

September 13, 2016

Ms. Kate Mullan
Acting Director, Information Collection Clearance Division
Office of the Chief Privacy Officer, Office of Management
U.S. Department of Education
400 Maryland Ave. SW, LBJ, Room 2E-347
Washington, DC 20202

RE: Agency Information Collection Activities; Comment Request; Cash Management Contract URL Collection [Docket ID: ED-2016-ICCD-0079]

Dear Ms. Mullan,

The undersigned negotiators from the 2014 Program Integrity and Improvement Committee, representing the interests of students, legal aid and consumer advocacy organizations, appreciate the opportunity to comment on the Department's notice regarding the centralized databasing of school-bank contracts, pursuant to its new cash management regulations.

We strongly supported this rulemaking, and believe the new rules will rein in some of the most problematic aspects of school-bank partnerships for marketing financial products to students receiving Title IV credit balances.

To ensure successful implementation of the new rule, we urge the Department to develop a searchable public database, much like the CFPB's college credit card database, to compare agreements and monitor market trends. Being able to easily search for agreements by school or financial institution, and review important data about account usage, will ensure that the Department has the information it needs to monitor compliance. It will also ensure that students, other relevant agencies, and the general public have access to important information about campus banking agreements and can compare key terms and conditions.

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.

Several recent reports, findings and concerns raised in recent years by government agencies and nonprofit organizations have raised concerns about problematic account features and a lack of transparency around campus banking agreements.¹ 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.² In 2012, the FDIC obtained a consent order against Higher One, the largest provider of campus banking products at the time, over claims that it charged students excessive overdraft fees.³ 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.⁴ The suit also alleged that Higher One charged excessive fees.⁵ Higher One agreed to settle the case for \$15 million.⁶ 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.⁷

¹ 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.

² See U.S. PIRG, *supra* note 1, at 20-23.

³ 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).

⁴ 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>.

⁵ Consolidated Amended Complaint at 5.

⁶ 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>.

⁷ 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>.

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 banking arrangements with schools.⁸ 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.⁹ Shortly thereafter, two bills were introduced in Congress to provide new consumer protections around campus banking products.¹⁰

In 2014, Consumers Union conducted research on campus banking product offerings that culminated in the report, *Campus Banking Products: Students Face Hurdles Accessing Clear Information and Accounts that Meet Their Needs*.¹¹ The investigation reviewed 16 products offered by nine financial firms, which taken together comprised the vast majority of the campus banking market. It 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.¹² The investigation also found that locating important information about campus banking products was very difficult in many cases.

To address these concerns, the Department convened a negotiated rulemaking committee to address cash management and other issues related to Title IV program integrity.¹³ The committee met in spring 2014 and engaged in extensive discussions, over four sessions, to determine the best approaches to protecting students' access to their Title IV balances.¹⁴ The committee's discussions primarily focused on student choice, account fees, and transparency of campus banking agreements between schools and financial firms.

⁸ 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.

⁹ 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>.

¹⁰ CAMPUS Debit Cards Act, H.R. 4714, 113th Cong. (2014); Protecting Aid for Students Act, S. 2385, 113th Cong. (2014).

¹¹ 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.

¹² *Id.* at 2.

¹³ Negotiated Rulemaking Committee, Negotiator Nominations and Schedule of Committee Meetings – Title IV Federal Student Aid Programs, Program Integrity and Improvement, 78 Fed. Reg. 69612 (Nov. 20, 2013).

¹⁴ U.S. Dep't of Educ., Negotiated Rulemaking 2013-2014, Program Integrity and Improvement, <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html>.

At the negotiating table, several negotiators urged public disclosure and central reporting of campus banking contracts, to ensure maximum transparency. We 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 banking contracts, and ultimately achieve the twin goals of increased competition and fairer terms for students.¹⁵

Contract Transparency is Crucial to Implement the Rule

A key component to the new rule is the requirement that schools post their campus banking contracts prominently online, as well as submit them to a centralized database. We believe the centralized database is crucial to ensuring compliance with the new rule, given the lack of transparency schools have shown to date about their campus banking agreements. 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.¹⁶ The CFPB and NACUBO have called for increased public disclosure of campus banking contracts between schools and financial firms.¹⁷ In many cases, however, the contracts are not easily accessible.¹⁸

The Department’s new contract disclosure requirements do not pose an undue burden on schools – in fact, schools with campus credit card agreements are already subject to similar transparency measures. The CARD Act of 2009 requires schools to publicly disclose their college credit card agreements.¹⁹ The CFPB collects these agreements in a publicly accessible, searchable 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.²⁰ 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

¹⁵ 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-cashmgmt-040214.pdf>.

¹⁶ See GOV’T ACCOUNTABILITY OFFICE, *supra* note 1, at 31.

¹⁷ 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>.

¹⁸ Consumer Fin. Protection Bureau, *supra* note 17.

¹⁹ Pub. L. No. 111-24, 124 Stat. 1734, 1749-50.

²⁰ See Consumer Fin. Protection Bureau, College Credit Card Agreements, <http://www.consumerfinance.gov/credit-cards/college-agreements/>.

became law, more issuers have entered the market²¹ – suggesting increased competition. In addition, the CFPB has found that revenue-sharing payments to schools have declined²² – another encouraging trend.

The submission of contracts into a centralized, searchable database will ensure that students and the public can easily find key information about the agreements, including the number of accounts opened, average fees assessed, and any financial incentives the school is receiving as part of the agreement. It will also provide an important backstop in the event that schools fail to optimize their own websites to display their contracts and other important information about the campus accounts.

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,

Whitney Barkley

Christine Lindstrom

Suzanne Martindale

Toby Merrill

²¹ 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.

²² *Id.* at 27.