

July 2, 2015

Ashley Higgins
U.S. Department of Education
1990 K St. NW, Room 8037
Washington, DC 20006

RE: Program Integrity and Improvement [Docket ID: ED-2015-OPE-0020; RIM 1840-AD14]

Dear Ms. Higgins,

Consumers Union, the advocacy division of Consumer Reports,¹ appreciates the opportunity to comment on the Department's proposed rule to set new minimum standards for campus banking arrangements pursuant to its "cash management" rules.

We strongly support the Department's proposal, and believe it will rein in some of the most problematic features of these school-bank partnerships. We are pleased that the proposed rule:

- **Sets minimum requirements** for accounts opened during the financial aid disbursement selection process, as well as those directly marketed to students;
- **Requires a neutral menu of options** for students choosing how to receive their financial aid disbursement, with direct deposit to an existing account displayed prominently as the first option;
- **Requires affirmative consent** from a student or parent to open a campus account before mailing an access device associated with the account, or linking an student's ID card to the account;
- **Requires meaningful access to free ATMs** for all campus accounts;
- **Bans point-of-sale and overdraft fees**, and any other fees for the first 30 days after account opening, on at least some campus accounts; and
- **Requires public disclosure of campus banking contracts**, including prominent posting on school websites as well as submission to a centralized database.

We also believe the rule could be further strengthened in a few key areas. The final rule should:

- **Set the same, strong standards for all campus banking agreements** between schools and financial firms. The proposed rule would distinguish between accounts opened as part of the Title IV disbursement process ("Tier 1" accounts) and those marketed directly to students ("Tier 2" accounts). Given that the vast majority of students nationwide must use Title IV funds to pay for college – and will have credit balances – it is important that the Department protect those funds, regardless of the manner in which a student is offered a campus account pursuant to an agreement between a school and a financial firm.

¹ Consumers Union is the public policy and advocacy division of Consumer Reports. Consumers Union works for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves, focusing on the areas of telecommunications, health care, food and product safety, energy, and financial services, among others. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit organization rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.

- **Ban co-branded ID cards prior to account opening.** While we appreciate that the proposed rule would prohibit linking such cards to a campus account without prior consent, we have concerns that receiving a co-branded student ID card with an embedded payment card function still implicitly markets the campus account as the preferred option for students.
- **Ban point-of-sale and overdraft fees on all types of campus banking products,** not just Tier 1 accounts. These fees are especially troubling, and inappropriate for student accounts.
- **Ban revenue-sharing agreements.** These kinds of agreements are banned on private education loans. Though we appreciate the proposed rule's provisions around the disclosure of such agreements, we believe the simpler solution is to eliminate them altogether.
- **Clarify that schools must base their decision to enter into a campus banking contract on whether that contract is in their students' best interests.** Schools should place priority weight on account terms when evaluating bids for campus banking contracts, to ensure that they are good for students.

In any case, if Tier 2 accounts are given fewer restrictions than Tier 1 accounts, and revenue sharing is still permitted, it is all the more crucial that the Department ensure clear public contract disclosures, as well as central databasing of all campus banking contracts. Better transparency around these agreements will promote healthy competition and encourage contract terms that give students a better deal.

General Comments

In recent years, financial firms have increasingly marketed campus banking products to colleges, universities, and their students. Financial aid refund disbursement services, student ID cards linked to bank accounts or prepaid cards, and student checking and savings accounts are now common across U.S. campuses. While these products can be convenient for students and cost-effective for colleges and universities, certain campus banking products have come under scrutiny for their controversial fees and policies. Banking agreements between schools and financial firms may result in arrangements that expose students to aggressive marketing tactics, high or unusual fees, and restricted choices for managing their money.

Consumers Union actively participated in negotiations on the draft cash management rule during the negotiated rulemaking committee for Program Integrity and Improvement in spring 2014. After the committee adjourned, we conducted research on campus banking product offerings that culminated in the August 2014 report, *Campus Banking Products: Students Face Hurdles Accessing Clear Information and Accounts that Meet Their Needs*.² Our investigation reviewed 16 products offered by nine financial firms, which taken together comprise the vast majority of the campus banking market. We developed three hypothetical usage patterns, to determine which kinds of fees could add up the most for students using the products. Our investigation found that while some campus banking products offered simple, low-cost fee structures and convenient access to funds, others came with high or multiple usage fees that added up to significant annual costs for those who use their cards frequently.³ ATM fees, point-of-sale fees and overdraft fees

² CONSUMER REPORTS, *CAMPUS BANKING PRODUCTS: COLLEGE STUDENT FACE HURDLES TO ACCESSING CLEAR INFORMATION AND ACCOUNTS THAT MEET THEIR NEEDS* (2014), available at https://consumersunion.org/wp-content/uploads/2014/08/Campus_banking_products_report.pdf.

³ *Id.* at 2.

contributed the most to added costs for heavy users of their accounts. We also found that finding important information about campus banking products was quite difficult in many cases.

We share the Department's concerns that some campus banking arrangements may be harmful to students – informed by our own research, as well as several recent reports, findings and concerns raised in recent years by other agencies and organizations.⁴

In its groundbreaking 2012 report, *The Campus Debit Card Trap*, U.S. PIRG found that aggressive marketing tactics and co-branded materials confused students into thinking they had to choose the school-sponsored account to access their funds.⁵ In 2012, the FDIC obtained a consent order against Higher One, the largest provider of campus banking products, over claims that it charged students excessive overdraft fees.⁶ Shortly thereafter, students from several states sued Higher One in a class action over claims that they were effectively forced to use Higher One's accounts to access their financial aid, in violation of federal law.⁷ The suit also alleged that Higher One charged excessive fees.⁸ Higher One agreed to settle the case for \$15 million.⁹ In 2014, the Federal Reserve Board also fined Cole Taylor Bank, a former Higher One bank partner, for deceptive marketing of Higher One accounts to students.¹⁰

In September 2013, several members of Congress wrote to executives at major financial firms that contract with colleges and universities to request more information about their campus

⁴ See, e.g., LESLIE PARRISH & MAURA DUNDON, CTR. FOR RESPONSIBLE LENDING, OVERDRAFT U: STUDENT BANK ACCOUNTS OFTEN LOADED WITH HIGH OVERDRAFT FEES (2015), available at http://www.responsiblelending.org/student-loans/research-policy/overdraft_u_final.pdf; U.S. GOV'T ACCOUNTABILITY OFFICE, COLLEGE DEBIT CARDS: ACTIONS NEEDED TO ADDRESS ATM ACCESS, STUDENT CHOICE, AND TRANSPARENCY (2014), available at <http://www.gao.gov/assets/670/660919.pdf>; OFFICE OF INSPECTOR GEN., U.S. DEP'T OF EDUC., FINAL MANAGEMENT INFORMATION REPORT: THIRD-PARTY SERVICER USE OF DEBIT CARDS TO DELIVER TITLE IV FUNDS, DEPARTMENT OF EDUCATION 15 (2014), available at <http://www2.ed.gov/policy/highered/reg/hearulemaking/2014/pii2-lindstrom1-oig.pdf>; Consumer Fin. Protection Bureau, Perspectives on Financial Products Marketed to College Students, Presentation to the Department of Education Negotiated Rulemaking Session 14 (Mar. 26, 2014) available at http://files.consumerfinance.gov/f/201403_cfpb_presentation-to-department-education-rulemaking-committee.pdf; RICH WILLIAMS & ED MIERZWINSKI, U.S. PIRG, THE CAMPUS DEBIT CARD TRAP (2012), available at http://www.uspirg.org/sites/pirg/files/reports/thecampusdebitcardtrap_may2012_uspef.pdf.

⁵ See U.S. PIRG, *supra* note 4, at 20-23.

⁶ Consent Order at 1, In re Higher One, Inc., An Institution-Affiliated Party of Bancorp Bank, FDIC-11-700b, FDIC-11-704k (Aug. 7, 2012), available at <https://www.fdic.gov/news/news/press/2012/pr12092.html> (click link to Higher One Consent Order near bottom of press release).

⁷ Consolidated Amended Complaint at 4, in re Higher One OneAccount Marketing and Sales Practices Litigation, No. 12-2407 (D. Ct. filed Apr. 2, 2013), available at <https://oneaccountsettlement.com/Portals/0/Documents/19%204-2-13%20Jury%20Trial%20Demand%20Consolidated%20Amended%20Class%20Action.pdf>.

⁸ Consolidated Amended Complaint at 5.

⁹ Preliminary Settlement Agreement at 2, in re Higher One OneAccount Marketing and Sales Practices Litigation, No. 12-2407 (D. Ct. filed Feb. 14, 2014), available at <https://oneaccountsettlement.com/Portals/0/Documents/47%202-14-14%20Plaintiffs%20Unopposed%20Motion%20for%20Preliminary%20Approval%20of%20Settlement.pdf>.

¹⁰ Cease and Desist Order at 5, in re Cole Taylor Bank, No. 14-021 (filed June 26, 2014), available at <http://www.federalreserve.gov/newsevents/press/enforcement/enf20140701b1.pdf>.

banking arrangements with schools.¹¹ In April 2014, 23 members of the House and Senate sent a letter urging Education Secretary Arne Duncan to establish rules that would protect students' right to choose how to receive their financial aid, ban revenue sharing deals between schools and financial firms, and require online disclosure of campus banking contracts.¹² Shortly thereafter, two bills were introduced in Congress to provide new consumer protections around campus banking products.¹³

The Consumer Financial Protection Bureau (CFPB) has sought information from students, schools, and financial firms about campus banking arrangements.¹⁴ In conducting its own research, the CFPB has found that campus banking products do not necessarily have better features than other alternatives.¹⁵ In late 2013, the CFPB called on financial institutions to make more information about campus banking agreements public.¹⁶ Earlier this year, the CFPB developed a proposed "Safe Student Account Scorecard" to guide schools toward account features that are better for students when evaluating bids for campus banking contracts.¹⁷

Specific Comments on the Proposal

668.161 – Definitions

We appreciate the Department's proposed Section 668.161(c), which specifies that a school must exercise the level of care and diligence of a fiduciary with respect to "managing" Title IV funds.¹⁸ As the Department notes, Congress intends to provide financial for a single purpose: "to serve students and their families."¹⁹ However, we believe the Department should further specify that this duty entails more than simply ensuring that account terms are consistent with industry

¹¹ Letter from Rep. George Miller et al. to Davia Kemper, CEO, Commerce Bancshares (Sept. 26, 2013), available at <http://democrats.edworkforce.house.gov/press-release/democratic-lawmakers-ask-big-bank-ceos-explain-student-debit-card-deals-colleges> and http://democrats.edworkforce.house.gov/sites/democrats.edworkforce.house.gov/files/documents/9_26_13_LtrstoBanks-DebitCards.pdf.

¹² Letter from Sen. Elizabeth Warren et al. to Arne Duncan, Secretary, U.S. Department of Education, (Apr. 22, 2014), available at <http://www.warren.senate.gov/files/documents/debit%20card%20letter%200423.pdf>.

¹³ CAMPUS Debit Cards Act, H.R. 4714, 113th Cong. (2014); Protecting Aid for Students Act, S. 2385, 113th Cong. (2014).

¹⁴ Request for Information Regarding Financial Products Marketed to Students Enrolled in Institutions of Higher Education, 78 Fed. Reg. 8114, 8114 (Feb. 5, 2013).

¹⁵ ROHIT CHOPRA, STUDENT LOAN OMBUDSMAN, CONSUMER FIN. PROTECTION BUREAU, BANKING ON CAMPUS FORUM 9 (2013), available at http://files.consumerfinance.gov/f/201309_cfpb_banking-on-campus-forum.pdf.

¹⁶ See Press Release, CFPB Calls on Financial Institutions to Publicly Disclose Campus Financial Agreements (Dec. 17, 2013), available at <http://www.consumerfinance.gov/newsroom/cfpb-calls-on-financial-institutions-to-publicly-disclose-campus-financial-agreements/>.

¹⁷ Request for Information Regarding an Initiative on Safe Student Banking, 80 Fed. Reg. 8069 (Feb. 13, 2015); see also Comments from Consumers Union to Consumer Fin. Protection Bureau (Mar. 30, 2015), available at http://consumersunion.org/wp-content/uploads/2015/03/CU_Ltr_CFPB_Safe_Student_Account_Scorecard.pdf.

¹⁸ Program Integrity and Improvement, 80 Fed. Reg. 28484, 28530 (proposed May 18, 2015).

¹⁹ 80 Fed. Reg. at 28489 (quoting House report on the Higher Education Opportunity Act of 2008).

standards, or that fees are not “excessive.” Rather, schools should seek accounts with terms that are in the *students’* best interests.²⁰

It is crucial for schools to negotiate campus banking agreements with a priority focus on their students’ best interests. Students on campus are a captive audience for the marketing of these products; indeed, that is what makes the prospect of entering into a campus banking agreement so attractive for financial institutions. The vast majority of students today receive financial aid, such as grants and loans, in order to go to college; in fiscal year 2014, the Department dispensed approximately \$134 billion in federal aid to 13 million students around the country.²¹ Although most college students arrive on campus with a pre-existing bank account,²² some of them may arrive looking for a good account on or near campus to manage their money. If a campus banking agreement is crafted with students’ best interests in mind, it can yield benefits for students by providing them access to a product that meets their near-term needs while also providing opportunity to develop long-term experience with a financial institution, and the mainstream banking system more broadly.

The Department’s final draft proposal during negotiated rulemaking included the express requirement that schools must base their contracting decisions upon “the best interests of the account holders, including financial terms, account features, and customer service.”²³ We urge the Department to include this same language in the final rule.

668.164(d)(3) – Payments by the Secretary

We support the proposed language to clarify the Department’s authority to develop its own card program for disbursing funds directly to students. Government-issued cards can be a good solution for people without bank accounts – and the government’s negotiating power can compel vendors to create a product with low fees and consumer-friendly features. We encourage the Department to continue exploring this option for financial aid disbursement.

²⁰ The Department should also work with the CFPB, which has proposed a “Safe Student Account Scorecard” to assist schools in evaluating bids for campus banking contracts. *See* Request for Information Regarding an Initiative on Safe Student Banking, 80 Fed. Reg. 8069 (Feb. 13, 2015); Comments from Consumers Union to Consumer Fin. Protection Bureau (Mar. 30, 2015), *available at* https://consumersunion.org/wp-content/uploads/2015/03/CU_Ltr_CFPB_Safe_Student_Account_Scorecard.pdf.

²¹ U.S. DEP’T OF EDUCATION, FEDERAL STUDENT AID, ANNUAL REPORT 2014 iii (2014), *available at* <http://www2.ed.gov/about/reports/annual/2014report/fsa-report.pdf>.

²² According to a survey of 65,000 students commissioned by Higher One, 86% of incoming first-year students have a checking or savings account when entering college. EVERFI, MONEY MATTERS ON CAMPUS 12 (2014), *available at* http://moneymattersoncampus.org/wp-content/uploads/2014/04/MMOC_Report_FINAL-4-4-14.pdf/. TouchNet, another financial firm that contracts with college and university to disburse payments, estimates that 98% of all college students have existing bank accounts. TouchNet Info. Sys., Inc., Financial Aid Refunds, 4 for Title IV eDisbursements Framework, <https://www.touchnet.com/prod/the-disbursemess.html>.

²³ U.S. Dep’t of Education, Negotiated Rulemaking 2013-2014, Program Integrity and Improvement, <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html> (“Issue 4 - Cash Management” under “Session 4 Materials”).

668.164(d)(4) – Student or Parent Choice

We strongly support the proposed requirement that schools ensure there is a neutral menu of options presented to the student when selecting a disbursement method, and that the menu makes direct deposit to an existing the account the most prominent, default option for receiving funds. We agree with the Department that this should be an easy option – and that there should be no delays in receiving funds via direct deposit to an existing account instead of the campus-sponsored account.

In its 2014 report, the GAO identified situations in which schools, in presenting students with their disbursement options, did not present disbursement options in a “clear and neutral” manner, and “appeared to encourage” students to select school-sponsored accounts.²⁴ In some cases, choosing a different option – such as the student’s pre-existing bank account – required additional documentation that was time-consuming to locate, and in some cases was not readily available online.²⁵ U.S. PIRG’s 2012 report showed how disbursement selection websites could display the campus account more prominently than other options, touting it as the faster way of receiving funds compared with direct deposit to an existing account or a paper check.²⁶

When making a disbursement selection, a student is effectively at the “point of sale” – and most vulnerable to steering practices. We applaud the Department’s proposal for ensuring that students have clear and neutral choices for receiving their Title IV funds, and are encouraged that the Department plans to work with the CFPB to design user-friendly disclosures.

To facilitate compliance, the Department may want to further specify the order in which the disbursement options must be displayed. At the negotiating table, some negotiators recommended a “two-step” approach whereby the disbursement selection screen offers the direct deposit option in a prominent and central location, and then includes links further down the page that students can click on if they do not have existing account information to provide. At that point, they can be directed to other options for receiving financial aid, including the Tier 1 account and a paper check.

We also support the proposed requirement that schools list a paper check as an option for receiving funds. While most students today may opt for electronic receipt of their financial aid funds, some may find that a paper check better meets their needs. Furthermore, some schools such as community colleges may not have direct control over how funds are disbursed due to state or municipal regulations, and may not be able to provide direct deposit as a disbursement option at the present time.²⁷ For these reasons, retaining the paper check option makes sense at least in the short term. The Department could also consider a gradual phase-out of paper checks in three to five years, as an alternative approach that would encourage states and municipalities to facilitate a move toward EFT options for impacted schools.

²⁴ GOV’T ACCOUNTABILITY OFFICE, *supra* note 4, at 27.

²⁵ *Id.* at 27-28.

²⁶ See U.S. PIRG, *supra* note 4, at 20 (HigherOne web portal screenshot)

²⁷ Negotiators representing the interests of two-year public colleges raised this issue at the negotiating table. See Memorandum, Brad Hardison, Issue #4: Cash Management – Comments and Recommendations to the U.S. Department of Education (Mar. 5, 2014), available at <http://www2.ed.gov/policy/highered/reg/hearulemaking/2014/pii2-hardison1-cashgmt.pdf>.

668.164(e) – Tier 1 Arrangements

In addition to requiring a neutral menu of options, we support the Department's proposed requirements for accounts marketed as part of a "Tier 1" arrangement between a school and a financial firm. In particular, we strongly support the proposed ban on pre-mailing of access devices – a tactic that has greatly contributed to student confusion about the accounts, and helped to create the perception that campus accounts are preferred or even required for receiving financial aid disbursements. Similarly, we support the ban on linking a student ID to a campus account without prior consent.

We strongly support the proposed bans on both point-of-sale and overdraft fees, along with the requirement that students have reasonable access to free ATMs. Our 2014 report found that ATM fees, point-of-sale fees and overdraft fees contributed the most to increased costs for students who use campus accounts frequently, as their sole or primary transaction account. These fees eat into precious financial aid that should be going toward educational and living expenses. Low-income students in particular cannot afford to lose their money due to high account fees.

We also support the proposal to limit fees further by prohibiting all fees for the first 30 days after a student opens a campus account, and encourage the Department to consider limiting fees further – for example, no fees for the first 60 days after account opening – to ensure that students have sufficient opportunity to access all their Title IV aid free and clear.

Finally, we urge the Department to limit providers' access to students' personal information prior to making a disbursement selection. If providers are allowed to collect names and email addresses, that information must be used only in order to fulfill duties related to Title IV disbursement requirements – not for marketing purposes. We have concerns that providers could use this personal information to evade the intent of the rule and directly market to students prior to making a disbursement selection. Absent evidence that this information is necessary to perform Title IV disbursement duties, we believe the better approach is to prohibit sharing any personal information about a student without their express consent.

668.164(f) – Tier 2 Arrangements

We urge the Department to extend the same, strong protections to both Tier 1 and Tier 2 accounts. While we appreciate the proposed requirement that all campus accounts have reasonable free ATM access, we are disappointed that the bans on point-of-sale and overdraft fees do not extend to Tier 2 accounts. Overdraft fees are particularly worrisome, and they can be quite high on accounts marketed directly to students. Our 2014 report found that some financial institutions charged higher-than-average overdraft fees for their student checking accounts.²⁸ More importantly, we believe that all students should be protected from overdraft fees. Students with low-balance accounts may be at increased risk of overdrawing their accounts; adding fees to a negative balance could pose a serious hardship to those students.

²⁸ See CAMPUS BANKING PRODUCTS, *supra* note 2, at 12. For example, TCF charges \$37 overdraft fees, and U.S. Bank charges \$26. *Id.* According to the CFPB, the median overdraft fee is \$34. CONSUMER FIN. PROTECTION BUREAU, CFPB STUDY OF OVERDRAFT PROGRAMS: A WHITE PAPER OF INITIAL DATA FINDINGS 52 (2013), available at http://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf.

Furthermore, the Department has clear authority – and a responsibility – to protect all Title IV funds, whether they are deposited into Tier 1 or Tier 2 accounts. As the Department rightly notes, Section 487(c)(1)(B) of Higher Education Act directs the Secretary to “prescribe such regulations as may be necessary” to ensure that schools are capable of managing Title IV funds responsibly, “including any matter the Secretary deems necessary to the sound administration of the financial aid programs.”²⁹ The Department has had cash management regulations, with provisions pertaining to disbursement, since 1996.³⁰ The Department amended its cash management regulations in 2007 to include minimum standards for accounts opened with the assistance of the school.³¹ The 2007 amendments required prior written consent before opening, no account opening fees, and reasonable free ATM access among other things.³² Subsequent to promulgating the 2007 amendments, Congress reauthorized the HEA in 2008 without making changes to the Department’s authority to promulgate regulations under Section 487(c) of the Act.³³ The Supreme Court often presumes that an agency’s interpretation of a statute is known to members of Congress, and that Congress accepts that interpretation if it reenacts a statute without changing the relevant language in question.³⁴ Therefore, Congress has implicitly affirmed the Department’s ongoing authority to regulate the disbursement of Title IV funds as it sees fit to ensure proper administration of the program.

In addition, although we appreciate the proposed ban on linking student IDs to campus accounts without prior consent, we have ongoing concerns that the rule would permit schools to distribute co-branded ID cards with payment card capability to students before they have consented to open a campus account. Seeing a bank logo on the student ID card implies that the campus account is endorsed by the school – precisely the kind of suggestive marketing that the Department is attempting to stop. We urge the Department to prohibit co-branding on ID cards that can serve as access devices for Tier 2 accounts. This would ensure consistently neutral marketing practices across Tier 1 and Tier 2 accounts.

Finally, we oppose any automatic exemption from regulation of Tier 2 accounts at schools without a certain number of credit balances. We agree with the Department’s approach, which places the onus on schools to demonstrate to the Department that their students are not receiving credit balances before they can claim an exemption. It is crucial for all students receiving credit balances to have the important protections outlined in this proposal.

668.164(e) and (f) – Contract Disclosure and Transparency Requirements

We strongly support the proposed requirement that schools post their campus banking contracts prominently online, as well as submit them to a centralized database. The GAO has raised concerns that campus banking contracts are “not fully transparent,” noting that they had trouble getting copies from several schools they surveyed.³⁵ The CFPB and NACUBO have called for

²⁹ 80 Fed. Reg. at 28491 (citing 20 U.S.C. § 1094(c)(1)(B)).

³⁰ Student Assistance General Provisions, Federal Perkins Loan Program, Federal Work-Study Program, Federal Supplemental Education Opportunity Grant Program, Federal Family Education Loan Programs, William D. Ford Federal Direct Loan Program, and Federal Pell Grant Program, 61 Fed. Reg. 60578, 60604-06 (Nov. 29, 1996).

³¹ Federal Student Aid Programs, 72 Fed. Reg. 62014, 62028-29 (Nov. 1, 2007).

³² 72 Fed. Reg. at 62029.

³³ Higher Education Opportunity Act of 2008, Pub. L. No. 110-315, 122 Stat. 3078, 3309 (2008) (amending Section 487(c)(1)(A), but leaving (B) untouched).

³⁴ *See, e.g.,* *Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978); *Nat’l Lab. Rel. Bd v. Gullett Gin Co.*, 340 U.S. 361, 365-66 (1951).

³⁵ *See* GOV’T ACCOUNTABILITY OFFICE, *supra* note 4, at 31.

increased public disclosure of campus banking contracts between schools and financial firms.³⁶ In many cases, however, the contracts are not easily accessible.³⁷

There is already precedent for schools publicly disclosing their marketing agreements with financial firms. The CARD Act of 2009 requires schools to publicly disclose their college credit card agreements.³⁸ The CFPB collects these agreements in a publicly accessible online database; it contains information about the number of accounts open at each college or university and the payments it received from the card issuer.³⁹ In its recent report to Congress on college credit card agreements, the CFPB found that while the number of credit card agreements has declined since the CARD Act became law, more issuers have entered the market⁴⁰ – suggesting increased competition. In addition, the CFPB has found that revenue-sharing payments to schools have declined⁴¹ – another encouraging trend.

The specific requirement that schools post the agreement prominently on their websites is also key to ensuring that the contracts are truly public. In the college credit card context, only a few schools post their contracts online or provide any guidance as to how to obtain them. A recent informal investigation we conducted found that it was difficult, if not impossible, to obtain information about college credit card agreements by calling campuses directly.⁴² We have urged the CFPB to make online posting an express requirement under CARD Act regulations, to ensure they are truly public as intended by the Act.⁴³ In its response to our inquiry, the CFPB noted that it was “peculiar” that schools were not posting their contracts online, given the “low burden” it would pose for ensuring compliance with public disclosure requirements under the Act.⁴⁴

At the negotiating table, several negotiators urged public disclosure of contracts to ensure transparency. Negotiators also suggested banning revenue-sharing in campus banking contracts, citing precedent in the context of private education loans. However, we indicated that contract transparency could be effective in discouraging revenue-sharing provisions in campus

³⁶ Press Release, Consumer Fin. Protection Bureau, CFPB Calls on Financial Institutions to Publicly Disclose Campus Financial Agreements (Dec. 17, 2013), *available at* <http://www.consumerfinance.gov/newsroom/cfpb-calls-on-financial-institutions-to-publicly-disclose-campus-financial-agreements>; Letter from Nat'l Ass'n of College & Univ. Business Officers to the Consumer Financial Protection Bureau re: Docket No. CFPB-2013-0003, Financial Products Marketed to Students Enrolled in Institutions of Higher Education 9 (Mar. 18, 2013), *available at* <http://www.regulations.gov#!documentDetail:D=CFPB-2013-0003-0068>.

³⁷ Consumer Fin. Protection Bureau, *supra* note 34.

³⁸ Pub. L. No. 111-24, 124 Stat. 1734, 1749-50.

³⁹ See Consumer Fin. Protection Bureau, College Credit Card Agreements, <http://www.consumerfinance.gov/credit-cards/college-agreements/>.

⁴⁰ CONSUMER FIN. PROTECTION BUREAU, COLLEGE CREDIT CARD AGREEMENTS: ANNUAL REPORT TO CONGRESS 10 (2014), *available at* http://files.consumerfinance.gov/f/201412_cfpb_college-card-agreement-report-2014.pdf.

⁴¹ *Id.* at 27.

⁴² See Letter from Suzanne Martindale, Consumers Union to Rohit Chopra & Anthony Alexis, Consumer Fin. Protection Bureau (Feb. 19, 2015), *available at* <http://consumersunion.org/news/consumers-union-to-cfpb-some-colleges-may-be-violating-credit-card-law/>.

⁴³ *Id.*

⁴⁴ Letter from Rohit Chopra & William Wade-Gery, Consumer Fin. Protection Bureau to Suzanne Martindale, Consumers Union (Mar. 12, 2015), *available at* http://consumersunion.org/wp-content/uploads/2015/03/CFPB_response_CARDAct_0315.pdf.

banking contracts, and ultimately achieve the twin goals of increased competition and fairer terms for students.⁴⁵

If the Department moves forward with the proposed distinction between Tier 1 and Tier 2 accounts, such that Tier 2 accounts are subject to fewer fee restrictions – and practices like revenue-sharing are still allowed – it is all the more crucial that these contracts be submitted to a centralized database and made easily accessible to the public.

Conclusion

We greatly appreciate the Department's hard work and thoughtful approach toward protecting students' financial aid dollars. We look forward to working with the Department on this and other important issues affecting college students.

Sincerely,

A handwritten signature in black ink, appearing to read 'Suzanne Martindale', written in a cursive style.

Suzanne Martindale
Staff Attorney

⁴⁵ See Memorandum, Chris Lindstrom & Suzanne Martindale, Issue 4 – Cash Management: Aligning Institutional and Student Interests in Campus Banking (Apr. 2, 2014), available at <http://www2.ed.gov/policy/highered/reg/hearulemaking/2014/pii3-lind-mart-cashgmt-040214.pdf>.