

TO: Negotiators
FROM: Carolyn Fast / Barmak Nassirian
RE: Protecting Students from Junk Fees when Banking on Campus

34 CFR § 668.164 Disbursing funds.

...

(e) Tier one arrangement.

(1) In a Tier one (T1) arrangement—

(i) An institution located in a State has a contract with a third-party servicer under which the servicer performs one or more of the functions associated with processing direct payments of title IV, HEA program funds on behalf of the institution; and

(ii) The institution or third-party servicer makes payments to—

(A) One or more financial accounts that are offered to students under the contract;

(B) A financial account where information about the account is communicated directly to students by the third-party servicer, or the institution on behalf of or in conjunction with the third-party servicer; or

(C) A financial account where information about the account is communicated directly to students by an entity contracting with or affiliated with the third-party servicer.

(2) Under a T1 arrangement, the institution must—

(i) Ensure that the student's consent to open the financial account is obtained before an access device, or any representation of an access device, is sent to the student, except that an institution may send the student an access device that is a card provided to the student for institutional purposes, such as a student ID card, so long as the institution or financial institution obtains the student's consent before validating the device to enable the student to access the financial account;

(ii) Ensure that any personally identifiable information about a student that is shared with the third-party servicer before the student makes a selection under [paragraph \(d\)\(4\)\(i\)](#) of this section—

(A) Does not include information about the student, other than directory information under [34 CFR 99.3](#) that is disclosed pursuant to [34 CFR 99.31\(a\)\(11\)](#) and [99.37](#), beyond—

(1) A unique student identifier generated by the institution that does not include a Social Security number, in whole or in part;

(2) The disbursement amount;

(3) A password, PIN code, or other shared secret provided by the institution that is used to identify the student; or

(4) Any additional items specified by the Secretary in a notice published in the FEDERAL REGISTER;

(B) Is used solely for activities that support making direct payments to the student and not for any other purpose; and

(C) Is not shared with any other affiliate or entity except for the purpose described in [paragraph \(e\)\(2\)\(ii\)\(B\)](#) of this section;

(iii) Inform the student of the terms and conditions of the financial account, as required under paragraph (d)(4)(i)(B)(2) of this section, before the financial account is opened;

(iv) Ensure that the student—

(A) Has convenient access to the funds in the financial account through a surcharge-free national or regional Automated Teller Machine (ATM) network that has ATMs sufficient in number and housed and serviced such that title IV funds are reasonably available to students, including at the times the institution or its third-party servicer makes direct payments into the financial accounts of those students;

(B) Does not incur any cost—

(1) For opening the financial account or initially receiving an access device;

(2) Assessed by the institution, third-party servicer, or a financial institution associated with the third-party servicer, when the student conducts point-of-sale transactions in a State; and

(3) For conducting a balance inquiry or withdrawal of funds at an ATM in a State that belongs to the surcharge-free regional or national network;

(v) Ensure that—

(A) The financial account or access device is not marketed or portrayed as, or converted into, a credit card;

(B) No credit is extended or associated with the financial account, and no fee is charged to the student for any transaction or withdrawal that exceeds the balance in the financial account or on the access device, except that a transaction or withdrawal that exceeds the balance may be permitted only for an inadvertently authorized overdraft, so long as no fee is charged to the student for such inadvertently authorized overdraft; ~~and~~

(C) The institution, third-party servicer, or third-party servicer's associated financial institution provides a student accountholder convenient access to title IV, HEA program funds in part and in full up to the account balance via domestic withdrawals and transfers without charge, during

the student's entire period of enrollment following the date that such title IV, HEA program funds are deposited or transferred to the financial account;

(D) The institution, third-party servicer, or third-party servicer's associated financial institution does not discriminate between non-Title IV and Title IV funds when assessing any fees, charges, or other costs associated with a T1 account; and

(E) No fee is charged to the student for any attempted transaction or withdrawal where the institution, third-party servicer, or third-party servicer's associated financial institution rejects or denies such a transaction due to insufficient funds in a T1 account.

(vi) No later than September 1, 2016, and then no later than 60 days following the most recently completed award year thereafter, disclose conspicuously on the institution's Web site the contract(s) establishing the T1 arrangement between the institution and third-party servicer or financial institution acting on behalf of the third-party servicer, as applicable, except for any portions that, if disclosed, would compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities;

(vii) No later than September 1, 2017, and then no later than 60 days following the most recently completed award year thereafter, disclose conspicuously on the institution's Web site and in a format established by the Secretary—

(A) The total consideration for the most recently completed award year, monetary and non-monetary, paid or received by the parties under the terms of the contract; and

(B) For any year in which the institution's enrolled students open 30 or more financial accounts under the T1 arrangement, the number of students who had financial accounts under the contract at any time during the most recently completed award year, and the mean and median of the actual costs incurred by those account holders;

(viii) Provide to the Secretary an up-to-date URL for the contract and contract data as described in [paragraph \(e\)\(2\)\(vii\)](#) of this section for publication in a centralized database accessible to the public;

(ix) Ensure that the terms of the accounts offered pursuant to a T1 arrangement are not inconsistent with the best financial interests of the students opening them. The Secretary considers this requirement to be met if—

(A) The institution documents that it conducts reasonable due diligence reviews at least every two years to ascertain whether the fees imposed under the T1 arrangement are, considered as a whole, consistent with or below prevailing market rates; and

(B) All contracts for the marketing or offering of accounts pursuant to T1 arrangements to the institution's students make provision for termination of the arrangement by the institution based on complaints received from students or a determination by the institution under

paragraph (e)(2)(ix)(A) of this section that the fees assessed under the T1 arrangement are not consistent with or are higher than prevailing market rates;

(C) Such an arrangement prohibits the institution, a third-party servicer, or third-party servicer's associated financial institution from imposing a "sunset" fee at any point in the lifecycle of a financial account or access device, including, for example, any fee automatically imposed when a student graduates or separates, or reaches a specified age; and

(D) Safe Harbor. The Secretary shall presume that the terms of accounts are not inconsistent with the best financial interests of the students opening them if the fees imposed under the T1 arrangement are substantially similar to the fees permitted under the Consumer Financial Protection Bureau's model "Safe Student Account.

(x) Take affirmative steps, by way of contractual arrangements with the third-party servicer as necessary, to ensure that requirements of this section are met with respect to all accounts offered pursuant to T1 arrangements.

(3) Except for paragraphs (e)(2)(ii)(B) and (C) of this section, the requirements of paragraph (e)(2) of this section no longer apply to a student who has an account described under paragraph (e)(1) of this section when the student is no longer enrolled at the institution and there are no pending title IV disbursements for that student, except that nothing in this paragraph (e)(3) should be construed to limit the institution's responsibility to comply with paragraph (e)(2)(vii) of this section with respect to students enrolled during the award year for which the institution is reporting. To effectuate this provision, an institution may share information related to students' enrollment status with the servicer or entity that is party to the arrangement.

(f) Tier two arrangement.

(1) In a Tier two (T2) arrangement, an institution located in a State has a contract with a financial institution, or entity that offers financial accounts through a financial institution, under which financial accounts are offered and marketed directly to students enrolled at the institution.

(2) Under a T2 arrangement, an institution must—

(i) Comply with the requirements described in paragraphs (d)(4)(i), (f)(4)(i) through (iii), (vii), and (ix) through (xi), and (f)(5) of this section if it has at least one student with a title IV credit balance in each of the three most recently completed award years, but has less than the number and percentage of students with credit balances as described in paragraphs (f)(2)(ii)(A) and (B) of this section; and

(ii) Comply with the requirements specified in paragraphs (d)(4)(i), (f)(4), and (f)(5) of this section if, for the three most recently completed award years—

(A) An average of 500 or more of its students had a title IV credit balance; or

(B) An average of five percent or more of the students enrolled at the institution had a title IV credit balance. The institution calculates this percentage as follows:

The average number of students with credit balances for the three most recently completed award years

The average number of students enrolled at the institution at any time during the three most recently completed award years.

(3) The Secretary considers that a financial account is marketed directly if—

(i) The institution communicates information directly to its students about the financial account and how it may be opened;

(ii) The financial account or access device is cobranded with the institution's name, logo, mascot, or other affiliation and is marketed principally to students at the institution; or

(iii) A card or tool that is provided to the student for institutional purposes, such as a student ID card, is validated, enabling the student to use the device to access a financial account.

(4) Under a T2 arrangement, the institution must—

(i) Ensure that the student's consent to open the financial account has been obtained before—

(A) The institution provides, or permits a third-party servicer to provide, any personally identifiable information about the student to the financial institution or its agents, other than directory information under [34 CFR 99.3](#) that is disclosed pursuant to [34 CFR 99.31\(a\)\(11\)](#) and [99.37](#);

(B) An access device, or any representation of an access device, is sent to the student, except that an institution may send the student an access device that is a card provided to the student for institutional purposes, such as a student ID card, so long as the institution or financial institution obtains the student's consent before validating the device to enable the student to access the financial account;

(ii) Inform the student of the terms and conditions of the financial account as required under paragraph (d)(4)(i)(B)(2) of this section, before the financial account is opened;

(iii) No later than September 1, 2016, and then no later than 60 days following the most recently completed award year thereafter—

(A) Disclose conspicuously on the institution's Web site the contract(s) establishing the T2 arrangement between the institution and financial institution in its entirety, except for any portions that, if disclosed, would compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities; and

(B) Provide to the Secretary an up-to-date URL for the contract for publication in a centralized database accessible to the public;

(iv) No later than September 1, 2017, and then no later than 60 days following the most recently completed award year thereafter, disclose conspicuously on the institution's Web site and in a format established by the Secretary—

(A) The total consideration for the most recently completed award year, monetary and non-monetary, paid or received by the parties under the terms of the contract; and

(B) For any year in which the institution's enrolled students open 30 or more financial accounts marketed under the T2 arrangement, the number of students who had financial accounts under the contract at any time during the most recently completed award year, and the mean and median of the actual costs incurred by those account holders;

(v) Ensure that the items under [paragraph \(f\)\(4\)\(iv\)](#) of this section are posted at the URL that is sent to the Secretary under [paragraph \(f\)\(4\)\(iii\)\(B\)](#) of this section for publication in a centralized database accessible to the public;

(vi) Ensure that the student accountholder can execute balance inquiries and access funds deposited in the financial accounts through surcharge-free in-network ATMs sufficient in number and housed and serviced such that the funds are reasonably available to the accountholder, including at the times the institution or its third-party servicer makes direct payments into them;

(vii) Ensure that the financial accounts are not marketed or portrayed as, or converted into, credit cards;

(viii) Ensure that the terms of the accounts offered pursuant to a T2 arrangement are not inconsistent with the best financial interests of the students opening them. The Secretary considers this requirement to be met if—

(A) The institution documents that it conducts reasonable due diligence reviews at least every two years to ascertain whether the fees imposed under the T2 arrangement are, considered as a whole, consistent with or below prevailing market rates; ~~and~~

(B) All contracts for the marketing or offering of accounts pursuant to T2 arrangements to the institution's students make provision for termination of the arrangement by the institution based on complaints received from students or a determination by the institution under [paragraph \(f\)\(4\)\(viii\)\(A\)](#) of this section that the fees assessed under the T2 arrangement are not consistent with or are above prevailing market rates;

(C) Such an arrangement prohibits the institution, a third-party servicer, or third-party servicer's associated financial institution from imposing a “sunset” fee at any point in the lifecycle of a financial account or access device, including, for example, any fee automatically imposed when a student graduates or separates, or reaches a specified age; and

(D) Safe Harbor. The Secretary shall presume that the terms of accounts are not inconsistent with the best financial interests of the students opening them if the fees imposed under the T2

arrangement are substantially similar to the fees permitted under the Consumer Financial Protection Bureau's model "Safe Student Account."

(ix) Take affirmative steps, by way of contractual arrangements with the financial institution as necessary, to ensure that requirements of this section are met with respect to all accounts offered pursuant to T2 arrangements; and

(x) Ensure students incur no cost for opening the account or initially receiving or validating an access device.

(xi) If the institution enters into an agreement for the cobranding of a financial account with the institution's name, logo, mascot, or other affiliation but maintains that the account is not marketed principally to its enrolled students and is not otherwise marketed directly within the meaning of paragraph (f)(3) of this section, the institution must retain the cobranding contract and other documentation it believes establishes that the account is not marketed directly to its enrolled students, including documentation that the cobranded financial account or access device is offered generally to the public.

(xii) Institutions falling below the thresholds described in paragraph (f)(2) of this section are encouraged to comply voluntarily with the applicable provisions of paragraphs (f)(4) and (f)(5) of this section.

(xiii) Ensure that the institution, third-party servicer, or third-party servicer's associated financial institution does not discriminate between non-Title IV and Title IV funds when assessing any fees, charges, or other costs associated with a T2 account.

(5) The requirements of paragraph (f)(4) of this section no longer apply with respect to a student who has an account described under paragraph (f)(1) of this section when the student is no longer enrolled at the institution and there are no pending title IV disbursements, except that nothing in this paragraph should be construed to limit the institution's responsibility to comply with paragraph (f)(4)(iv) of this section with respect to students enrolled during the award year for which the institution is reporting. To effectuate this provision, an institution may share information related to students' enrollment status with the financial institution or entity that is party to the arrangement.