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April 23, 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

Very truly yours,

BLACKBOARD TRANSACT

By: [redacted]

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 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 presenting options for students to secure their credit balances; 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.

§668.164 Disbursing funds.

(Sections without comment prior to "§668.164 Disbursing funds" not shown for readability)

…

(4) Student choice. (i) Except as provided under paragraph (d)(4)(iii) of this section, if an institution elects to make direct payments by EFT, the institution may ~~must~~ make direct payments to a student's or parent's existing financial account, or to a financial account opened by the student or parent without assistance from the institution.

(ii~~) If the student or parent does not have or provide information about a financial account,~~ The institution may establish a process under which the student or parent is offered other options for receiving a direct payment. In establishing that process, the institution—

(A) Must ensure that the options are described and presented in a clear, fact-based, and neutral manner, e.g., the student or parent is not steered to, or compelled to select, a particular option. In describing the options, the institution may provide information about available financial accounts, provide information about a sponsored account under paragraph (e) of this section, or describe how the available financial accounts compare to the sponsored account. ~~If one of the options includes making a direct payment to an available financial account or to the sponsored account, another option must be issuing a check or dispensing cash;~~

(B) May not require the student or parent to open a financial account at a specific financial institution; and

(C) May recommend only financial accounts that are insured by the FDIC or NCUA or that have pass-through insurance coverage.

(iii) ~~After~~ If the student or parent ~~provides information about an existing financial account~~ chooses an alternative to EFT—

(A) The student or parent may choose the sponsored account or another option under the process the institution has established for making direct payments in paragraph (d)(4)(ii) of this section~~; and~~

(B) The ~~institution or the~~ financial institution offering the account may not directly solicit the student or parent to choose the sponsored account.

(e) Sponsored account. (1) If an institution located in a State enters into a contract or arrangement with any entity (e.g., a third-party servicer, financial institution, or other person) under which a student or parent opens, or is referred to open, a financial account offered by the entity, or has the option of using a card or device issued for institutional purposes to activate or access a financial account into which title IV, HEA program funds may be transferred or deposited, the institution or entity responsible under that contract or arrangement—

Author

Comment [1]: The regulations already provide that a student may request a check and the institution must provide if requested. However, requiring a check as an option only increases the risk/ likelihood that the student will be subjected to unscrupulous check cashing services and/or it will significantly delay the student s access/use of this monies if deposited to a checking /savings account. This is especially true in light of the un and under-banked. Further, Patriot Act requirements/holds for checks over $5,000, will delay access to these monies. It is not uncommon for checks exceeding this threshold for students living off campus, which is the majority of student population.

Requiring cash as an option is impractical in that it can potentially require institutions to carry millions of dollars in cash-on-hand, which brings with it inherent material and significant risks to both institutions and students, as well as associated increased operating costs and security costs. This results in an additional and unfunded administrative burden placed on the institution.

Finally, both the check and/or cash requirements fundamentally reverse the electronic delivery direction the economy as well as the Department has taken over the past 30 years.

(i) May only transmit such information that is not in conflict with FERPA regulations.

(ii) Must obtain consent from the student or parent must be obtained prior to disbursing funds under any option. ~~Must inform the student or parent about the terms and conditions of the financial account and obtain the student's or parent's written affirmative consent to open or use the account before the institution or entity may either —~~

~~(A) Send or transmit to the student or parent a debit card, prepaid card, access device, or virtual representation of the card or device associated with the financial account; or~~

~~(B) Associate with the financial account a card or device that was previously provided to the student or parent for institutional purposes.~~

(iii) 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;

(iv) Must ensure that the student or parent does not incur any cost associated with—

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

(B) ~~Maintaining the account, such as a monthly maintenance fee, inactivity fee, or account termination fee ;~~ Fees that are unreasonable and not commonly assessed in the industry and are not comparable to, or less than, the fees usually charged for that item or service.

~~(C) Using the debit card, prepaid card, or access device to conduct up to four cash withdrawals per month or statement cycle at any out-of-network ATM located in a State; and~~

(D) Using the debit card, prepaid card, or access device to conduct point-of-sale purchases or to receive cash back from point-of-sale purchases.

(iv) Must ensure that the debit card, prepaid card, or access device associated with the account belongs to a surcharge-free national ~~or regional~~ ATM network that has ATMs on or near each campus;

(v) 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;

(vi) Must ensure that the student or parent is not assessed any fee or charge to cover an ATM transaction, or one-time debit card transaction, when the financial account has insufficient or unavailable funds, or when the entity declines a transaction;

(vii) Where the financial account is a subaccount, must ensure that with respect to any debit card, prepaid card, or access device—

Author
Comment [2]: See (e) (iv)

Author
Comment [3]: The requirement to be a member of a "national" surcharge-free ATM network provides the most comprehensive level of access that is three times (3x) the largest bank in the United States. Adding an additional four (4) surcharge-free cash withdrawals is not only immaterial in comparison to the already proposed national network, it will prove extremely difficult to monitor and audit for program compliance. Stated differently, what would be the substantive audit procedures the Department would propose/issue under Student Financial Audits or Program Reviews? What evidential matter would demonstrate compliance?

Author
Comment [4]: Given the exponential growth in distance learning where, for example, there is an institution located in a rural "region" who educates tens of thousands of students spread across the entire US, a regional option will not meet with the spirit and intent of free-and-clear access. Therefore, to ensure maximum access for all learners, a national network is the only responsible requirement.

(A) The provider of the card or device provides the student or parent with pass-through deposit or share insurance;

(B) The card or device does not have an attached line of credit or loan feature under which repayment from the account is triggered upon or associated with the delivery of a Federal payment, including a deposit or transfer of title IV, HEA program funds into the account; and

(C) The account provides the student or parent with all of the consumer protections that apply to a payroll card account under the Electronic Fund Transfer Act, as amended;

(viii) Must ensure that the financial account is—

(A) In the student's or parent's name; or

(B) A subaccount of a custodial account that is titled in the name of the third party servicer, and is set up to ensure any title IV, HEA program funds deposited in the custodial account are credited immediately to the student's or parent's subaccount (or card or device); and

(ix) Must ensure—

(A) That the circumstances and terms of the financial account afford the student or parent a reasonable opportunity to withdraw or expend the total amount of title IV, HEA program funds deposited or transferred to the financial account without incurring any cost, fees or charges and provide the student or parent with clear and timely instructions as to how that may be done; and

(B) That any other fees or charges assessed to the student or parent that are not otherwise prohibited in this section are reasonable. A fee or charge is reasonable if it is a commonly assessed fee in the industry and is comparable to, or less than, the fees usually charged for that item or service.

(2) The institution must base its decision to enter into or continue the contract or arrangement on achieving the best possible financial terms for the students and parents who choose to open the sponsored account. The institution must also—

(i) Review any information that is provided to the student or parent in connection with opening or activating 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;

(ii) Disclose conspicuously on the institution's website, and otherwise make public, that contract or arrangement in its entirety with an accompanying summary of the terms and conditions of the contract or arrangement and other related information. The summary and related information must be updated ~~as needed~~ each award year to provide information about—

(A) The name of the financial institution offering the sponsored account, and the third-party servicer or other parties involved in opening or enabling the sponsored account;

(B) Whether the contract or arrangement provides for revenue sharing or royalty payments, and if so, the nature and amount of that compensation;

(C) Whether the sponsored account is a checking account, prepaid debit card, or other type of account;

(D) Any fees or charges associated with the account;

(E) The number of allowable out-of-network surcharge-free ATM transactions;

(F) The number of network or surcharge-free ATMs located on or near the campus; and

(G) The combined percentage of students and parents who incurred fees under the program as well as the ~~total~~ ~~and~~ average amount of fees paid by students and parents (combined) who ~~had the sponsored account~~ actually incurred a fee during the most recently completed award year or twelve-month program period, which ever is greater.

~~(3) May not share with the entity any information about the student or parent until the student or parent makes a selection under paragraph (d)(4) of this section;~~

Author
Comment [5]: Redundant, addressed in (e) (i) of this draft