

May 1, 2014

Ms. Pamela Moran  
U.S. Department of Education  
Office of Postsecondary Education  
1990 K Street, N.W.  
Washington, DC 20006

Dear Ms. Moran:

In connection with the Program Integrity and Improvement Negotiated Rulemaking Committee, and in follow-up to the meetings held April 26-28, we have developed additional input we respectfully submit for consideration by our fellow Negotiators.

During the most recent meetings the Negotiators representing Banks & Credit Unions worked cooperatively with the Negotiators representing Institutional Third-Party Servicers, to present to the entire Committee a jointly supported proposal reflecting the principles and objectives identified by the Committee throughout the process. We are writing now to summarize our recent proposal, clarify our position, and to offer additional draft language.

The attached summarizes our input in connection with Issue #4 - Cash Management. This document presents an explanation of our recommendations, together where appropriate with a mark-up of our regulatory language. So that to the extent possible our input reflects a broad perspective, we continue to dialog with members from our respective communities of interest.

We are encouraged by the progress the Committee has made and remain hopeful that consensus can be reached in order to enable a competitive well-functioning marketplace, while effectively addressing concerns that have surfaced related to marketing and opening of financial accounts as an integrated feature of the processes Higher Education Institutions follow to collect student payment instructions and distribute Title IV credit balances. On behalf of our communities of interest, we appreciate the opportunity to participate in this process.

We look forward to continuing to work with you and the Committee through the remainder of the negotiations.

Sincerely,



Paul Kundert  
President and CEO  
University of Wisconsin Credit Union



Casey McGuane  
Chief Operations Officer  
Higher One



Tom Levandowski  
Senior Company Counsel  
Wells Fargo Bank, N.A.



Bill Norwood  
Chief Architect and Director  
Heartland Payment Systems

## **Scope of the Joint Proposal**

During the Negotiated Rule Making Session on April 24, 2014, the Negotiators for Institutional Third-Party Servicers together with the Negotiators for Banks & Credit Unions, after meeting in caucus, jointly submitted to the Rule Making Committee mutually supported proposed draft revisions to the proposed draft regulations the Department distributed to the Rule Making Committee on April 16, 2014. Then in response to requests from members of the Committee, we reorganized paragraph (e) and distributed it on April 25, 2014. The joint proposal covered only Part 668.164 (d)(4) Student Choice, through the end of (e) Sponsored Account. We've included this proposal as Exhibit A. Our jointly submitted proposal is focused on these sections, and we would refer you to other input we have or will provide separately to inform you of our concerns in connection with other sections of 668 Subpart K.

## **Overview of the Joint Proposal**

This joint proposal represents a carefully balanced effort that works only in its entirety. Our proposal represents significant change to the current state of the campus based marketplace. We urge the Department to consider regulatory transition time to implement the sweeping changes we have proposed. For example, the elimination of point-of-sale fees, the new prohibition concerning the pre-mailing of cards, and the commitment for a minimum number of fee-free ATM transactions together with access to a surcharge free ATM network represent not only significant changes in the underlying economics involved in offering accounts, but will also present significant and complex operational changes. (See provisions in (e)(1)(iii)(D), (e)(1)(i)(A) and (e)(1)(iii)(C) respectively). In crafting this joint proposal we took great care to:

- Create a carefully balanced structure that works only when considered in its entirety
- Works within the confines of the Department's statutory authority under HEA
- Consider operational business needs and commercial financial considerations in order to keep providers interested in serving the marketplace
- Consider the input provided by fellow negotiators in person and in written submissions
- Consider the input of our communities of interest
- Consider recommendations made by official, and public interest, reports
- Reflect significant interlocking concessions in an earnest attempt to reach consensus within the timeframes provided

## **Section by Section Commentary**

In order to capture the comments made at our recent meeting in support and explanation of this joint proposal we are including here a section by section commentary. In order to help reference our comments back to the proposal provided in Exhibit A, we have provided a cross reference number in each section.

### **Student Choice (Reference 1)**

We proposed the following:

(4) Student choice. (i) Except as provided under paragraph (d)(4)(ii) 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 assistance from the institution.

(ii) 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 strongly encouraged 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 offer as an option only financial accounts that are insured by the FDIC or NCUA or that have pass-through insurance coverage.

Our Commentary:

Our purpose in offering revised language is consistent with the principles discussed by the Rule Making Committee, while considering the need to reasonably be able to put this regulation into practice through processes, communications, and systems.

The Department has expressed concern that our proposed deletion of the introductory clause in subparagraph (ii) would nullify subparagraph (i). We view this differently.

In the Department's proposed draft, an institution is permitted to offer the student an array of options for disbursement of his/her credit balance both before the institution receives any information from the student regarding an existing financial account (subparagraph (ii)), and after receiving such information (subparagraph (iii)) as well. Accordingly, it is unnecessary as a drafting matter, and potentially confusing to the public, to include two separate provisions regarding the timing of offering such options; under the language of the revised draft, that timing is independent of when or if the institution receives existing account information from the student. Our proposed draft therefore consolidates the two provisions into a single provision by deleting the introductory clause in (ii) and striking subparagraph (iii)(A). This consolidation improves the readability of the regulations, retains in full the substantive import of the language in subparagraphs (ii) and (iii)(A), and has no impact on the meaning or effect of subparagraph (i).

Some negotiators have argued that systems and processes should be designed so that a student or parent is not made aware of all their choices, until they have repeatedly failed to provide information about their existing account. This would be an unnecessarily burdensome and potentially harmful approach. As we have stated at our most recent meeting, if a student comes with their own financial account and is satisfied with that account, then they are fully protected by a clear, fact-based and neutral communication of all their other options. How many on-line consumers when presented at check-out with the options to pay by Visa, MasterCard, Discover, or American Express, have been in that moment persuaded to sign up for a new credit card account simply by having viewed all their payment options at once? Moreover, public policy would favor creating user-friendly access to sponsored accounts that are designed to provide students beneficial terms and conditions, not requiring schools to withhold information about those accounts from their students. It serves no policy purpose to impose a substantial additional paperwork burden on schools and students through a two-step process for presentation of direct payment options just to disfavor an account that the Department believes represents a "good deal" for students.

Further, some Negotiators have raised concerns regarding our proposed elimination of "steered to, or", while preserving "...not compelled to select" in our proposed draft. We believe duplicative terms create confusion and make a knowable standard difficult to determine. It was not our intent to diminish the effectiveness of the rules. Nonetheless, institutions in an attempt to comply with the regulation are bound to question what meaning was

intended by the inclusion of multiple expressions of similar prescription. During our discussions on April 24, 2014 we responded to concerns offering this language:

“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 strongly encouraged or compelled to select a particular option.”

### **Use of Information (Reference 2)**

We proposed the following:

(iii) The institution or the financial institution offering the account (other than the account described in (d)(i)) may not, using the information about the student or parent available solely as a result of performing direct payments, directly solicit the student or parent to choose the sponsored account.

Following the meeting with the benefit of additional review time, we believe that technical/grammatical clarifications are in order so that the provision would read:

(iii) The institution or the financial institution offering an account (other than an account described in (d)(4)(i)) may not, using the information about the student or parent available solely as a result of performing direct payments, directly solicit the student or parent to choose that account.

Our Commentary:

During negotiations on April 23-24, 2014 the Department Negotiators indicated the intent of this provision was to ensure that information obtained solely by virtue of providing services under paragraph (4), should not then be used to directly solicit a change in EFT preference, or to solicit the student to open a different account. In response to concerns that were raised, the Department indicated that it didn't mean this provision to preclude the general marketing activities carried on by account providers. For example, it indicated that campus-based signs were not direct solicitations. Further, the Department Negotiators acknowledged that account providers may continue conducting marketing activities using publically known information, or information purchased from other sources, and that they intended only here to restrict direct solicitation of specific individuals within the processes of paragraph (4) using information obtained solely by a provider's position in supporting processes under the paragraph.

### **Definition of Sponsored Account (Reference 3)**

We proposed the following:

(e) Sponsored account. (1) If an institution located in a State enters into a formal or informal agreement with any entity (e.g., a third-party servicer, financial institution, or other person) for the primary purpose of –

(A) assisting a student or parent, as part of the institution's direct payment process, in opening a financial account offered by the entity into which title IV, HEA program funds are transferred or deposited, or

(B) providing a student or parent, as part of the institution's direct payment process, the option of using a card or device issued for institutional purposes to activate or access a financial account opened with the assistance of the institution into which Title IV, HEA program funds are transferred or deposited, the institution or entity responsible under that formal or informal agreement –

## Our Commentary:

We have previously shared the significant operational problems represented by the Department's proposed paragraph (e), and the chilling effects it will have on long-standing general banking practices in designing, offering, and opening deposit accounts. Financial institutions typically offer students consumer checking account choices from among the financial institution's standard array of product choices provided to the general public. While some providers might exclusively focus on providing financial services solutions in a campus environment, many others do not. Further, many institutions offer a national network of branch locations, in addition to providing on-line banking services - - each facilitating deposit account opening by the general public, including students. During negotiations on April 23-24, 2014, we explained that the Department's proposed rule did not make it possible for a financial institution to adequately know at account opening, whether or not the account being opened at a particular branch or through the online services of the financial institution, was in fact a sponsored account. Likewise, the Department's proposed regulation did not make it clear if an account previously opened by a parent or student prior to enrollment or prior to the existence of an "arrangement or contract" needed to be unilaterally closed, or undergo a modification of the account terms, as a result of the student enrolling or the onset of a covered "arrangement". In addition, the Department Negotiators stated clearly that notwithstanding the proposed language they did not intend that a bank branch lease, placement of one or more ATMs on a campus, or an on-campus tabling event would constitute "an arrangement" as contemplated by this regulation. Yet, we have stressed that the Department's proposed language remains so expansive that even this question persists and financial institutions are left having to guess at the meaning of the language and at which conduct or "arrangements" will be subject to the rule. The Primary Negotiator representing students expressed similar concerns in her letter to the Committee dated April 22, 2014.

"This paragraph also lacks clarity. As written, it appears that a student or parent who opens an account with an entity that contracts with the institution would be covered by these protections, regardless of whether or not they opened the account on campus. I believe that this clause as written defeats our purpose by trying to do more than what is necessary for students who are being needlessly steered into campus sponsored accounts that drive up their costs." – Christine Lindstrom Memo to Negotiators of April 22, 2014, for USPIRG

The Department Negotiators observed that our proposed definition of "sponsored account" seems narrower than what they proposed. We would argue not that it is narrower, but that it is a clearer and knowable standard that provides fair notice of the conduct subject to the regulation. Our definition relies on the simultaneous conditions being observed in a formal or informal agreement, related to the distribution of Title IV funds, and also involving the assistance of the institution in opening the financial account. We would suggest that providing "assistance" is best represented by a fact-pattern in which the institution undertakes actions coordinated in support of the account-opening success of the financial institution or entity. Since instances of institutional assistance are heavily fact-specific, further attempt in the regulation to define assistance would result in an unintended exclusion of fact-patterns that, when consideration is given to the totality of the circumstances, should be deemed to constitute account-opening assistance. Further, if an institution had concerns with its ability to demonstrate a position of non-assistance, then that institution could easily undo any presumption of assistance by requiring a disclosure within communications to parents and students, effectively removing any presumption of assistance (e.g. "Accounts offered by XYZ Bank are completely optional, and not required to access any University service. The University makes no endorsement of the products offered by XYZ Bank.").

We have significant concerns that if the Department proceeds with an ambiguous definition of "sponsored account", then many banks and credit unions are likely to withdraw from this marketplace when faced with the inability to be confident that their retail banking operations across their national network of branch offices is in compliance with these proposed regulations or that they can continue to provide generally available deposit

account products and services while providing on-campus banking solutions. We believe we have presented a definition that can work in achieving the goals of the Rule Making process.

**May not Make Claims (Reference 4)**

We proposed the following:

The Department relocates this provision to another section of the Regulation.

Our Commentary:

We believe the Department intends that the institution not retain control of Title IV funds after they are distributed, except to correct an error. The Department indicated during the meeting that they agreed with the need to relocate this provision to another place in the regulation. We concur that it be relocated.

**Costs Not Initiated or Imposed by the Institution or Account Provider Entities (Reference 5)**

We proposed the following:

(iii) Must ensure that the student or parent does not incur any cost initiated or imposed by the institution or entities responsible for the arrangement associated with—

Our Commentary:

We have expressed at our in-person meetings and written submissions to the Committee, that we do not believe it to be commercially possible to offer sponsored accounts in a manner which meets the requirements proposed in the Department's draft (e)(1)(iii). One major reason for that is because students or parents may choose to make use of the account in a manner which subjects them to fees and charges not imposed by, and out of the control of, the institution or entity responsible for the account.

These are some of the fees over which the institution and account provider have no control that a student or parent may encounter in the use of the financial account:

- Merchant imposed point-of-sale fees permitted by card network rules and provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. These "costs" may also take the form of foregone cash discounts, under which a merchant may offer a higher retail price when payment is made by debit card, rather than cash.
- Currency conversion charges imposed in the use of the account in a foreign country
- Cash advance fees paid to receive an over-the-counter cash advance
- ATM Owner surcharges

In each of these instances the student or parent holder of the sponsored account is told of the costs they will incur prior to consummating the transaction, and then must take a specific proactive step to incur such costs armed with such information.

**Monthly Maintenance Fee (Reference 6)**

We proposed the following:

(B) Maintaining the account, such as an inactivity fee, or account termination fee, except a monthly maintenance fee consistent with paragraph (ix)(B) of this section can be charged;

Our Commentary:

We have previously stressed that a monthly maintenance account fee should continue to be a potential feature of a sponsored account. We indicated that an easy to understand monthly fee could represent a more consumer friendly approach than other alternatives. Further, we expressed our concern that the recent Dodd Frank Wall Street Reform and Consumer Protection Act had put card payment systems in a state of potential disequilibrium. Should debit card interchange income to card providers continue to fall within a reasonably short period of time, monthly maintenance fees very well might emerge as primary support in the economics of providing sponsored accounts. Without providing the option of a monthly account fee, there are serious doubts about the commercial viability of this Regulation as the industry changes. During negotiations on April 23-24, 2014 the Department Negotiators expressed a concern that while they did believe a reasonable monthly account maintenance fee might be a good option, they held concerns that the presence of this feature or the fee amount itself had the potential to render the sponsored account an overall poor value. When reviewed in the context of the entire proposed regulation, we do not agree with that possibility. We would refer to other compensating aspects of the proposed regulation. In particular, paragraph (2) requires the educational institution to base its decisions on achieving the best financial terms for students and parents, while paragraph (1)(ix)(B) provides that fees not otherwise prohibited in the section are reasonable (e.g. commonly assessed, comparable to or less than usually charged). Finally, (2)(ii)(G) requires the annual publication of the average amount of fees paid by students and parents in connection with the sponsored account. When all such provisions are taken together, we don't believe the Department's concerns are justified. Rather, we fear a future wholesale withdrawal by commercial entities from this marketplace if the regulation is not designed to adapt to pricing mechanisms that may very well be required in the future.

Should the Department continue to fear that other fees may be added alongside a monthly maintenance fee, then we would agree to further clarify that the reasonability standard in paragraph (1)(ix)(B) be applied overall, and not fee by fee. The Department might consider the following:

(1)(ix)(B) – That when considered in combination with other fees and charges, any other fees or charges assessed to the student or parent that are not otherwise prohibited in this section are reasonable. The combination of fees and charges are reasonable when they are comparable to, or less than, fees and charges associated with typical industry account offerings.

**ATM Fees and ATM Terminal Surcharges (Reference 7)**

We proposed the following:

(C) Using the debit card, prepaid card, or access device for the first two completed or attempted transactions per month or monthly billing cycle at any automated teller machine (ATM) located in any State as defined in 600.2. Unless provided with reasonable access to a national network of fee-free ATMs, the institutions shall ensure that the student is reimbursed for up to \$10 per month in ATM owner surcharges incurred in connection with such minimum free transactions. The institution shall disclose the network of fee-free ATMs available, indicating any and all names associated with the network, and the approximate number of available ATMs in that network both nationally and locally. Institutions must also disclose the number and location of fee-free ATMs on campus and their hours of accessibility. The institution shall direct the financial institution or third-party servicer to provide a publicly accessible online ATM locator to search for in-network ATMs.

Our Commentary:

We believe the Department intends to ensure that student holders of a sponsored account are provided with reasonable account terms, and the Department does not intend to eliminate the availability of sponsored accounts by requiring terms that are not commercially viable. We believe the Department is concerned that Institutions or entities responsible for the account or arrangement may not provide reasonable access to Title IV cash. Our proposal provides for no less than two (2) free attempted or completed ATM transactions at any ATM on a monthly (or monthly billing cycle) basis. This represents a significant compromise in an earnest effort to make consensus possible. When taken together with the proposed elimination of entity imposed fees for point-of-sale purchase transactions, we believe what we propose provides more than adequate access to Title IV cash. As we explained during the recent rule making session, our proposal provides either that the student or parent will be provided with reasonable access to a national network of fee-free ATMs (a surcharge free ATM network) or the student or parent will be reimbursed for ATM owner surcharges incurred in the performance of the two monthly free ATM transactions. This represents a balanced approach, requiring reasonable access to Title IV monies while at the same time maintaining the minimum economics needed for private sector entities to participate in this market.

The Department has stated that they prefer the disclosure portion of this paragraph be separated. We agree with this suggestion. Further, the Department has also indicated that they prefer that a fixed dollar amount not be referenced in this provision. Finally, Committee discussions indicated a preference for clarifying the meaning of “fee-free ATMs” (which we had described as ATMs free of “surcharges”). To accommodate these requests within our original intended meaning, we submit the following proposed change to the paragraph:

- (C) Using the debit card, prepaid card, or access device for the first two completed or attempted transactions per month or monthly billing cycle at any automated teller machine (ATM) located in any State as defined in 600.2. Unless provided with reasonable access to a national network of surcharge free ATMs, the institution shall ensure that the student is reimbursed for ATM surcharge fees incurred in connection with such minimum free transactions.

Note: We propose to relocate the “disclosure” related language from our original ATM Fee proposal to the “Basis of the Contract Decision” (Reference 10) section set forth below in this letter.

**May not Portray as a Credit Card (Reference 8)**

We proposed the following:

~~(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;~~

Our Commentary:

We are not aware of the practices the Department intends to be addressed with this provision. We do not recall any reference to these practices by any member of the Rule Making Committee, nor by reference to any of the official or public interest reports we have discussed. Over time ambiguous or unnecessary regulations increase compliance costs without providing any benefit. We believe the provision should be removed.

### **Regulation E Overdraft Opt-In (Reference 9)**

We proposed the following:

~~(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,~~

Our Commentary:

In the context of the Department's draft, the subject of account overdrafts has no unique or special characteristics other than consideration of general consumer protections. Student and parent account holders are already fully protected by the provisions of Regulation E, which is under the jurisdiction of the Consumer Financial Protection Bureau. The Department's proposed paragraph (e)(vi) conflicts with the current structure of Regulation E which provides consumers the clear choice of opting-in to an overdraft feature and financial institutions a very clear basis for assessing fees for providing that feature. The opt-in with a fee structure in Regulation E reflects a careful balancing of interests, through a comprehensive process conducted by the Federal Reserve less than ten years ago, between consumer choice/protection and legitimate costs borne by financial institutions. We note that the Department's proposed provision wades into the balancing of interest that the Federal Reserve resolved when it addressed this matter in the context of Reg. E. The Federal Board summarized their actions as follows:

"Consumer advocates, members of Congress, federal and state regulators, and the overwhelming majority of individual consumers who commented urged the Board to adopt the proposed opt-in alternative that would require institutions to obtain a consumer's affirmative consent before fees could be charged for paying an overdraft." Federal Reserve Board of Governors Federal Register / Vol. 74, No. 220 / Tuesday, November 17, 2009 / Rules and Regulations

Since the regulatory need represented here is not unique or different, and already under the jurisdiction of another Federal agency, we ask the Department to eliminate this provision, and communicate any concerns to the Consumer Financial Protection Bureau, for further consideration by the CFPB. Further, provisions in paragraph (2) and (1)(ix) essentially serve to meet the Department's interests here. The institution is to obtain terms in the best interests of students, the student is to receive clear instructions on how to access the funds without any cost, and the fees must be reasonable. Finally, the Department's interests are further served in this matter by paragraph (2)(g), which requires the publishing of the average cost per student in connection with the sponsored account.

### **Basis of the Contract Decision (Reference 10)**

We proposed the following:

(2) The institution must base its decision to enter into or continue the contract or arrangement on achieving financial terms for student and parents that choose to open sponsored accounts that are as good or more favorable than common alternatives in the marketplace. The determination may consider financial terms, account features, and customer service. The institution must also—

Our Commentary:

We understand that the placement of this provision provides an important balance to other components of the proposed regulation. This provision intends that primary focus of the institution's contract decision should be providing the best value to the student. The Department has indicated a potential concern about whether our proposed change provides an appropriate standard in this matter. In order for this marketplace to function well,

we believe the primary consideration should be the value to students and parents. We believe the Department's intent is to make clear that the institution in entering into a contact or arrangement has a clear duty to ensure the sponsored account provides a reasonable value to students and parents, and is not inferior to the value students or parents would have commonly obtained in the marketplace. We believe the Department may have proposed a standard with which an institution cannot reasonably demonstrate compliance. We believe a revision is needed that can be demonstrably achieved, while preserving the Department's intent. We also believe the institution's evaluation of an account should include not only the account terms, but the features of the account, and the quality of customer service provided to students and parents as well.

In response to the Department's concerns that our previously proposed language could be perceived as weakening the intent, we now provide this alternative language:

(2) The institution must base its decision to enter into or continue the agreement on the best interests of the account holders, including financial terms, account features, and customer service. The institution must also—

This new proposed language reflects the approach previously taken by the Department's private loan regulations, and would achieve Department's policy goals while creating a regulatory requirement with which institutions will be able to demonstrate compliance. See 34 CFR 601.10(d)(3)

We also propose to delete existing subparagraphs (E) and (F) under (e)(2)(ii), replacing those provisions with a new (E) as set forth immediately below, and re-lettering existing subparagraph (G) as (F):

(E) The network of surcharge free ATMs available, indicating any and all names associated with the network, and the approximate number of available ATMs in that network both nationally and locally; the number and location of surcharge free ATMs on campus, if any, and their hours of accessibility; and a publicly accessible online ATM locator to search for in-network ATMs.

#### **Unify Descriptive Language (Reference 11)**

We proposed the following:

(2)(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 a clear, fact-based, and neutral manner;

Our Commentary:

Our proposal changed "objective" to "clear, fact-based" simply to conform the language to the requirement regarding communications of disbursement options to students under (d)(4)(ii)(A). This avoids unnecessary confusion as to whether a different disclosure standard applies to communications regarding the sponsored account under (e)(2)(i) than under (d)(4)(ii)(A).

#### **Publication of Contract Summary (Reference 12)**

We proposed the following:

(2)(ii) Disclose conspicuously on the institution's website, and otherwise make public, a 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—

Our Commentary:

We believe requiring disclosure of not just a summary of the key provisions of an institution's contract with the account provider, but the entire contract as well, would not significantly enhance the student's ability to decide whether the sponsored account is his/her best option for disbursement of a credit balance. In fact, it might very well result in fewer students making the effort to read and understand the summary. At the same time, disclosure of these contract documents would potentially damage competition by making public critical proprietary information, and would create security concerns where, as is often the case, a servicer's technical system specifications and processes were appended to or otherwise included in the contract document.

**Amount of Material Benefit (Reference 13)**

We proposed the following:

(2)(ii)(B) The nature and amount of the material financial benefit provided by the entity to the institution under the formal or informal agreement;

Our Commentary:

Upon considering the comment of fellow negotiators on April 25 -26, and further review, we agree to revert to the language provided by the Department in its revised draft of this provision.

**Disclosure of Average Fees (Reference 14)**

We proposed the following:

(G) The 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.

Our Commentary:

We believe disclosing the total fees paid by all of a provider's sponsored account holders in a year is not useful information to a student or parent considering whether to open a sponsored account, and is potentially misleading. We believe the most useful information to include in a disclosure in this area would be a disclosure, for the preceding 12 month period, of the monthly average number of account holders, and the monthly average amount of fees paid by such account holders. There are wide variations in numbers of account holders and fees paid from month to month, so monthly averages are the most useful type of data in this area.

**Privacy Protections (Reference 15)**

We proposed the following:

(3) Except as reasonably required to enable a third-party servicer to perform its duties, to the extent not inconsistent with the Family Education Rights Protection Act of 1974 and the regulations promulgated thereunder ("FERPA"), may not provide to the entity any information about the student or parent until the student or parent makes a selection under paragraph (d)(4). An institution may provide directory information in a manner consistent with FERPA, regardless of their status as a sponsored account provider or third-party servicer.

Our Commentary:

The Department Negotiators requested that we provide them with the specific data elements required for a third-party servicer to perform its duties. They also indicated a strong preference for not mentioning FERPA or the related concept of “directory information” in the regulation itself.

With respect to the Department Negotiators’ first request, we believe the following data elements must be available to a third-party servicer in order for it to be able to properly perform its duties:

1. Permanent address
2. Delivery Address (if different)
3. DOB
4. SSN in part (i.e., last four) or Tax ID No.
5. Student ID No.
6. Cryptographic information (for authentication)
7. Unique Identifier(s) for parent or student (usually a number set by the school)
8. Phone Number (support purposes)
9. Email address (enrollment selection link)
10. Secure alternatives to email messaging
11. Gender (support purposes)
12. Photos
13. Password/PIN or other unique item only known by the student
14. Confirmation that the student is to receive a Title IV credit balance disbursement, and the amount of such disbursement.

With respect to the request regarding references to FERPA and related terms, we would be comfortable revising the provision to read as follows:

(3)(i) Except as reasonably required to enable a third-party servicer or other contractor to perform its duties, or as permitted under paragraph (ii), may not provide to the entity any information about the student or parent until the student or parent makes a selection under paragraph (d)(4). Regardless of the status as a provider of sponsored accounts, nothing shall prevent an institution from providing information permitted by law and regulations, on the same terms provided to other entities or individuals.

(ii) For purposes of (i), data elements reasonably required to enable a third party servicer or contractor to perform its duties include without limitation such demographic or other information may include without limitation name; permanent and delivery address; telephone listing; electronic mail address; secure alternative to electronic mail address; photograph; date of birth; Social Security Number in part or tax identification number; student identification number; cryptographic information; whether the student is enrolled as determined by the institution; unique identifiers established by the student or parent for the purposes of receiving credit balances; passwords or personal identification numbers (“PIN”s) established by the student or parent for the purposes of receiving credit balances; and confirmation that the student or parent is to receive a Title IV credit balance disbursement, as well as the amount of such disbursement.

### **Sponsored Account Treatment After Termination of Enrollment (Reference 16)**

We proposed the following:

(4) A sponsored account is no longer subject to the sponsored account terms once a student associated with the account (whether the student or parent is the account holder) is no longer enrolled at the institution that is party to the agreement referenced in section e(1). To effectuate this purpose, participating account providers can request from the institution that is a party to the relevant agreement referenced in e(1) the enrollment status of students associated with sponsored accounts.

Our Commentary:

During negotiations on April 23-24, 2014 the Department Negotiators expressed support for this provision which provides for a notification so that entities can know when the conditions triggering sponsored account treatment have ended, even though the student or parent may continue the use of the financial account. Department Negotiators expressed some general concern regarding the privacy of information, but seemed to accept the need to provide a reliable method for an entity or financial institution to understand when the conditions for sponsored account status were no longer met by an individual student or parent. If the Department prefers, we are open to a technical clarification in the last sentence that would read: "To effectuate this purpose, participating account providers can request from the institution that is a party to the relevant agreement referenced in e(1) whether students associated with sponsored accounts continue to be enrolled as determined by the institution."

Exhibit A

Institutional Third-Party Servicers and Banks & Credit Unions Joint Proposal  
Updated April 26, 2014

1 (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 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~~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 offer as an option only 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~~

2 ~~(B) The institution or the financial institution offering the account (other than the account described in (d)(i)) may not, using the information about the student or parent available solely as a result of performing direct payments, directly solicit the student or parent to choose the sponsored account.~~

3 (e) Sponsored account. ~~(1) If an institution located in a State enters into a contract or arrangement formal or informal agreement with any entity (e.g., a third-party servicer, financial institution, or other person) for the primary purpose of assisting a student or parent, as part of the institution's direct payment process, in opening a financial account offered by the entity, or providing the option of using a card or device issued for institutional purposes to activate or access a financial account opened with the assistance of the institution, into which title IV, HEA program funds are transferred or deposited, the institution or entity responsible under that contract or arrangement~~  
~~If an institution located in a State enters into a contract or arrangement formal or informal agreement with any entity (e.g., a third-party servicer, financial institution, or other person) for the primary purpose of —~~

(A) assisting a student or parent, as part of the institution's direct payment process, in opening a financial account offered by the entity into which title IV, HEA program funds are transferred or deposited, or

(B) providing a student or parent, as part of the institution's direct payment process, the option of using a card or device issued for institutional purposes to activate or access a financial account opened with the assistance of the institution into which title IV, HEA program funds are transferred or deposited, the institution or entity responsible under that formal or informal agreement –

(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—~~

~~(iii) Must ensure that the student or parent does not incur any cost initiated or imposed by the institution or entities responsible for the arrangement 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 a -monthly maintenance fee- consistent with paragraph (ix)(B) of this section can be charged;~~

~~(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~~

(C) Using the debit card, prepaid card, or access device for the first two completed or attempted transactions per month or monthly billing cycle at any automated teller machine (ATM) located in any State as defined in 600.2. Unless provided with reasonable access to a national network of fee-free ATMs, the institutions shall ensure that the student is reimbursed for up to \$10 per month in ATM owner surcharges incurred in connection with such minimum free transactions. The institution shall disclose the network of fee-free ATMs available, indicating any and all names associated with the network, and the approximate number of available ATMs in that network both nationally and locally. Institutions must also disclose the number and location of fee-free ATMs on campus and their hours of accessibility. The institution shall direct the financial institution or third-party servicer to provide a publicly accessible online ATM locator to search for in-network ATMs.

(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;~~

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(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

(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 on achieving the best possible financial terms financial terms for student and parents that choose to open sponsored accounts that are as good or more favorable than common alternatives in the marketplace. The determination may consider financial terms, account features ~~the best possible financial terms, other account features, and customer service~~. 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 clear, fact-based, 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 a~~ 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 formal or informal agreement. 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

14

(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.

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~~(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, to the extent not inconsistent with the Family Education Rights Protection Act of 1974 and the regulations promulgated thereunder ("FERPA"), may not provide to the entity any information about the student or parent until after the student or parent makes a selection under paragraph (ed)(42). An institution may provide directory information in a manner consistent with FERPA, regardless of their status as a sponsored account provider or third-party servicer.~~

16

~~(4) A sponsored account is no longer subject to the sponsored account terms once a student associated with the account (whether the student or parent is the account holder) is no longer enrolled at the institution that is party to the agreement referenced in section e(1). To effectuate this purpose, participating account providers can request from the institution that is a party fo the relevant agreement referenced in e(1) the enrollment status of students associated with sponsored accounts.~~