protections governing the use of prepaid cards and similar financial instruments; would include provisions designed to provide students free access to their full title IV credit balances; would require neutrality in marketing materials provided to students; would acknowledge the Secretary’s authority to make direct disbursements of title IV aid; and would clarify permissible disbursement practices and agreements between institutions and other entities that assist the institution in making title IV payments to students. The proposed changes also include a number of technical changes, the most significant of which eliminates language that governed the disbursement of FFEL program funds.

Changes: See attached regulatory text.

Blackboard’s comments and recommendations are incorporated in the regulatory text below. Our response is structured in the following format:

1. The specific proposed regulation/language being addressed is highlighted in yellow.
2. Blackboard then follows the highlighted language with our comments and recommendations set forth in sections entitle “**Blackboard Comments**” and “**Recommendation**” and in blue text.

At this time we did not comment the proposed regulations as it relates to the Department’s oversight responsibility to ensure compliance; however, we strongly encourage the Department to consider the impact of these regulations on the ability to effectively performed audits under OMB Circular A-133, The Department’s Audit Guide, as well as substantive procedures set forth its Program Reviews Guide.

§668.161 Scope

(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) The 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;

(ii) A day is a calendar day, unless otherwise specified;

(iii) The term “parent” refers to the parent borrower of a Direct PLUS Loan;

(iv) An “institution” includes a foreign institution as defined in 34 CFR 600.52, unless otherwise specified;

(v) The term “student ledger account” refers to a bookkeeping account maintained and used by an institution to record the financial transactions pertaining to a student’s enrollment at the institution.

(vi) The term “financial account” refers to a student’s or parent’s checking or savings account, or other consumer asset account, including a debit card account or prepaid card account, held by a financial institution;

(vii) The term “financial institution” means a bank, savings association, or credit union that is insured by the Federal Deposit Insurance Corporation (FDIC) or National Credit Union Share Insurance Fund (NCUSIF); and

(viii) The term “pass-through deposit or share insurance” means that FDIC or NCUSIF deposit insurance coverage applies to the beneficiaries (students and parents) of a custodial account held at a financial institution.

(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—

(1) Use or hypothecate (i.e., use as collateral) the funds for any other purpose; or

(2) Transfer or maintain the funds in a sweep account, 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, reimbursement, 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 electronic funds transfer (EFT) of that amount to the Federal bank account designated by the institution; and

(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, or pay the student or parent directly, for the amount of title IV, HEA program funds that the student or parent is eligible to receive, including the amount of any credit balance due under §668.164(f), 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 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 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(f).

(4) The Secretary approves the amount of the institution's reimbursement request for a student or parent and initiates an EFT of that amount to the Federal bank account designated by the institution, if the Secretary determines with regard to that student or parent that the institution—

(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).

(d) Heightened cash monitoring (HCM) payment method. Under the heightened cash monitoring payment method, an institution must credit a student’s ledger account, or pay the student or parent directly, for the amount of title IV, HEA program funds that the student or parent is eligible to receive, including the amount of any credit balance due under §668.164(f), before the institution—

(1) Submits a request for funds under the provisions of the advance payment method described in paragraphs (b)(1) and (b)(2), 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), 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) Federal bank account. An institution must maintain title IV, HEA program funds in a bank account that is in its name, under its control, and federally insured. For an institution located in a State, the bank account must be insured by the FDIC or NCUSIF. For a foreign institution, the bank account may be insured by the FDIC or NCUSIF, or by an equivalent agency of the federal or central government of the country in which the institution is located. If there is no equivalent agency, the Secretary may approve a bank account designated by the foreign institution.

(2) For each bank 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 bank account the phrase “Federal Funds”; or

(ii)(A) Notifying the financial institution that the bank 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 bank account contains Federal funds and maintaining a copy of that statement.

(b) Separate bank account. An institution must maintain title IV, HEA program funds in a separate Federal bank account that contains no other funds.

Blackboard Comment:

The Department’s current requirement states:

“All schools must maintain a bank account into which the Department transfers, or the school deposits, FSA funds. The account must be federally insured or secured by collateral of value reasonably

*equivalent to the amount of FSA funds in the account. A school generally is not required to maintain a separate account for each FSA program unless the Department imposes this requirement as a result of a program review or other action.*¹

It is our belief that a separate stand-alone account (with associated incremental administrative costs), as opposed to subsidiary accounts containing only Title IV within a master account, does not provide greater visibility, stewardship or auditability than does a subsidiary account that is compliant with **§668.163**.

Recommendation: The proposed change be removed and the original regulation **§668.163(b)** be allowed to stand as written.

(c) Interest-bearing bank account Except for Federal Perkins Loan Program funds, an institution is not required to maintain title IV, HEA program funds in an interest-bearing bank account.

(1) Any interest earned on Federal Perkins Loan Program funds is retained by the institution as provided under 34 CFR 674.8(a).

(2) If an institution maintains other title IV, HEA program funds in an interest-bearing account, the institution may keep the initial \$250 it earns on those funds during an award year. By June 30 of that award year, the institution must remit to the Secretary any earnings over \$250.

§668.164 Disbursing funds.

(a) Disbursement. (1) Except as provided under paragraph (a)(2), a disbursement of title IV, HEA program funds occurs on the date that—

(i) The institution credits the student's ledger account or pays the student or parent directly with—

(A) Funds received from the Secretary; or

(B) Institutional funds used in advance of receiving title IV, HEA program funds; or

¹ 2012-2013 Federal Student Aid Handbook; US Department of Education. Volume 4 - Chapter 2, Requesting and Managing FSA Funds; p.4-36

(ii) As provided under paragraph (d)(3), the Secretary pays a student or parent directly.

Blackboard Comment:

The Secretary paying students and parents directly is more than likely a practical impossibility. At a minimum, it will carry with it significant on-going costs and operational complexities base on the following:

1. The suggestion that the Department mirror the approach the Social Security Administration's has taken with its DirectExpress. Title IV is not a defined benefit program as is Social Security. Eligibility can be fluid over a year, enrollment period or a given day based on a student's action or inaction;
2. The Department's card/product will have less utility than currently available responsible market offerings. For example, DirectExpress has several limitations including it can only be loaded by Social Security and not by the beneficiary, it only provides for one free ATM withdrawal per load period/month, it does not have free checks and the beneficiary must pay for money orders;
3. The current DirectExpress² program at Social Security does not insulate the beneficiaries from many of the fees and related student complaints that the Department is currently trying to address. BlackboardPay³ has superior utility, fee schedule and a much greater ability avoid fees or no possibility of fees;
4. There will be millions and millions of incremental dollars spent on the start-up and on-going program administration associated with such a Department run system/program, born solely by taxpayers while currently available and responsible disbursement options cost taxpayers nothing;
5. Common Origination and Disbursement will require costly modification to interoperate with such a system/program; and
6. Title IV programmatic complexities must be resolved regarding how campus-based programs such as Federal Work-Study and the Perkins Loan Programs will operate under this approach and as it relates to funds managed at and by the institution, and with respect to institutional matches and Institutional Capital Contributions (ICC);

Recommendation: Based on the above, the proposed option for the Department to provide direct disbursement is not a practical alternative nor is it in the best interest of the taxpayers. Therefore, the propose option should be removed from the proposed regulation.

(2)(i) For a Direct Loan where 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

² DirectExpress: <https://www.usdirectexpress.com/edcfdtclient/docs/faq.html#1>

³ BlackboardPay: <https://www.blackboard.com/Platforms/Transact/Products/Financial-Services/BlackboardPay/For-Students.aspx>

(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. Except for paying a student FWS wages at least once a month, as provided under 34 CFR 675.16(a)(2), or for making early, late, or retroactive disbursements, as provided under paragraphs (g), (h), and (i) respectively, an institution must disburse during each payment period the amount of title IV, HEA program funds that an enrolled student or parent is eligible to receive for that payment period.

(c) Crediting a student's ledger account. (1) An institution may credit a student's ledger account with Direct PLUS Loan funds the parent authorizes a student to receive, and other title IV, HEA program funds, to pay for allowable charges associated with the current payment period. Allowable charges include—

(i) The amount of tuition, fees, and institutionally provided room and board assessed the student for the payment period, or as provided under paragraph (c)(5), 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 costs 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) An institution may not include the cost of books and supplies as part of tuition and fees under paragraph (c)(1)(i).

(3) For allowable charges stemming from a previous payment period in the current award year, an institution may associate those charges with the current payment period.

(4) For charges stemming from a prior award year, an institution may associate those charges with the current payment period if those charges are not more than \$200 for—

(i) Tuition, fees, and institutionally-provided room and board; and

(ii) As provided in paragraph (c)(1)(ii), educationally related goods and services provided by the institution for which the institution obtains the student's or parent's authorization.

(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 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) Direct payments. (1) Except as provided under paragraph (d)(3), 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 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 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, or require an institution to pay, title IV, HEA program funds directly to a student or parent using a method established or authorized by the Secretary.

(4) Conditions for making a direct payment. In making a direct payment, the institution—

(i) May not require any student or parent to open or use a financial account at a specific financial institution; and

(ii)(A) Must request each student or parent to provide the information needed to make an EFT to the financial account the student or parent opened without assistance from the institution and use that financial account if the student or parent provides that information; or

Blackboard Comment:

We believe that a directed approach could fundamentally undermine the goal of disclosure, transparency and lowest cost to students. This proposed “default” option de facto assumes that

all Financial Accounts at banks are safe-harbors from fees for Title IV disbursements and that account disclosures are complete and proper. Given this is not factually the case, we believe it is important for the institution to also make certain that if it offers EFT to a Financial Account, it also provides general financial literacy information to the student or parent related to EFTs to Financial Accounts in an unbiased and transparent manner, consistent with any other options presented.

Further, the EFT requirement and assumption is in conflict with current regulations related to a student's or parent's request for disbursement by check. Specially, it precludes the institution from issuing a check if the student or parent provides EFT information regardless of the students or parent's preference/request for a check, in that an institution must "use that financial account".

There is another logical conflict with (D)(4)(ii)(B) by stating, "without assistance from the institution". Specifically, in the event that during the prior year the student or parent did not have a financial account (were unbanked) and the institution assisted ("institution may assist") the them in "opening" a financial account [requirement (B)], then the very nature of that account was born of "assistance" by the institution and therefore the institution is barred from making subsequent disbursements to that account in accordance with (D)(4)(ii)(A).

Recommendation: Rewrite (d)(4)(ii)(A) as follows:

The institution must make the student or parent aware that EFT to an existing account is an option and provide them with the ability to submit the associated account information in a reasonable straightforward manner and without undue burden if selected by the student or parent as their preferred disbursement option.

(B) If the student or parent does not have, or provide information about, a financial account, the institution may assist the student or parent in opening a financial account under paragraph (e).

(5) Student choice. If an institution establishes a process under which a student or parent is offered options for receiving a direct payment, the institution must ensure that—

(i) The options are described clearly and presented in a neutral manner, e.g., the student or parent is not steered to, or compelled to select, a particular option; and

(ii) The process for making direct payments electronically to a financial account designated by the student or parent under paragraph (4)(ii)(A), or otherwise selected by the student or parent, is as timely and no more onerous than making direct payments to a sponsored account under paragraph (e).

Blackboard Comment:

Not all disbursement methods are created equal and the associated timelines from initiation to posting vary accordingly, and are beyond the control of the institution. Specifically, timelines for funds delivery and availability may vary from 15 minutes to 48 hours or more depending on

the commercial delivery method associated with a program. We do agree that any artificial means of delaying participation in one of the options should be expressly prohibited.

Recommendation: Based on the risk perceived by the Department, we suggest the following language:

(ii) The process and/or commercial delivery method for making direct payments electronically to a financial account designated by the student or parent under paragraph (D)(4)(ii)(A), or otherwise selected by the student or parent cannot be extended beyond its standard commercial delivery timeline based on actions taken or not taken by the institution.

(e) Sponsored account. If an institution located in any State, as defined in 600.2, establishes a process that a student or parent follows to open a financial account, either through a contract with a third-party servicer or through any arrangement with an entity under which any party to the arrangement exercises any control over the financial account into which the student's title IV, HEA program funds are transferred or deposited, the institution—

Blackboard Comment:

As it is the intent of the Department is to serve the best interests of all Title IV recipients and in accordance with requirements (1) through (13) set forth below, then the Department must ensure it has captured the entire universe of Title IV recipients, and not a subset thereof. To that end, the above proposed language in (e) would seem to exclude non-Sponsored Accounts which would be any Financial Account a student or parent had established i.e. a traditional checking account.

Consequently, Title IV disbursements deposited into these accounts would not be afforded the same protection as Title IV deposits in Sponsored Accounts. Further, the language related to third-party or other entity arrangement distracts from the Department's ultimate objective of affording the same protections to all Title VI recipients, regardless of contractual arrangements.

Recommendation: Based on the above comments, we suggestion the following language:

(e) Sponsored Accounts. If an institution located in any State, as defined in 600.2, establishes a process to assist a student or parent to open a financial account for which HEA program funds are transferred or deposited, the institution—

(1) Must disclose conspicuously on its website, and otherwise make public, that contract or arrangement in its entirety;

Blackboard Comment:

Again, the language in (1) is limiting if the objective is to afford the same protections to all Title IV recipients, regardless of contractual arrangements.

Recommendation: Based on the above, we suggestion the following language:

(1) Must disclose conspicuously on its website, and otherwise make public, the contract or arrangement in its entirety (excluding propriety information) or if an arrangement does not exist, general financial literacy information about non-Sponsored Accounts related to potential services and related fees.

(2) Before the student's or parent's financial account is opened and before the student or parent may activate a debit card, prepaid card, or access device associated with the account, must—

(i) Inform the student or parent of the terms and conditions of the account; and

(ii) Obtain in writing affirmative consent from the student or parent to open the account;

Blackboard Comment:

If the dual objective is to protect students and parents and expedite the disbursement of Title IV funds, requiring written confirmation (paper) when the Department already accepts electronic confirmations throughout the administration of the Title IV programs, this section (2)(ii) appears to be counter to the latter objective.

Recommendation: Based on the above, we recommend the following language:

(ii) Obtain in writing or electronic format affirmative consent from the student or parent to open the account;

(3) Must review any information that is provided to the student or parent about the account, and the debit card, prepaid card, or access device associated with the account, to ensure that the information is presented to the student in an objective and neutral manner;

Blackboard Comment:

Depending on the construct of the program and related services, it is not feasible or realistic to expect an institution to review and have a command over (“any”) all content that a provider may publish either in paper form, or via electronic links to other web sites. Therefore to ensure accountability and a reasonable and finite amount of content to review, the review should be limited in scope to the content presented to a student or parent when considering opening a Sponsored Account for the disbursement of Title IV funds.

Recommendation: Based on the above comment, we suggest the following language:

(3) Related to the opening of a Sponsored Account, review all information that is provided to the student or parent requisite to the opening of the account, the debit card, prepaid card, or access device associated with the account, to ensure that the information is presented to the student or parent in a clear, concise and objective manner, including but not limited to the fee schedule;

(4) May not send a debit card, prepaid card, or access device associated with the account to a student or parent unless the student or parent specifically requests it after providing consent as required in paragraph (e)(2);

(5) May not offer a debit card, prepaid card, or access device associated with the account that bears the institution’s logo or mascot, or that otherwise implies an affiliation with the institution;

Blackboard Comment:

We understand the Department is concerned about creating an “affiliation” that may induce a student or parent to select one option over another; however, we believe the Department has sufficiently addressed the risk of affiliation based on the protections and disclosures already set forth as requirements in this draft.

It is also important to understand that current instant issuance programs on campus, featuring a cobranded card, provide a significant benefit to the cardholder in the event of a lost or stolen card. Instead of waiting 5 to 7 business days for a replacement card by mail, the student can obtain a new card from the institution’s card office and immediately regain access to their Title IV funds.

It also appears that the Department may have presented conflicting logic during rule making by stating, for example, that bank branches (physical and visually prominent branded buildings) located on campus do not create an affiliation, even if the bank is sponsoring a campus debit card program; however, a logo “bug” on a card from a financial institution (not located on campus) and in conjunction with the campus logo constitutes an affiliation and thus a greater inducement.

Again, with all the proposed requirements of full disclosure and the presentation of information in a “neutral and unbiased manner”, we believe a student or parent can make an informed decision as to what is the best option for them; that a financial institution’s logo will not result in the suspension of a student’s or parent’s ability to make an informed decision.

Finally, an institution’s brand is critical to the institutions long-term financial sustainable and success. The institution can ill-afford to tarnish its brand. Doing so results in a drop in enrollment and equally important a drop in giving, institutional advancement, the life blood of many institutions.

Therefore, it is critical for an institution to maintain a positive brand and get its brand out; to remain relevant in the market place. A branded card being used not only on campus, but wherever that students travels creates “impressions”... every time it is removed from a wallet or purse to complete a transaction. These impressions build institutional brand awareness. From a student’s perspective, the institution’s brand and associated sense of pride is equally important. It publically reaffirms the decision they have made in choosing higher education as well a reaffirmation of the institution they have chosen to attend; however, only if the institution abides by the rules regarding transparency, full disclosure and reasonable fees associated with the program.

Recommendation: Requirement (5) should be removed from the proposed regulation.

(6) May not provide to the servicer or entity any information about the student or parent until after the student or parent consents affirmatively to open the account under paragraph (e)(2);

(7) May not make any claims against the funds in the account without the written permission of the student or parent, except for correcting an error in transferring the funds in accordance with banking protocols;

(8) Must ensure that the student does not incur any cost in—

(i) Opening the financial account or initially receiving the debit card, prepaid card, or access device associated with the account;

(ii) Maintaining the account; or

(iii) Using the debit card, prepaid card, or access device to conduct any transaction at any automated teller machine (ATM) located in any State as defined in 600.2;

(9) Must ensure that the debit card, prepaid card, or access device associated with the account can be used nationally;

(10) May not market or portray the financial account, debit card, prepaid card, or access device as a credit card or credit instrument, or subsequently convert the account, card, or device to a credit card or credit instrument;

(11) May not assess the student or parent any overdraft fees if the financial account is overdrawn;

Blackboard Comment:

Requirements (e)(8)(iii) & (11) are commercially unrealistic if the Department wants to ensure student choice and if the intent of the Department is to serve the best interest of all Title IV recipients, not just a subset. The objective should be to maximize access by requiring any Title IV disbursement program be part of a nationwide surcharge-free ATM network. Networks such as the Allpoint ATM network provides almost three times (3x) as many surcharge-free ATMs than the largest banks in the United States. Therefore, students will be better served and have significantly less risk of incurring a foreign ATM fees than they would if they opened a standard checking account at even a major bank. Unfortunately, the proposed requirements in section (4)(ii) if allowed to stand will not better serve students or provide greater access to surcharge free ATMs if providers exit the education market based on an economic model that is no longer viable; one that delivers only cost and no revenue.

We are also concerned that the proposed language imposes greater restrictions/hurdles on Sponsored Accounts regardless of the fact that Financial Accounts offer not greater protection based on FDIC data. In fact, in the majority of cases Financial Accounts expose students to more and greater fees than a well-designed, responsible and student-centric program as evidenced by BlackboardPay. To that end, we look forward to providing the Department full access to BlackboardPay detailed data of fees incurred by cardholder on an annual basis; however, we will do so in strict accordance with all applicable student and consumer privacy rules and regulations.

With respect to overdraft fees (NSF) in section (e)(11), this is easily solved today via prepaid cards, which do not allow for overdraft. Attempting to impose this requirement on debit cards would result in at least two of the following when a student or parent overdrafts their account:

1. the bank absorbs the NSF fees which compromises the underlying economics of providing access to a Financial Account;
2. the institution absorbs the NSF fees and passes them along to the entire student population in the form of a tuition increase;
3. the student or parent has no economic incentive not to overdraft or accountability for doing so, which creates a moral hazard; and
4. the entities providing such cards/accounts discontinue this aspect of their business thus reducing competition and access for Title VI recipients.

Finally, the proposed regulation does not appear to contemplate the fact that monies in either a Financial or Sponsored Account may not be entirely Title IV funds. Monies are comingled and indistinguishable. Consequently, when an overdraft occurs it cannot be determined if it was the result of over drafting Title VI funds, or other funds deposited into the account such as payroll, gifts, tax refund, etc.

Recommendation: Based on the above comments, we suggest striking both provisions (8)(iii) and (11), and replacing with the following:

Taking into account both on-campus and distance learners, two of the key requirements of a responsible and well-designed Title IV disbursement program are: (1) does not allow for overdrafts, (2) is part of a national surcharge-free ATM network that ranks amongst the top five in the United States for number of participating ATMs deployed.

(12) Regardless of the debit card, prepaid card, or access device associated with the financial account, must ensure that—

- (i) The provider of the card or device provides the student or parent with pass-through deposit or share insurance;
- (ii) The card or device does not have an attached line of credit or loan feature under which repayment from the account is triggered upon the delivery of a Federal payment, including a deposit or transfer of title IV, HEA program funds into the account; and
- (iii) The account provides the student or parent with all the consumer protections that apply to a payroll card account under the Electronic Fund Transfers Act, as amended; and

(13) Ensure that the financial account is in the student's or parent's name, or for a financial account that is a pooled custodial account, the subaccount (or card or device) is in the student's or parent's name. The custodial bank account must be established in the name of the institution or the institution's third party servicer, and must be set up to ensure that any title IV, HEA program funds that become the pooled funds of the custodial account are credited immediately to the student's or parent's subaccount (or card or device).

Blackboard Comment:

The first paragraph of (e)(13) "Ensure that the financial account is in the student's or parent's name, or for a financial account that is a pooled custodial account, the subaccount (or card or device) is in the student's or parent's name." is not practicably feasible. Just as is the case today when electronically transferring funds to a routing number provided by a student or parent, the name on that Financial Account is unknown to the institution. To de facto require the

institution to request verification as to the name associated with every Financial or Sponsor Account prior to disbursement would not only be grossly onerous and costly, it would significantly protract the timely delivery of Title IV funds. The institution must be able to rely on the student's or parent's representations under the terms of the Title IV programs that the funds are being used for their intended educational purposes, period.

Recommendation: Removed section from proposed regulation.

(f) 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).

(2) Except as provided in paragraph (f)(3), an institution must pay a title IV, HEA credit balance directly to the student 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.

(3) An institution must delay making a direct payment if the institution has information that—

(i) The student or parent is engaged in an activity that is known or intended to defraud the Federal government;

(ii) The person attending, or seeming to attend, classes at the institution is not the student for whom the payment is intended; or

(iii) The student is enrolled at the institution for the sole purpose of obtaining title IV, HEA program funds.

(g) Early disbursements. (1) Except as provided in paragraph (g)(2) 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 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;

(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).

(h) 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 (h)(4), a student who becomes ineligible, as described in paragraph (h)(1), 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;

(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 (h)(2) 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); 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 (h)(1).

(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)(i)(A), (B), or (C).

(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.

(i) 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 for some reason the student did not appear to qualify to receive the funds), the institution may pay the student for all prior payment periods in the current award year for which the student was eligible or subsequently established eligibility in accordance with program regulations.

(j) 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.

(k) 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 (f) 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 way 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) 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 right 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) 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); 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).

(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); 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).

(iii) If a student or parent requests a loan cancellation after the period set forth in paragraph (a)(4)(ii)(A) or (B), 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)(4) that are included in that authorization; and

- (ii) Except if prohibited by the Secretary under the reimbursement or cash monitoring payment method, 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 under §668.164(f).
- (2) In obtaining the student's or parent's authorization to perform an activity described in paragraph (b)(1), 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) 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 §668.164(c)(4), 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), 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), 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 bank 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), 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.