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POLICY & ACTION FROM CONSUMER REPORTS

August 21, 2017

Betsy DeVos, Secretary
U.S. Department of Education
400 Maryland Ave. SW, Room 6E231
Washington, DC 20202

RE: Evaluation of Existing Regulations [Docket ID: ED-2017-OS-0074]

Dear Secretary DeVos:

Consumers Union, the policy and mobilization arm of Consumer Reports,[1] appreciates the opportunity to comment on existing Department regulations that may be subject to review, repeal, or modification.

We urge the Department to preserve two rules developed by the 2014 negotiated rulemaking committee on Program Integrity and Improvement: (1) the cash management rule, pertaining to student financial accounts; and (2) the state authorization rule, pertaining to distance education programs. Both rules were carefully crafted through a negotiated rulemaking process that included educational and financial institutions, accreditors, financial aid administrators, and groups representing students before proceeding to public comment.[2] The final rules balance diverse interests and ensure commonsense protections for students. They should be fully implemented and vigorously enforced.

We also urge the Department to preserve and support continued borrower enrollment in the REPAYE plan, which was developed by negotiated rulemaking in 2015 and received consensus support from a committee that included schools, financial aid administrators, loan servicers and groups representing students before proceeding to public comment.[3] The REPAYE plan ensures that anyone with a Direct loan, regardless of when they borrowed, has access to an affordable repayment plan that ties monthly payments to their income.

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[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.

[2] U.S. Dep't of Educ., Negotiated Rulemaking Committee for Higher Education 2013-2014, Program Integrity and Improvement, https://www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html (see list of negotiators).

[3] U.S. Dep't of Educ., Negotiated Rulemaking Committee for Higher Education 2014-2015, https://www2.ed.gov/policy/highered/reg/hearulemaking/2015/index.html (see list of negotiators).

We highlight our support for these rules in addition to the gainful employment and borrower defense rules, which we recently asked the Department not to weaken.[4]

Cash Management

The Department's cash management rule establishes standards for agreements between schools and financial firms to conduct financial aid disbursement.[5] 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.

The Department put new cash management rules on the 2014 negotiated rulemaking agenda in light of mounting evidence some campus banking arrangements were harming students – informed by several reports, findings and concerns regarding aggressive marketing practices,[6] harmful fees,[7] and a lack of transparency around campus banking contracts.[8] While negotiated rulemaking was in process, Consumer Reports conducted its own 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.*[9] Our investigation reviewed 16 products offered by nine financial firms, which taken together comprised the vast majority of the campus banking market at the time. We found that

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[4] Letter from Consumers Union to U.S. Dep't of Educ., Negotiated Rulemaking Committee; Public Hearings (July 12, 2017), *available at* https://consumersunion.org/wp-content/uploads/2017/07/CUtestimony_negreghearings_FINAL.pdf.

[5] 34 C.F.R. § 668.164(2016).

[6] *See, e.g.*, RICH WILLIAMS & ED MIERZWINSKI, U.S. PIRG, THE CAMPUS DEBIT CARD TRAP 20-23 (2012), *available at* http://www.uspirg.org/sites/pirg/files/reports/thecampusdebitcardtrap_may2012_uspef.pdf.

[7] *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

[8] *See* 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; THE CAMPUS DEBIT CARD TRAP, *supra* note 6, at13 (discussing hidden school incentives); 20-23 (discussing practices that steer students into products).

[9] 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.

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.[10] ATM fees, point-of-sale fees, and overdraft fees 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.

The rulemaking also came on the heels of high-profile lawsuits and congressional inquiries. 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.[11] 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.[12] The suit also alleged that Higher One charged excessive fees.[13] Higher One agreed to settle the case for $15 million.[14] 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.[15]

In 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.[16] In 2014, during committee negotiations, 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

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10 *Id.* at 2.

11 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).

12 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.

13 Consolidated Amended Complaint at 5.

14 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.

15 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.

16 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.

require online disclosure of campus banking contracts.[17] Shortly thereafter, two bills were introduced in Congress to provide new consumer protections around campus banking products.[18]

The final rule, issued in October 2015, created sensible safeguards that ensure student choice and prevent schools from steering students into products that do not meet their financial needs. The rule requires schools to make sure that direct deposit is the first, most prominent option for financial aid disbursement. It limits harmful fees on campus accounts marketed through the disbursement process, and requires reasonable fee-free ATM access on and around campus. It also requires schools to disclose any revenue-sharing arrangements with their financial firm partners.

The Department recently announced a six-month delay in implementation of required disclosures for student accounts under the new rule.[19] We urge the Department to release the final disclosures no later than the new proposed deadline of January 1, 2018.

<u>State Authorization</u>

The Department's state authorization rule sets forth requirements that states must follow to evaluate distance education providers headquartered in other states, and establishes procedures for resolving complaints where the student's location is in a different state than where the school is headquartered.[20] As the Department acknowledged when it proposed this rule, there has been significant growth in the number of students enrolling in out-of-state online programs, a majority of whom enroll in proprietary schools' online programs.[21] Citing reports from the Department's Office of Inspector General[22] and the Government Accountability Office,[23] as well as investigations by state attorneys general,[24] the Department found that new rules were needed to address the complexities

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17 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.

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

19 U.S. Dep't of Educ., Cash Management Electronic Announcement #8 – Publication of a Federal Register Notice Regarding the Final Format of Disclosures for Student Financial Accounts, https://ifap.ed.gov/eannouncements/070317CashMgmtEA8FRFinalFormatDisclosuresStudentFinancialAccounts.html (issued July 3, 2017).

20 34 C.F.R. § 600.9 (2016).

21 Program Integrity and Improvement; Proposed Rule, 81 Fed. Reg. 48598, 48607 (proposed July 25, 2016).

22 U.S. DEP'T OF EDUC., OFFICE OF THE INSPECTOR GEN., INVESTIGATIVE PROGRAM ADVISORY REPORT, DISTANCE EDUCATION FRAUD RINGS (2011), *available at* https://www2.ed.gov/about/offices/list/oig/invtreports/l42l0001.pdf.

23 U.S. GOV'T ACCOUNTABILITY OFFICE, USE OF NEW DATA COULD HELP PROVIDE OVERSIGHT OF DISTANCE EDUCATION (2011), *available at* http://www.gao.gov/assets/590/586340.pdf.

24 *See* 81 Fed. Reg at 48599.

of overseeing distance education providers in order to prevent fraud, misuse of federal funds and gaps in consumer protections for students.

Increasing numbers of complaints about fraud at some institutions indicate that state oversight is necessary to ensure that schools do not evade oversight when marketing programs to students in other states. For example, in 2014, Ashford and its parent company Bridgepoint Education, Inc. paid $7.25 million to Iowa for misleading online recruiting practices, including deceiving prospective students by leading them to believe that online education degrees would allow them to become classroom teachers.[25]

However, in July 2016, Ashford announced that they were currently educating more than 48,000 students online.[26] Ashford is not alone in doing active business despite being under investigation. The University of Phoenix,[27] Kaplan[28] and Ashworth[29] – all of which have been the focus of complaints by state and federal agencies – also continue to have robust distance-only education programs and are actively enrolling students.

The Department's final rule for state authorization of distance education programs, issued in December 2016, clarified what states need to do to better oversee out-of-state providers marketing distance education programs to their students. The rule allows for interstate reciprocity agreements but makes clear that states have a right to enforce their own consumer protection laws. The rule also provides important disclosures so that students know whether or not their program meets the relevant requirements for professional licensure in the their home state.

REPAYE

The REPAYE plan was established by consensus through negotiated rulemaking in 2015, at the direction of the previous Administration, to give more borrowers access to affordable loan payments.[30] The Department was tasked with creating a new plan

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25 Press Release, Iowa Dep't of Justice, Office of the Att'y General, Ashford University and Parent Company Bridgepoint Education Agree to $7.25 Million Payment Major Changes after Miller Alleges Consumer Fraud (May 16, 2014), https://www.iowaattorneygeneral.gov/newsroom/ashford-university-and-parent-company-bridgepoint-education-agree-to-7-25-million-payment-and-majo/.

26 Press Release, Bridgepoint Educ.,, Bridgepoint Education Reports Second Quarter 2016 Results (Aug. 2, 2016), http://www.prnewswire.com/news-releases/bridgepoint-education-reports-second-quarter-2016-results-300307777.html.

27 Apollo Education Group, Inc., Current Report (Form 8-K), at 2 (Aug.7, 2015).

28 Press Release, North Carolina Dep't of Justice, Office of Att'y General, Unlicensed Medical Institute Shutdown for Offering Faulty Classes (Oct. 9, 2015), http://www.ncdoj.gov/News-and-Alerts/News-Releases-and-Advisories/Press-Releases/Unlicensed-medical-institute-shut-down-for-offerin.aspx.

29 Press Release, Fed. Trade Comm'n, Ashworth College Settles FTC Charges it Misled Students About Career Training, Credit Transfers. (May 26, 2015), https://www.ftc.gov/news-events/press-releases/2015/05/ashworth-college-settles-ftc-charges-it-misled-students-about?utm_source=govdelivery.

30 Memorandum, Presidential Memorandum – Federal Student Loan Repayments (Jun 9, 2014), *available at* https://www.whitehouse.gov/the-press-office/2014/06/09/presidential-memorandum-federal-student-loan-repayments.

because other income-driven repayment (IDR) plans come with higher payments[31] or are only available to recent borrowers.[32]

The REPAYE plan caps monthly payments at 10% of discretionary income and is available to any borrower with a Direct loan, regardless of when they borrowed, giving borrowers with older loans more repayment choices.[33] The REPAYE plan comes with several important features:

- Does not require a partial financial hardship (PFH) to enroll. Borrowers can enroll in REPAYE regardless of their debt-to-income ratio and have the security of knowing that their payments will fluctuate with their income. Those who earn less pay less, and those who earn more pay more; this produces equitable results for the program as a whole.
- Has no standard repayment cap. This goes hand in hand with removing the PFH requirement, and enables higher-income borrowers to always pay 10% of their discretionary income even if such an amount is higher than it would be on the standard 10-year repayment plan. Borrowers who can pay down their loan balances faster are allowed to do so.
- Limits interest charges for borrowers who can only afford to make interest-only payments. The plan puts a limit on interest charges at 50% of the remaining accrued interest while loans are in periods of negative amortization. This will help prevent ballooning balances for those who have high debt-to-income ratios.
- Protects married borrowers filing separately from unfairly high payments. The vast majority of married borrowers file joint taxes due to the monetary advantage it provides under our tax system. Those who file separately are likely to be estranged from their spouses or otherwise unable to access their income. In extreme cases, these filers may be survivors of domestic violence. REPAYE allows these borrowers to self-certify that they are separated from their spouses or otherwise unable to reasonably access their income information, and therefore should have their monthly payments calculated based solely on their own income – but without counting the spouse in their household size.
- Applies maximum repayment periods that protect undergraduate borrowers. The plan ensures that a student with only undergraduate loans will repay for a maximum of 20 years. This protects undergraduate students regardless of how much they borrowed, and especially protects those students who leave school without completing their education. Students who leave college with debt and no degree are the most vulnerable to economic stress, and this plan rightly ensures that they will not be burdened with overly long repayment periods.

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[31] For example, the income-based repayment (IBR) plan caps payments at 15% of discretionary income for borrowers who took out loans before 2014. *See* 20 U.S.C. § 1087e (establishing IBR plan as of 2009); 20 U.S.C. § 1098e(a)(3) (setting "partial financial hardship" cap at 15%).

[32] IBR payments are capped at 10% of discretionary income for borrowers who took out loans after July 2014. 20 U.S.C. § 1098e(e). Pay As You Earn also caps payments at 10%, but is only available to borrowers who took out loans on or after October 2011. 34 C.F.R. § 685.209(a)(i)(3).

[33] *See* 34 C.F.R. § 685.209(c).

We encourage the Department to work with all federal loan servicers to promote the benefits of this plan in communication with borrowers who may be struggling with their loans.

Conclusion

We strongly urge the Department to preserve these key protections for students and vigorously enforce them, to ensure the integrity and fair administration of the federal financial aid system.

Thank you again for the opportunity to provide comments. We look forward to working with the Department on this and future endeavors.

Sincerely,

Suzanne Martindale
Staff Attorney