Subject: Campus Debit and Prepaid Cards and the Best Financial Interest Standard

Dear Colleague:

Colleges and universities may partner with third-party companies to disburse surplus Title IV funds to student loan borrowers via school-sponsored prepaid cards or debit cards, or partner with third-party companies to co-brand financial products including debit cards linked to checking accounts (collectively "campus cards"). After numerous investigations, audits, and legal actions by federal officials, the Department of Education ("Department") promulgated regulations in 2015 (80 Fed. Reg. 67126, codified in relevant part at 34 C.F.R. § 668.164) to outline standards for schools partnering with companies operating in the so-called "cash management" space. However, because consumer harm in the campus card market persists, the Department seeks to clarify the circumstances under which an arrangement between a school and a company is "not inconsistent with the best financial interests" of students, as defined in 34 C.F.R. § 668.164.

Specifically, the cash management regulation establishes that higher education institutions that permit third parties to offer accounts to students must ensure that the terms of these accounts "are not inconsistent with the best financial interests of the students opening them." 34 C.F.R. § 668.164(e)(2)(ix), (f)(4)(viii). The "best financial interests" rule applies to two types of campus cards—circumstances where institutions contract with third parties to distribute Title IV student assistance funds via accounts provided by the school ("T1 arrangements") and institutions that contract with third parties to market school-sponsored accounts directly to students ("T2 arrangements").

Under the current regulation, higher education institutions in both T1 and T2 arrangements can satisfy the "best financial interests" rule if: (1) the institution provides documentation that it "conducts reasonable due diligence reviews" at least biannually to

determine whether the arrangement's fees are, "considered as a whole, consistent with or below prevailing market rates;" and (2) contracts for T1 and T2 arrangements include provisions that allow for termination based on poor student feedback or information provided in the above referenced review that the arrangement's fees are "not consistent with or are above prevailing market rates." 34 C.F.R. § 668.164(e)(2)(ii)(C)(2)(ix), (f)(4)(viii).

In light of ongoing consumer harm, we issue this letter to provide additional guidance on the terms "best financial interest" and "reasonable due diligence" as understood by the Department.

I. Department's Interpretation

Reasonable Due Diligence: Annual Summary of Fees

When conducting "reasonable due diligence reviews," higher education institutions should request annual summaries of fees from third-party companies. Schools are reminded that they already must publish several of the below data points. 668.164(e)(2)(vii)(B), (f)(2)(ii), (f)(4)(iv)(B). These reports will document the amount of fees actually assessed to students in the previous academic year, including the following annual metrics:

- Number of student account holders
- Average and median fees paid (annual total) by a student account holder
- All fee types assessed in descending order of assessment frequency
- Average and median fees paid by a student for each fee imposed
- Number of student accounts assessed any fee
- Number of student accounts assessed any fee, where fees total up to $15, between $15 and $35, and $50 or greater.

Best Financial Interest: Fee Evaluation

When conducting "reasonable due diligence reviews," higher education institutions should consider both fee rates and fee types. For example, the Department considers that the

following safe account features are in the "best financial interest" of student loan borrowers, and thus should be provided free of charge:

- Card-based electronic account
- Deposit insurance
- Direct deposit
- Online and mobile banking / bill pay
- Electronic statements
- Fee-free overdraft protection or, alternatively, no charge for declined authorizations due to insufficient funds ("NSF")
- Money orders / e-checks (two free per month)
- Use of in-network and out-of-network ATMs (at least three free per month for the latter)

Additionally, the Department does not view monthly maintenance fees favorably and encourages higher education institutions to seek out account terms with no monthly maintenance fees or easily obtainable fee waivers. For example, many financial companies offer free checking accounts provided that the account holder maintain a low minimum balance.

Similarly, the "best financial interests" of students dictate that fees never be assessed for the following student account holder activities:

- Point-of-sale purchases
- Declined authorizations due to NSF, or, alternatively, fee-free overdraft protection (if overdraft protection is offered)
- Account termination
- Prepaid card reload
- Account inactivity while enrolled as a student and for a sufficient grace period thereafter
- Check cashing
- Balance inquiries
- Accessing customer services

Finally, the Department considers "reasonable due diligence reviews" to include a forward-looking analysis. As such, higher education institutions must require third-party companies to provide forecasts of possible or planned fee increases and provide notice to institutions so that they may have adequate time to assess how the increases will affect their student population. Schools should also actively solicit and consider any student feedback or complaints regarding the campus card arrangements during "reasonable due diligence reviews."

Best Financial Interest: Fee Structure Transparency

Higher education institutions must require third-party companies to disclose the terms of their T1 and T2 account arrangements. 34 C.F.R. § 668.164(d)(4)(i)(B)(2). To make sure that these disclosures meet the "best financial interests" standard, schools should require that third-party companies provide a single, simplified fee table that lists all fees that a student could possibly incur in a T1 or T2 arrangement. The fee table should display the fee amount, code term for the fee as it appears on the student's statement (e.g., NSF), and a short, plain statement explaining what conditions trigger the fee.

Best Financial Interest: Eliminate Paid Marketing Agreements

Higher education institutions must already publish their contracts with third-party companies that provide T1 and T2 arrangements, including any form of compensation received by the school. 34 C.F.R. § 668.164(e)(ii)(C)(2)(ix), (f)(4)(iii)-(iv). These compensated arrangements and revenue-sharing provisions present an inherent conflict of interest or "inconsisten[cy]" between the school's own pecuniary interest and the students' "best financial interests." *Id*. Accordingly, the Department views these paid agreements as incompatible with the "best financial interests" of students.

II. Conclusion

"Reasonable due diligence" in the name of the "best financial interests" of students cannot only focus on fee structures in the abstract. Higher education institutions must understand how fees are actually affecting their students in order to assess whether T1 and T2 contractual arrangements continue to be in their "best financial interest." Requiring more reporting and transparency around fee assessment will help higher education institutions ensure that their

students have access to financial products that are in their "best financial interests." Schools and regulators will be able to better review and monitor banking agreements for financial abuses. Students will be able to anticipate and plan around fees associated with their accounts. And further, core account features will be available free of charge.

Higher education institutions must conduct continuous and ongoing review of T1 and T2 contractual arrangements. Furthermore, schools should review annual fee summaries not only to determine whether an arrangement is in the "best financial interests" of the student body as a whole but also to identify particular student subpopulations who are saddled with disproportionately high fee burdens. The Department encourages schools to assist these students and possibly intervene on their behalf with the third-party company.

Finally, eliminating paid T1 and T2 arrangements will fundamentally reposition the students' "best financial interests" as the center of third-party contract negotiations. Schools will be able to better evaluate all possible third-party options and will no longer be financially incentivized to promote certain accounts over others at the expense of students.

Sincerely,

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