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April 2, 2014

Via E-Mail (chipbloc@[redacted] *& craigbagemihl@*[redacted]

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U.S. Department of Education
1990 K Street NW., Room 8017
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RE: Issue #4- Cash Management Rules, Department of Education Negotiated Rulemaking on Program Integrity and Improvement -- Comments and Recommendations of Higher One, Inc. on Draft Proposed Regulations

Dear Sirs:

Pursuant to the Department's request to the negotiators in the above-referenced negotiated rulemaking, this is to respectfully submit the comments and recommendations of Higher One, Inc. on the draft Proposed Regulations circulated by the Department's negotiator in advance of the negotiation sessions of March 26-28, 2014. We have also attached as Exhibit A proposed revisions to the Department's draft (the "ED Draft") that reflect our comments and recommendations for your review.

Our comments and recommendations on the ED Draft pertain to proposed §668.164 and are as follows:

COMMENTS ON THE GENERAL APPROACH OF THE ED DRAFT.

We have three (3) concerns with the overall approach of proposed §668.164 in the ED Draft:

1. ED Should Provide Institutions with an Alternative.

As explained in more detail below, the ED Draft attempts to tread a fine line between maximizing consumer-oriented benefits and protections and triggering a sea change in the marketplace that could instead result not only in those benefits and protections never becoming available, but in a the loss of benefits and protections available today as well . We believe that unless the final regulations depart sharply from the ED Draft, ED's attempt to strike this balance will fail. To avoid exacerbating the problems the regulations are attempting to address, we recommend that ED provide an institution with the option of forswearing all financial interest in the financial accounts its students choose to open,

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and in exchange be permitted to negotiate with account providers to get the best terms and conditions it can for its students.

Under current regulations, an institution is allowed to enter into an arrangement with a financial account provider under which the institution recommends, endorses, or otherwise encourages its students to open an account with that provider, but only if that account has certain consumer protections, ensures convenient and free ATM access, and does not carry with it certain types of fees. See 34 CFR 668.164(c)(3). The ED Draft imposes on accounts subject to such arrangements a variety of new consumer-oriented features and fee restrictions, and relies on financial account providers to deliver those benefits to students[1] by continuing to enter into such arrangements. However, those new benefits and fee restrictions will drastically limit if not eliminate altogether the ability of account providers to make a profit on the accounts subject to those arrangements. Moreover, by prohibiting institutions from recommending a particular account, the ED Draft removes entirely any value of such an arrangement to the provider. We believe the result will be the virtual if not complete extinction of these arrangements. Rather than the expansion of consumer benefits and fee reductions sought by the ED Draft, students will see a substantial reduction in consumer benefits and an increase in fees compared to those generally available today.

To avoid this result, it is critical that the regulations provide for a backup plan.

In the current rulemaking, various negotiators have noted the striking similarities between our issues and those addressed in the 2009 negotiated rulemaking to implement the provisions governing private education loans set forth in the Higher Education Opportunity Act of 2008 (P.L. 110-315 (Aug. 14, 2008)). In both cases, the principal concerns related to whether (1) institutions might be receiving significant financial benefits from some financial product providers in exchange for recommending/endorsing the provider's products to students, (2 disclosures by some providers of terms and conditions of their products might not be adequate, (3) marketing of products by some providers might be too aggressive, and (4) terms and conditions for some of those products might not be in the best interests of students.

In essence, the approach we propose is based on the regulations that achieved consensus in the 2009 rulemaking on private education loans.[2] See 34 CFR 601.10, 601.21. It would also reflect the approach a number of States have taken on private student loans and that has been cited with approval by the State AG negotiators in the current proceeding.

[1] Although the recipients of Title IV funds can be students or parents, for ease of reference we use the term "students" in this letter to refer to either or both as the context requires..

[2] In fact, one of the negotiators in the 2009 rulemaking who apparently joined in that consensus was Rich Williams, the principal author of the May 2012 U.S. PIRG Report, *The Campus Debit Card Trap –Are Bank Partnerships Fair to Students,* that has been a key impetus for the current rulemaking. See 74 FED REG 37433-34 (July 28, 2009).

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Specifically, we propose that the regulations allow an institution that agrees to forego any fee or other material benefits from financial account providers to recommend financial accounts of particular providers and to negotiate with such providers solely to get the best terms for its students on the products it decides to recommend.[3] This would allow each institution to determine whether, for example, its particular student body would benefit more from a full suite of online functionalities and more on-campus ATMs than from an across-the-board ban on overdraft fees. More generally, it would preserve and improve the traditional role of institutions as trusted advisors to students on financial matters.[4]

2. Regulating What Institutions Can Say to Their Students.

Our second concern with the overall approach of the ED Draft is its reliance on censoring the communications between institutions and students. The ED Draft can be read as imposing three (3) separate prohibitions on what an institution can say to its students. First, institutions would appear to be barred from recommending any particular disbursement option to a student, even if one is clearly better (or worse) than the others. Second, institutions would apparently be barred from explaining to the student that if he/she supplies information to the institution on an existing bank account, he/she thereby loses the ability to choose a disbursement option other than EFT to that account, even if that is not the best option for that student. Third, institutions would appear to be prohibited from recommending that the student open a sponsored account even if doing so would be more advantageous to the student than other options.

To our knowledge, there is no precedent in ED regulations for imposing restrictions such as these on what institutions can say to its students. Moreover, they not only do not further the goals of the regulations, they actually interfere with them.

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[3] The attached proposed new subsection (l) is intended to implement our proposal. In drafting that provision, we have attempted to use wherever possible the language found in ED's private loan regulations. See 34 CFR 601.10, 601.21.

[4] It has been suggested that a school might steer students to an account provider that is more convenient for the school even if there is no financial benefit being provided to the school. However, it is important to distinguish between what an account provider does – provide accounts to students—and what a disbursement servicer does – provide administrative services to schools. While disbursement servicers can vary widely in terms of the convenience they offer for schools, account providers do not. The role of the account provider is simply to receive funds on behalf of the student, place them in the student's account, and provide banking services to the student with respect to those funds thereafter. For account providers, the beneficiary of high-quality customer service and convenience is the student, not the school.

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3. Making Things Worse for the Unbanked.

Our third general concern with the ED Draft is that by making arrangements between institutions and financial account providers unworkable, it will make things worse for the 16% [5] of college students who are unbanked. It will increase use of the inefficient and insecure check option, and exacerbate the current problems created by students' excessive use of high-fee nonbank check-cashing companies.

COMMENTS ON SPECIFIC PROVISIONS.

Subsection (d)(3). We believe the Department should commit in the regulations that any product that it would use to make direct payments of Title IV funds to students under this subsection will comply with the requirements for sponsored accounts set forth in section (e), including a commitment that it will not seek to impose a fee on students or institutions to pay for the costs of offering this product.

Subsection (d)(4)(ii). As noted above, the institution apparently will be prohibited from explaining to the student that if he/she supplies information to the school on an existing bank account, he/she thereby loses the ability to choose a disbursement option other than EFT to that account, even if that is not the best option for that student. We believe this will result in schools misleading unsuspecting students into unwittingly "choosing" to have their credit balances deposited into existing accounts rather than a new sponsored account they might actually prefer and which would very likely have lower fees. The goals of these regulations – reducing student cost and increasing student choice and transparency – would be undermined, not advanced. Further, we believe institutions will be unwilling to comply with this requirement, particularly since it would expose them to potential liability under the FTC Act and various State UDAP statutes. For all of these reasons, we believe this provision would be unlikely to survive a court challenge.

Subsection (d)(5)(i). As noted above, the "neutral manner" requirement and prohibition on "steering" in this provision would seem to prohibit an institution from recommending a financial product to a student. Since this removes the entire benefit of a sponsored account arrangement for the account provider, we believe this provision would result in the virtual if not complete extinction of these arrangements and the consumer-oriented benefits and fee reductions the ED Draft proposes to attach to them.

Subsection (d)(5)(i). We believe the ED Draft language should be revised to clarify that it would not violate the "neutral manner" and "steering" provisions of this subsection if the institution (or its third party disbursement services provider) lists as an option or otherwise mentions the financial product offered by a particular provider without giving equal treatment to

[5] Findings from a 2014 survey of 739 students conducted by GFK Public Affairs & Corporate Communications, commissioned by Higher One, previously provided to the Department and the Committee. The study was conducted using GfK's KnowledgePanel®, a nationally representative, probability selected Internet panel used by several U.S. Government agencies and The Associated Press.

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the products offered by all other competing providers. This seems to be the assumption underlying the rest of this subsection but is unclear from the language in (i).

Subsection (e)(3). As noted above, by apparently prohibiting an institution from recommending the sponsored account to the student, there would be no incentive for a financial account provider to ever enter into a sponsored account arrangement with an institution, thus frustrating the intent of the regulations to expand the consumer-oriented benefits available on accounts used by students to receive their credit balances.

Subsection (e)(4). Prohibiting the institution from sending an unactivated debit or similar card to a student interferes with the student's access to Title IV funds without significantly advancing any of the purposes of the regulations. As long as the student must open the account and consent before the card can be activated, student choice is protected.

Subsection (e)(6). It would extremely difficult and expensive for a third-party disbursement servicer to do its job without student information from the institution being provided before the refund disbursement method is selected.[6] We recommend revising this provision to allow such information to be provided to such a servicer that is also a sponsored account provider only as reasonably required to enable the servicer to perform its duties, and to make clear that the servicer shall not be permitted to use such information to send to the student or parent any information about the sponsored account that is not presented to the student or parent in an objective and neutral manner.

Subsection (e)(8)(ii). The proposed prohibition on account maintenance fees would prohibit financial account providers from structuring sponsored accounts in a way that certain bank regulators and consumer advocates have argued is safer and more consumer-friendly than other models. For example, the FDIC Model Safe Account[7], which features a flat monthly fee, was developed to help financial institutions establish, "safe, low-cost transactional and savings accounts that are responsive to the needs of underserved consumers." Flat monthly fee accounts offer a predictable cost structure that can help consumers avoid excessive fees caused by certain adverse behavioral patterns.

Subsection (e)(8)(iii). The proposed elimination of all charges for the use of all ATMs is not practicable in our view. We propose instead (via a new subsection (e)(14)) that free ATM use be available at on-campus ATMs, which shall continue to be required to be provided, <u>and</u> at all ATMs in at least one national ATM network.

Subsection (e)(11). Checking accounts with no overdraft fees and with no overdraft protection or monthly fees are exceedingly rare in the banking industry. Therefore, banning overdraft fees make comparing sponsored accounts with other bank accounts much more difficult, thus interfering with the goals of choice and transparency.

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[6] Such servicers have proven to be of great value to schools and students across the country. Attached for your reference as Exhibit B are comments from just a few of our many satisfied client institutions that demonstrate how valuable our services have been to them, and of their concern with the possible effects of the ED Draft on their ability to continue to serve their students effectively and efficiently.
[7] www.FDIC.gov/consumers/template

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Thank you very much for the opportunity to submit the above comments and recommendations on the ED Draft. Please do not hesitate to contact me if you have any questions or if I can provide further clarification on any of the above.

Sincerely,

Casey McGuane

CC: Pamela Moran, U.S. Department of Education

Attachments: Exhibit A- Higher One Redline of Draft Proposed Regulations
Exhibit B- Sample of Institutional Feedback Letters on Issue #4

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Exhibit A- Proposed Regulatory Language of Higher One

§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

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

(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

(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. Any means of direct payment by the Secretary will be subject to terms, conditions, and safeguards no less favorable to the student or parent than those set forth in subsection (e), and shall not involve any fee or other charge to the institution.

Comment [A1]: See cover letter.

(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 of the student or parent ~~opened without assistance from the institution and use~~ that ~~financial~~ is not a sponsored account as described in subsection (e), if ~~the student or parent provides that information; or~~any;

Comment [A2]: "Assisting" concept moved to (e) for clarity

(B) ~~If~~Must inform the student or parent ~~does not have, or provide information about, a~~ that such financial account~~, the institution may assist~~ shall be used for making the direct payment to the student or parent ~~in opening a~~ unless the student or parent affirmatively selects a different option that the institution offers under paragraph (5), if any; and

(C) Must use that financial account ~~under paragraph (e).~~if the student or parent provides that information and does not affirmatively indicate a different preference.

Comment [A3]: See cover letter.

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

~~(i) The~~(A) Subject to subsection (ii), 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

Comment [A4]: See cover letter.

(~~ii~~B) The process for making direct payments electronically to a financial account ~~designated by the student or parent~~ under paragraph (4)(ii)(A), or to a financial account otherwise selected by the student or parent~~,~~ that is not a sponsored account as described in subsection (e), is as timely and no more onerous for the student or parent than making direct payments to a sponsored account under paragraph (e~~).~~); and

Comment [A5]: Clarification

(ii) Under the process established by the institution under paragraph (i), an institution may present as an option direct payment to a financial account of one or more (but fewer than all) specific financial account providers without violating paragraph (i)(A).

Comment [A6]: See cover letter.

(e) Sponsored account. ~~If~~Except as provided in subsection (l), 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 into which the student's title IV, HEA program funds are transferred or deposited, or otherwise assists a student or parent in opening such an account, either through a contract with a third-party servicer or through any arrangement with an entity ~~under which any party to the arrangement~~that exercises any control over ~~the~~such financial account ~~into which the student's title IV, HEA program funds are transferred or deposited~~, the institution, with respect to such account—

Comment [A7]: See cover letter.

Comment [A8]: Ensures that if the bank offers the student the option of opening an account that is different from the one the school is assisting the student with, that account is not deemed to be a sponsored account.

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

(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;

(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, that is provided to the student or parent before the account is opened, to ensure that the information is presented to the student or parent in an objective and neutral manner;

Comment [A9]: Clarification.

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

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

~~(6) May~~(6) Except as reasonably required to enable the servicer to perform its duties, 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)~~;~~), provided, however, that the servicer shall not be permitted to use such information to send to the student or parent any information about the sponsored account that is not presented to the student or parent in an objective and neutral manner;

Comment [A10]: See cover letter.

(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 or parent does not incur any cost ~~in~~—

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

(ii) ~~Maintaining the~~ Due to account~~;~~ inactivity or dormancy.

~~(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~~;~~ through use of a debit card, prepaid card, or other access device;

(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~~an 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~~).~~); and

(14) Must ensure that –

(i) The account belongs to at least one (1) national an automated teller machine (ATM) network, so that the student or parent does not incur any cost in using the debit card, prepaid card, or access device associated with the account to conduct any transaction at an ATM in such national network; and;

(ii) 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 main campus and any other location of the campus at which a student is able to obtain all credits needed to graduate, or immediately adjacent to and accessible from such campus or location, as applicable.

(f) <u>Title IV, HEA credit balances</u>. (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) <u>Early disbursements</u>. (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.

(l) Authority of Institutions to Recommend Specific Financial Accounts. Notwithstanding any provision to the contrary in this section, an institution may, without meeting the requirements applicable to sponsored accounts in subsection (e)(other than paragraphs (7), (10), (12) and (13) thereof), recommend to or otherwise encourage a student or parent to open or use a sponsored account as described in subsection (e), and/or assist the student or parent in opening or using such an account, if the following requirements are met:

Comment [A11]: See cover letter.

(i) The institution does not have an arrangement with the provider of such account under which the institution is entitled to receive a fee or other material benefits from such provider, including without limitation discounted or free services, in exchange for such recommendation;

(ii) The institution exercises a duty of care and a duty of loyalty to its students and parents in selecting accounts to recommend without prejudice to and for the sole benefit of such students and parents; and

(iii) The institution clearly and fully discloses to the student or parent at the time it first makes such a recommendation to the student or parent with respect to a particular account –

(A) The fees, terms and conditions of such account;
(B) The method and criteria used by the institution in selecting accounts to recommend to students and parents to ensure that accounts are selected for recommendation on the basis of the best interests of the account holders, including highly competitive fees, terms, conditions, and consumer protections, product features, convenience, high-quality customer service, and additional benefits beyond the standard terms and conditions or provisions for similar accounts;
(C) Why the institution recommends such account, particularly with respect to terms and conditions or other provisions favorable to the account holder; and
(D) That the student or parent is not required to open or direct the institution to make a direct payment into such account.

Exhibit B- Sample of Institutional Feedback Letters
Issue #4- Cash Management

Index:

1) Pennsylvania College of Technology- Public, 4 Year
2) Adams State University- Public, 4 Year
3) Butte-Glenn Community College District- Public, 2 year

Pennsylvania College of Technology's response to proposed changes in Title IV refund policy.

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

1. The Federal Government's G5 Administration site does not meet this requirement. There are funds in G5 that are not Title IV, HEA. You cannot direct specific program's funds to a specific bank account. Colleges will need to manually manage their federal funds within the banking system after they are received.

2. How are Title IV, HEA funds identified that need to be kept in a separate bank account? At what point are Title IV, HEA funds to be moved from the federal bank account to a general operating account? We draw down funds in the reimbursement method after they have been posted to students' accounts. But students have to earn them by completing 60% of the semester or the refund process dictates they must be returned as a Title IV refund. From a Financial Aid perspective, these funds are tracked as Title IV funds until the loans are paid back by the borrower because of default rates. Again, when are they no longer Title IV, HEA funds as related to the bank account so they can be used by the College? Until these questions can be answered or regulated, these funds cannot be separated in a physical bank account.

668.164(d)(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. Related 668.164 (a)(ii) As provided under paragraph (d)(3), the Secretary pays a student or parent directly.

1. Giving unilateral control to the Secretary without a proper review process has the potential to be damaging and costly to colleges and universities and limit options for students. Without proper review, processes could be established that could result in substantial changes to processes requiring reprogramming and added costs to colleges and universities.

668.164(e)(2)(ii) Obtain in writing affirmative consent from the student or parent to open the account. Also, 668.164(e)(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); 668.164(e)(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);

1. These options will completely cripple the ability of institutions to be issue refunds in the time frame required by Title IV. Refunds will have to be issued via check, unless institutions already have an ACH process in place internally. Delivering refunds through a third party in the current manner has been efficient and cost effective for the college and students. We have cut costs and staff because of the third party process which is directly related to the costs students must pay for their education.

2. Requiring a signed pre-approval from students effectively gives the college's operating decision of how to issue refunds in an efficient and cost effective means to the student. Students should not be able to make administrative decisions for the colleges. Students are currently pre-notified of the existing refund process, receive information about their options, and **they** choose to have refunds issued in the manner **they** would like. The students still have the choice of refund delivery. This process and the ability to forward information to the third party and to the student prior to the students' arrival on campus is key to this system working.

3. This new regulation requiring signatures to be obtained prior to any information being put forth will not permit refunds to be issued in a timely manner under Title IV regulations. Therefore, colleges will be forced to go back to issuing checks. Even with ACH, students will be required to provide sensitive bank account information. Colleges will be forced to program, collect, store, and safeguard this data. If students do not provide their bank information, checks will need to be issued. New students continually are brought in every semester making it more difficult to collect information. In the new regulations, without student signatures and requests for an electronic refund or account, checks will need to be issued. These requirements are forcing colleges back into an environment that will require issuing paper checks to meet the Title IV guidelines.

4. Issuing checks is inefficient, costly, and unsafe for students. Many of our students previously received refund checks for large amounts of money, some for $10,000+. Without a local bank account, they would be required to cash them at the college's bank to avoid fee and then to carry large amounts of cash with them until they paid their off campus rent or other expenses. Our college went to a third party for electronic refunds because it was a safe and efficient process. It provided a free bank account for students while attending college who did not have one. The third party process eliminated the check process and allowed refunds to go direct to a bank account of the students' choice. The students receive their refunds immediately and the system is constantly monitored for Title IV compliance. With our current process students have choices. If they choose to open a bank account, this creates another opportunity for learning, as they learn to manage their money and a bank account, many students for the first time. Our students have been pleased with the flexibility this process offers. These new regulations will take us back to issuing checks and put our students in a time consuming, unsafe process to receive their refunds without any choices.

<u>668.164(e)(5)</u> 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;

1. Removing any connection to the institution in regards to branding will result in a card branded to the issuing bank which then in turn links the bank to the institution and its students. These cards are issued only to our students for the purpose of refunding money. Our students should be able to identify with the college they are attending.

2. This removes the ability of Colleges using these cards as a "one card". These cards are sometimes used for ID and other purposes. With no name or branding connection to the college, this will not be possible.

<u>668.164(e)(8)</u> Must ensure that the student does not incur any cost in—

<u>(iii)</u> 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

1. No company in the world can guarantee an ATM is not going to charge a fee. This should be reworded so that the company (bank) issuing the card will not charge a fee to the account holder for use at an ATM outside their network.

Adams State University
Colorado
Great Stories Begin Here

March 25, 2014

Pamela Moran
US Department of Education
Office of Postsecondary Education
Washington, DC

RE: Department of Education's Proposed Guidelines for Title IV Refunds

Dear Ms. Moran:

At Adams State University, time and experience have proven how important it is to give students electronic refund options that work. Electronic refunds put money in the student's hands faster to allow for more timely purchase of books, supplies, and other student needs. They are safer; in most cases, students don't keep large amounts of cash which are subject to loss and theft. They are more convenient as the student does not need to mail or hold the check before depositing with the bank of their choice. Electronic refunds are less expensive for colleges and universities. The savings in time and money allow institutions to put those resources to work in other ways.

As a small institution, we have limited resources. Some of the items on our "wish list" are often placed on hold because we don't have funds to purchase software or service packages. While we have talented IT personnel, there are just not enough to accomplish the university's numerous "to do" lists.

Our solution to improve delivery of student credit balances was to use the third party servicer, Higher One. Higher One has evolved and many of the practices and costs associated with the early implementation no longer exist. While Higher One may not have achieved perfection, the old stand in line to wait for your paper check and then rush to deposit before the check(s) you just wrote hit your bank account is no one's dream of perfection.

These are some features we like about Higher One:

- Students do have choices. They can opt to have credit balance funds go to their personal bank account via ACH, they can opt to use the Higher One debit card and/or open a Higher One bank account if they choose.
- The option to use a debit card is popular with our students. They have an opportunity to purchase or rent books and supplies using online options. In some circumstances, we have offered a cash refund to a student and the reply is most often, "If the money will be on my card tomorrow, I can wait."

OFFICE OF BUSINESS & FINANCIAL AFFAIRS
208 Edgemont Blvd. • Alamosa, CO 81101 • Fax: (719) 587-8214 • Phone: (719) 587-7728
www.adams.edu

- Higher One's student website is top-notch. Students are able to access account information 24-7 and answers to student questions are readily available. The site provides tons of important, easy to understand information relative to financial literacy.
- Higher One communicates with students via email and texts to let them know when refunds are available or other information, as needed.
- Higher One is dependable; their services are available. We transmit our refund files, wire funds and students receive their refunds promptly and conveniently.
- Higher One's website for administrative users is easy to use and provides answers to our questions quickly.
- Higher One is innovative. One example is Higher One's recently released process through Netverify. Students provide Identification information via smartphone/webcam without saving a copy of the image on the device.

The following illustrate successful experiences at Adams State as a result of our relationship with a third party servicer:

- A few years after implementing refunds of credit balances, students came to us requesting payment of work-study payroll through the same process. A student survey was conducted and the majority of respondents favored payroll payment through Higher One. The payroll process was implemented in July 2012. Students don't stand in line to pick up checks. If the payroll payment date happens during spring break, students have access to their money wherever they may be.
- Adams State offers short term emergency loans to students for purchase of books/supplies, living expenses, etc. These loans are often advanced for pending financial aid or student payroll and are paid by paper check. Emergency loan advances have dropped in recent years. During fiscal year (FY) 2009-10 emergency loan advances totaled $83,216. During FY 2012-13 advances dropped to $46,280. With 3 months to go in current FY 2013-14, total loans advanced to date stand at $24,400. While some of the decrease may be due to increased efficiencies in the awarding and disbursing of financial aid, the fact that students have quick, convenient access to their credit balance or payroll funds plays a major role in the decrease of these loans.
- Use of Higher One has helped decrease cash needs across campus resulting in
    1. improved efficiency due to less handling of cash and quicker balancing of deposits and end of day sessions.
    2. increased security on campus as large cash amounts are no longer needed. A few years ago, cash on hand was increased by $30,000 during tuition and fee payment to cash checks and disburse limited cash refunds to students. Nowadays, no additional cash is needed during tuition and fee payment. Daily cash on hand has decreased from to $7500 to $4500.

The research, data, and information presented relative to student credit refunds has been thorough and given me pause to consider the way we do business. Fees have been excessive and information was slanted in ways that did not give students full information about their choices. Thanks to protests from students and other groups many changes for the better have been made. Because we do want what is best for our students, we must be vigilant to obtain the best deal for our students, in all respects. As noted by Anne Gross, NACUBO's vice-president for regulatory affairs, "The interests of colleges and universities often align with the interests of their students rather than oppose them. When colleges look for a less expensive way to provide enhanced services to their students, both win in terms of convenience, security and efficiency."

If new regulations limit our ability to provide refund data to a third-party servicer and are so restrictive that we must "scrap" a system that currently works well, we will find resources to devise another system. However, it may not deliver as effectively and there will be fewer student choices. We would prefer students have opt-outs, so data would not be sent to a third-party servicer or could be "recalled". Currently, we do not send information to Higher One if requested by a student. However, better presentation about student choices on our website, through student mailings and at student orientations would alleviate concerns about student choice and privacy.

Many of the proposed provisions will limit student choice. The student with an established banking account and debit card privileges is served. What about the student who does not have an established banking relationship? Yes, colleges and universities can now counsel and assist students open up bank accounts. But what provisions will govern this opportunity? If students can't or don't provide banking information, the return to paper checks and lines or mailing paper checks is inevitable. This will limit quick, convenient access to funds for many students. It is a step back, not forward.

Sincerely,

Beatrice T. Martinez

Beatrice T. Martinez, Director
Student Business Services

Cc: Andrew Crawford, Higher One
Senior Vice President, Campus Services & Operations

Butte-Glenn Community College District, California

Utilizing the services of Higher One has enabled Butte-Glenn Community College District to better assist students with financial aid. In addition, I feel we are better stewards of taxpayer funds while using Higher One.

Many of our students do not have checking accounts. In the past, a high percentage of students would take their financial aid check to a check cashing company where they would pay a significant fee to have their check cashed. In addition, financial aid fraud was a significant concern. There were not enough controls in place when using paper checks to keep fraud out of the system. We were dealing with $10,000 in fraud type activities per year (2 to 4 transactions) when using only the district process. We have not encountered one single fraud case since switching to Higher One several years ago.

Students receive funds quickly through Higher One. In the past, we would mail checks on Thursday. That means the checks were delivered to the post office Thursday evening. Some lucky students would receive their checks of Friday or Saturday. Most would have to wait until the following Monday. Many students use their home address which could be located hundreds of miles away. It took them even longer to receive their financial aid funds. Now, with Higher One, we are averaging over 95% of our students receiving their funds quickly and correctly (One account, ACH transfer, or mailed check). The students now receive their funds on Thursday instead of having to wait for the mail to deliver funds to them. Essentially, our students are receiving funds faster than they ever have before. Those waiting for ACH or paper check are still receiving funds in a similar time frame before we switched to Higher One.

Bank fees that students pay through Higher One are not any higher than a regular customer of a bank would pay. Hopefully Higher One will add more ATM machines or connect with other banks to allow this service in more places. It can be an inconvenience to students but it is not unreasonable to expect students to know their financial needs before the weekend.

Federal funds have been protected. When using paper checks we would mail to students a few days before the semester started. Some students that never had an intention of going to school were then awarded funds. The Higher One process requires students to activate their card before receiving funds. This additional step is a barrier to those individuals that had no intention of going to school from receiving the funds. We have had a much better success rate refunding dollars to the Department of Education since using Higher One.

Trevor Stewart, CPA
Director of Business Services
Butte-Glenn Community College District