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April 22, 2014

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

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RE: Issue #4- Cash Management Rules, Department of Education (ED) Negotiated Rulemaking on Program Integrity and Improvement – Redline/Comments on ED's Revised Draft Proposed Regulations

Dear Sirs:

Per the email request of Pamela Moran on behalf of ED, please find enclosed the redlined markup and comments of Higher One regarding ED's revised draft proposed regulations on Issue #4. Our proposed revisions and comments are set forth in the enclosed document as a redlined markup to the draft § 668.164 (d) and (e) provided by ED on April 16.

We remain committed to working with ED and the negotiating committee to develop a new set of regulations that serve the best interests of students. Our proposed revisions were developed based on thoughtful consideration of all the issues and feedback provided by students, higher education institutions, third-party servicers and industry representatives. Working together with ED, we are hopeful that the concerns surrounding Issue #4 can be addressed and that our proposed revisions outline a pathway forward.

In addition to the attached document, we also want to share the following general comments and observations:

1. Absent significant revisions to the draft language, the ability of financial institutions and third-party servicers to offer "sponsored accounts" is questionable. As a result, these accounts and the consumer-driven terms and benefits ED desires to deliver with them may not be realized and would become broadly unavailable to students. Of greater concern is the likelihood that non-traditional and minority students, those with the greatest need, will be disproportionately affected. Historically, institutions that serve these populations have been ignored by financial institutions offering "financial accounts". This would cause significant inconvenience and expense to the students at these institutions. The attached markup proposes a number of modifications that we believe represent an equitable balance between the best interests of students and the economic viability of "sponsored accounts".

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2. It is unclear from the draft whether service providers would be able to provide disbursement services without their accounts being treated as "sponsor accounts". Should this be ED's intent, financial institutions and third-party servicers would be compelled to limit or eliminate offering key administrative services and functions to institutions. The most challenging and costly aspects of a disbursement program such as gathering and storing bank information, exception handling, and managing student refund choices would revert back to institutions, many of which do not desire or cannot perform such functions today.

3. The key terms in the draft that drive its requirements – "assist", "offer as an option", "recommend", "solicit", "recommend", "refer", and "arrangement" -- are vague and may fail to provide fair notice to institutions and account providers as to what they can and cannot do.[1] Higher One is concerned it will be unable to competently determine whether it should concur in the draft language without clarification from ED as to what each of these terms means and what effect each is intended to have.

I look forward to continuing this important work together with ED and the other negotiators to arrive at proposed regulations that work for students, institutions and their third-party servicers.

Sincerely,

Casey McGuane

Casey McGuane

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

Enclosure: Higher One Redline and Comments Section 164 (d) and (e) 4.22.14

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[1] We continue to believe that the best approach is to employ a single concept to describe a school's involvement with an account – "recommend or otherwise assist" – and to have the applicability of the "sponsored account" requirements to an account turn on whether the school is receiving a <u>quid pro quo</u> from the account provider in exchange for the institution's recommendation/assistance. The enclosed markup demonstrates how this would be reflected in regulatory language. This approach is simple, easy to enforce, and enables institutions with no financial interest potentially adverse to their students' to use their knowledge of their own students to advise them on which options are best for them.

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(4) Student choice. (i) Except as provided under paragraph (d)(4)(i~~i~~) of this section, if an institution elects to make direct payments by EFT, the institution 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 the recommendation or other assistance from the institution.

(ii) ~~If the student or parent does not have or provide information about a financial account, the~~The institution may establish a process under which the student or parent is offered other options for receiving a direct payment besides an account described in paragraph (i). 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 one or more 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 and provide other assistance to the student or parent in opening or using an available financial account or sponsored account, but may recommend or provide such assistance only for financial accounts that are insured by the FDIC or NCUA or that have pass-through insurance coverage.

~~(iii) After the student or parent provides information about an existing financial account—~~

~~(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, in exchange for material financial benefits from the entity (including without limitation the provision of free or discounted services), the institution recommends that the student or parent open, or otherwise assists a student or parent in opening~~a student or parent opens, or is referred to open,~~ a financial account offered by the entity, or ~~has~~ provides the student or parent the option of using a card or device issued for institutional purposes to activate or access a financial account offered by the entity, and the institution deposits a direct payment for the student or parent into such account~~into which title IV, HEA program funds may be~~

Comment [A1]: Distinctions between "steering", "offering as an option", "referring", "soliciting", "assisting" and "recommending" are too vague to be workable, and do not give schools fair notice of what the regulations require of them. We recommend using "recommending or otherwise assisting" concept throughout, and making regulatory treatment of an account the school recommends or otherwise assists the student with turn on whether the school has a financial interest in the student choosing one account over another, as this goes directly to whether the school can be relied upon to keep the student's best interests as its top priority.

Comment [A2]: Clarifies that the school does not have to list all accounts available to the student from all banks.

Comment [A3]: Note: "Financial account" is defined in §668.161(d)(vi) of this draft as belonging to "a student[] or parent[]", but that term is used repeatedly §668.164(d) and (e) of this draft to mean an account that is or may be offered to a student or parent. The definition should be revised accordingly.

Comment [A4]: We don't see a policy purpose for this. Electronic disbursement is safer for the student and less susceptible to fraud against ED.

Comment [A5]: Draft doesn't say when or even if school must ask for this info. Also, for a student who chooses another option, this is an unnecessary burden to provide, and an unnecessary burden on the school to collect ...

Comment [A6]: Paragraph (ii) already requires that the info on the available and sponsored accounts be fact-based and neutral. Also, see above comment re vagueness of distinction between "soliciting ...

Comment [A7]: Does this mean that contracts already in place when the reg takes effect are not subject to the new requirements? Clarification needed as to this point.

Comment [A8]: Too vague to give parties adequate notice as to what is prohibited absent description as to what consideration must be provided by the account provider in order for an arrangement to exist. Absent ...

Comment [A9]: See above comment re vagueness of distinction between "referred" and other similar terms used elsewhere in the draft.

~~transferred or deposited~~, the institution or entity responsible under that contract or arrangement ~~with respect to the financial account subject to such contract or arrangement~~—

(i) 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.~~

(ii) 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;

(iii) 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;

(B) Maintaining the account, such as an ~~monthly maintenance fee,~~ inactivity fee, or account termination fee, except that an industry reasonable monthly maintenance fee can be charged;

(C) Using the debit card, prepaid card, or access device to conduct up to ~~four~~ two (2) cash withdrawals per month or statement cycle at any out-of-network ATM located in a State, unless 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 the institution's main campus and any other location of the institution at which a student is able to obtain all credits needed to graduate; 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;

Comment [A10]: Unclear.

Comment [A11]: Clarifies that if a student chooses to open a different account with the financial institution from the one recommended or assisted by the school, that account is not treated as a sponsored account. Permits the student to opt for an account with different terms/features that better suit the student's needs than the one recommended by the school.

Comment [A12]: Paragraph (B) undercuts the purpose of paragraph (A). Essentially allows advance carding via ID card while prohibiting it via debit card. Recommend deleting ban on advance provision of debit card, thus providing equal treatment for debit card-based and ID card-based approaches. School is still required to make sure that its communications with the student about the sponsored account are neutral. Prohibiting advance provision of a debit card but allowing essentially the same thing via ID cards detracts from student convenience without advancing any policy goals.

Comment [A13]: The use of a fixed all-inclusive monthly fee is increasingly the approach of choice in the banking industry, due to its predictability for both the consumer and the bank.

Comment [A14]: Very expensive for provider, and goes well-beyond what is allowed in other contexts involving government payments. Also, unnecessary given new proposed ban on all POS charges.

Comment [A15]: Clarifies that transaction declined fees are banned only in the context of one-time debit card transactions.

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

(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

Comment [A16]: Unclear how this is intended to work, especially in the case of a bank with no nearby branch. Need clarification here.

(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 financial services 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 solely on achieving the best possible financial terms, other account features, and customer service for the students and parents who choose to open the sponsored account. The institution must also—

Comment [A17]: Clarifies that, even though bank is allowed to compensate the school for recommending the bank's account to students, the best interests of the student must be the only criterion the school uses to decide which accounts to sponsor.

(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~~ clear, fact-based, and neutral manner;

Comment [A18]: To conform with language in (d)(4)(ii)(A).

(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 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) The nature and amount of the material financial benefit provided by the entity to the institution under the contract or arrangement~~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 ~~total and~~ average amount of fees paid by students and parents who had the sponsored account during the most recently completed award year or twelve-month period.

(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;~~ Except as reasonably required to enable a third-party servicer to perform its duties, may not provide to the entity any information about the student or parent until after the student or parent makes a selection under paragraph (de)(42).

Comment [A19]: This would be a meaningless number since it would be driven primarily by the number of account holders.

Comment [A20]: Unnecessarily interferes w/school's ability to hire servicer to efficiently carry out disbursement services function. Paragraph (2)(i) already ensures all info provided to student will be neutral. School will be forced to hire a different contractor to conduct actual mailings and email issuances. Expense to school will be increased, with no policy benefit.