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34 CFR Part 668
Program Integrity and Improvement; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AD14

[Docket ID ED–2015–OPE–0020]

Program Integrity and Improvement

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the cash management regulations and other sections of the Student Assistance General Provisions regulations issued under the Higher Education Act of 1965, as amended (HEA). These final regulations are intended to ensure that students have convenient access to their title IV, HEA program funds, do not incur unreasonable and uncommon financial account fees on their title IV funds, and are not led to believe they must open a particular financial account to receive their Federal student aid. In addition, the final regulations update other provisions in the cash management regulations and otherwise amend the Student Assistance General Provisions. The final regulations also clarify how previously passed coursework is treated for title IV eligibility purposes and streamline the requirements for converting clock hours to credit hours.

DATES: *Effective date:* These regulations are effective July 1, 2016.

Compliance dates: Compliance with the regulations in § 668.164(e)(2)(vi) and (f)(4)(iii) is required by September 1, 2016; § 668.164(d)(4)(i)(B)(*2*) by July 1, 2017; and § 668.164(e)(2)(vii) and (f)(4)(iv) by September 1, 2017.

FOR FURTHER INFORMATION CONTACT: *For clock-to-credit-hour conversion:* Amy Wilson, U.S. Department of Education, 1990 K Street NW., Room 8027, Washington, DC 20006–8502. *Telephone:* (202) 502–7689 or by email at: *amy.wilson@ed.gov.*

For repeat coursework: Vanessa Freeman, U.S. Department of Education, 1990 K Street NW., Room 8040, Washington, DC 20006–8502. *Telephone:* (202) 502–7523 or by email at: *vanessa.freeman@ed.gov;* or Aaron Washington, U.S. Department of Education, 1990 K Street NW., Room 8033, Washington, DC 20006–8502. Telephone: (202) 502–7478 or by email at: *aaron.washington@ed.gov.*

For cash management: Ashley Higgins, U.S. Department of Education, 1990 K Street NW., Room 8037, Washington, DC 20006–8502. *Telephone:* (202) 219–7061 or by email at: *ashley.higgins@ed.gov;* or Nathan Arnold, U.S. Department of Education, 1990 K Street NW., Room 8081, Washington, DC 20006–8502. *Telephone:* (202) 219–7134 or by email at: *nathan.arnold@ed.gov.*

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SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: Over the past decade, the student financial products marketplace has shifted and the budgets of postsecondary institutions have become increasingly strained, in part due to declining State funding. These changes have coincided with a proliferation of agreements between postsecondary institutions and financial account providers. Cards offered pursuant to these arrangements, usually in the form of debit or prepaid cards and sometimes cobranded with the institution's logo or combined with student IDs, are marketed as a way for students to receive their title IV [1] credit balances via a more convenient electronic means. However, as we describe in more detail elsewhere in this preamble and in the preamble to the notice of proposed rulemaking published in the **Federal Register** on May 18, 2015 (NPRM),[2] a number of reports from government and consumer groups document troubling practices employed by some financial account providers. Legal actions, especially those initiated by the Federal Reserve and Federal Deposit Insurance Corporation (FDIC), against the sector's largest provider reinforce some of these concerns.

According to these reports, the following practices were found:

- Providers were prioritizing disbursements to their own affiliated accounts over aid recipients' preexisting bank accounts;
- Providers and schools were strongly implying to students that signing up for the college card account was required to receive Federal student aid;
- Private student information unrelated to the financial aid process was given to providers before aid recipients consented to opening accounts;
- Access to the funds on the college card was not always convenient; and
- Aid recipients were charged onerous, confusing, or unavoidable fees in order to access their student aid funds or to otherwise use the account.

These practices indicate that many institutions have shifted costs of administering the title IV, student aid programs from institutions to students. Given that approximately nine million students attend schools with these agreements, that approximately $25 billion dollars in Pell Grant and Direct Loan program funds are disbursed to undergraduates at these institutions every year, that students are a captive audience subject to marketing from their institutions, that the college card market is expanding, and because there have been numerous concerns raised by existing practices, we believe regulatory action governing the disbursement of title IV, student aid is warranted.

In addition, we include in these regulations a number of minor changes that reflect updated Office of Management and Budget (OMB) guidance for Federal awards, clarify some provisions to further safeguard title IV funds, and remove references to programs that are no longer authorized.

Finally, we address in the regulations two issues unrelated to cash management—repeat coursework and clock-to-credit-hour conversion—that were identified by the higher education community as requiring review. We believe these regulatory changes will result in more equitable treatment of student aid recipients and simplify title IV requirements in these areas.

The NPRM contained background information and our reasons for proposing the particular regulations. The final regulations contain changes from the NPRM, which are fully explained in the *Analysis of Comments and Changes* section of this document.

Summary of the Major Provisions of This Regulatory Action:

The regulations—

- Explicitly reserve the Secretary's right to establish a method for directly paying credit balances to student aid recipients;
- Establish two different types of arrangements between institutions and financial account providers: ''tier one (T1) arrangements'' and ''tier two (T2) arrangements'';
- Define a ''T1 arrangement'' as an arrangement between an institution and a third-party servicer, under which the servicer (1) performs one or more of the functions associated with processing direct payments of title IV funds on behalf of the institution, and (2) offers one or more financial accounts under

[1] Throughout this preamble, we refer to title IV, HEA program funds using naming conventions common to the student aid community, including ''title IV student aid'' and similar phrasing.

[2] 80 FR 28484, 28488–28490. The NPRM is available at *http://www.gpo.gov/fdsys/pkg/FR-2015-05-18/pdf/2015-11917.pdf.* We cite to the NRPM in subsequent references as 80 FR at [page].

the arrangement, or that directly markets the account to students itself or through an intermediary;

• Define a ''T2 arrangement'' as an arrangement between an institution and a financial institution or entity that offers financial accounts through a financial institution under which financial accounts are offered and marketed directly to students. However, if an institution documents that, in one or more of the three recently completed award years, no students received credit balances at the institution, the requirements associated with T2 arrangements do not apply. If, for the three most recently completed award years, the institution documents that on average fewer than 500 students and less than five percent of its enrollment received credit balances then only certain requirements associated with T2 arrangements apply;

• Require institutions that have T1 or T2 arrangements to establish a student choice process that: prohibits an institution from requiring students to open an account into which their credit balances must be deposited; requires an institution to provide a list of account options from which a student may choose to receive credit balance funds electronically, where each option is presented in a neutral manner and the student's preexisting bank account is listed as the first and most prominent option with no account preselected; and ensures electronic payments made to a student's preexisting account are initiated in a manner as timely as, and no more onerous than, payments made to an account made available pursuant to a T1 or T2 arrangement;

• Require that any personally identifiable information shared with a financial account provider as a result of a T1 arrangement before a student makes a selection of that provider (1) 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, with the exception of a unique student identifier generated by the institution (that does not include a Social Security number, in whole or in part), the disbursement amount, a password, PIN code, or other shared secret provided by the institution that is used to identify the student, and any additional items specified by the Secretary in a **Federal Register** notice; (2) is used solely for processing direct payments of title IV, HEA program funds, and (3) is not shared with any other affiliate or entity for any other purpose;

• Require that the institution obtain the student's consent to open an account under a T1 arrangement before the institution or account provider sends an access device to the student or validates an access device that is also used for institutional purposes, enabling the student to use the device to access a financial account;

• Require that the institution or financial account provider obtain consent from the student to open an account under a T2 arrangement before (1) the institution or third-party servicer provides any personally identifiable information about that student to the financial account provider 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 and (2) the institution or account provider sends an access device to the student or validates an access device that is also used for institutional purposes, enabling the student to use the device to access a financial account;

• Mitigate fees incurred by student aid recipients by requiring reasonable access to surcharge-free automated teller machines (ATMs), and, for accounts offered under a T1 arrangement, by prohibiting both point-of-sale (POS) fees and overdraft fees charged to student account holders, and by providing students with the ability to conveniently access title IV, HEA program funds via domestic withdrawals and transfers in part and in full up to the account balance, without charge, at any time following the date that such title IV, HEA program funds are deposited or transferred to the financial account;

• Require that contracts governing T1 and T2 arrangements are conspicuously and publicly disclosed;

• Require that cost information related to T1 arrangements is conspicuously and publicly disclosed;

• Require that cost information related to T2 arrangements is conspicuously and publicly disclosed when on average over three years five percent or more of the total number of students enrolled at the institution received a title IV credit balance or the average number of credit balance recipients for the three most recently completed award years is 500 or more;

• Require that institutions that have T1 arrangements establish and evaluate the contracts governing those arrangements in light of the best financial interests of students; and

• Require that where a T2 arrangement exists and where either on average over three years five percent or more of the total number of students enrolled at the institution received a title IV credit balance, or the average number of credit balance recipients for the three most recently completed award years is 500 or more, the institution establish and evaluate the contract governing the arrangement in light of the best financial interests of students.

The regulations also—

• Allow an institution offering term-based programs to count, for enrollment status purposes, courses a student is retaking that the student previously passed, up to one repetition per course, including when a student is retaking a previously passed course due to the student failing other coursework, and

• Streamline the requirements governing clock-to-credit-hour conversion by removing the provisions under which a State or Federal approval or licensure action could cause a program to be measured in clock hours.

Costs and Benefits: The expected effects of these final regulations include improved information to facilitate consumer choice of financial accounts for receiving title IV credit balance funds, reasonable access to title IV funds without fees, and redistribution of some of the costs of payment of credit balances among students, institutions, and financial institutions; updated cash management rules to reflect current practices; streamlined rules for clock-to-credit-hour conversion; and the ability of students to receive title IV funds for repeat coursework in certain term programs. Institutions, third-party servicers, and financial institutions will incur implementation costs related to the regulations. The anticipated effects of the regulations are detailed in the *Discussion of Costs, Benefits, and Transfers* in the Regulatory Impact Analysis as well as the *Paperwork Reduction Act of 1995* section of this preamble.

Public Comment: In response to our invitation in the NPRM, 211 parties submitted comments on the proposed regulations. We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address technical or other minor changes.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the regulations since publication of the NPRM follows.

General Comments

Comments: The Department received many positive comments regarding the proposed regulations. These commenters argued that in light of several recent consumer and government reports and legal actions documenting troubling practices on the part of financial account providers, the Department was justified in proposing changes to the cash management regulations to ensure title IV student aid recipients are able to access their title IV funds. The commenters praised the Department's proposed regulations and stated that the changes would provide strong protections for students and disclosure rules that would provide incentives for better behavior in the college card marketplace.

Many other commenters had concerns about the regulations or suggestions for how to improve them. These suggestions are discussed in detail in the remaining sections of this preamble.

Other commenters argued that it would be counterproductive for the Department to regulate in this area. One commenter asserted that the fees that students are paying are already lower than the fees they would be charged for a standard bank account. Other commenters argued that providers of both T1 and T2 arrangements would be forced to exit the marketplace, leaving institutions with limited options for delivering title IV credit balances. Another commenter stated that institutions would choose not to renew contracts with account providers. One commenter noted that if this happens, students may be pushed towards higher-fee products. Other commenters contended that the costs of compliance would force institutions to raise tuition. One commenter suggested that the Department assist institutions with the cost of compliance.

Discussion: We thank the commenters who provided thoughtful suggestions for how to improve the proposed regulations, and we also thank those who supported the proposal generally.

We disagree with the commenter who stated that fees under T1 and T2 arrangements are lower than the fees students would encounter in traditional banking relationships. As stated in the NPRM, there is significant evidence that students are incurring unreasonably high fees, particularly, although not exclusively, under T1 arrangements.[3]

We also disagree with commenters who expressed concerns that the new requirements will drive account providers from the marketplace, to the disadvantage of both institutions and students. We note that account providers are still permitted to charge the institution whatever costs the two parties agree to, we have simply limited the amount and types of fees that are charged to title IV recipients (and also note that certain fees, including monthly maintenance fees, can still be passed on to offset costs). In addition, we believe that account providers recognize the long-term value in establishing relationships with students who may, in the future, require other products and services offered by their financial institutions. Because these more transparent and commonplace fees will be allowable under the regulations and because of the future opportunities created by establishing a banking relationship with students, we do not foresee a situation in which account providers will exit the market and students will be forced to choose among options that include even higher fees. Because third-party servicers will still be able to offer savings to institutions, we do not believe that institutions will choose to abandon their providers.

We also note that schools are responsible for the costs of participating in the title IV programs and are required to ensure that students receive the full balance of title IV funds to which they are entitled, without additional financial assistance from the Department.

Changes: None.

Legal Authority

Comments: Some commenters supported the Department's legal authority to regulate issues relating to disbursements of title IV funds, to ensure that institutions and their servicers act as responsible stewards of taxpayer dollars, and to enable students to access the full balance of their Federal student aid.

Several commenters questioned our legal authority to promulgate these regulations, arguing that the Department lacks the legal authority to regulate banks and financial accounts.

Commenters further argued that the Department was acting outside its statutory authority in regulating T2 arrangements, because the bank accounts under those arrangements fall within the purview of other government agencies and not within the authority of the Department under the HEA. Instead, the commenters believed that the Department should limit its regulations to institutions. These commenters also pointed to section 492(a)(1) of the HEA, which states that for purposes of negotiated rulemaking, the Department must consult with ''representatives of the groups involved in student financial assistance programs under this title, such as students, legal assistance organizations that represent students, institutions of higher education, State student grant agencies, guaranty agencies, lenders, secondary markets, loan servicers, guaranty agency servicers, and collection agencies.'' The commenters argued that because banks are not among those groups enumerated in this list, the Department does not have authority to regulate them.

Another commenter argued that the proposed regulations impermissibly expanded the definition of ''disbursement,'' and that the HEA does not authorize the Department to expand the definition of ''disbursement services.''

Another commenter argued that the proposed regulations violate the First Amendment. Specifically, the commenter argued that by requiring institutions to list a student's preexisting bank account as the first and most prominent option, the Department was depriving institutions that believe that a student's preexisting account is not in the student's best interests of the right to more prominently display another account. The commenter argued that a less restrictive means of achieving the Department's goal would be to require that all account options are listed neutrally and with objective information.

Discussion: We appreciate the comments supporting our proposal and agreeing that we have the statutory authority to promulgate the regulations.

We disagree with the commenters who argued that these regulations are outside of our purview under title IV of the HEA. The Department is responsible for overseeing Federal student aid, which annually disburses billions of dollars intended to benefit students, to ensure that the program operates as effectively and efficiently as possible. Multiple statutory provisions vest the Department with broad rulemaking authority to effectuate the purposes of the program. *See, e.g.,* 20 U.S.C. 1094(c)(1)(B); 1221e–3; 3474. As the statute makes clear, foremost among those purposes is ensuring that students actually receive the awards Congress authorized. Thus, for example, Section 487 of the HEA requires that in the program participation agreement an otherwise eligible institution must enter into before it is authorized to award title IV funds, the institution must pledge to ''use funds received by it for any program under this title and any interest or other earnings thereon solely for the purpose specified in and in accordance with the provision of that program,'' and ''not charge any student a fee for processing or handing any application, form, or data required to determine the student's eligibility for assistance under this title or the amount of such assistance.'' Similarly, section 401(f)(1) of the HEA provides that ''[e]ach student financial aid administrator [at each institution] shall . . . (C) make the

[3] 80 FR at 28506.

award to the student in the correct amount.'' Under section 454(j) of the HEA, ''proceeds of loans to students under [the Direct Loan program] shall be applied to the student's account for tuition and fees, and, in the case of institutionally owned housing, to room and board. Loan proceeds that remain after the application of the previous sentence shall be delivered to the borrower by check or other means that is payable to and requires the endorsement or other certification by such borrower.'' Section 454(a)(5) of the HEA provides that the Direct Loan program participation agreement shall ''provide that the institution will not charge fees of any kind, however described, to student or parent borrowers for origination activities or the provision of any information necessary for a student or parent to receive a loan under this part, or any benefits associated with such loan.'' Given that these provisions and many more demonstrate an overriding purpose of ensuring that students receive their title IV funds, it is the Department's responsibility to use its rulemaking authority to ensure title IV does not operate as a means to benefit third parties while inhibiting students' access to the full amounts of their awards. The GAO report and other investigations show that college card programs can and sometimes do operate to impair full access. These regulations are narrowly tailored to prevent that from continuing to happen. The regulations address a problem directly within the Department's cognizance and are an appropriate exercise of the Department's rulemaking authority.

We have consistently interpreted the HEA as authorizing regulation of the matters addressed in the regulations, including in the 2007 cash management regulations prohibiting account-opening fees, requiring reasonable free ATM access, and requiring prior consent from a student before opening a financial account, and the 1994 regulations relating to third-party servicers.

Furthermore, we disagree that section 492(a)(1) of the HEA provides evidence that we are acting outside our statutory authority; on the contrary, we believe that section further supports our authority. Section 492(a)(1) provides a list of the groups ''involved'' in the title IV programs, ''such as'' lenders, secondary markets, and collection agencies. The term ''such as'' signifies that the list is illustrative, rather than comprehensive; indeed, the Department has previously included several other types of representative groups in negotiated rulemaking. The rulemaking that led to these final regulations included banking sector representatives who provided helpful expertise in improving the regulations we proposed. In addition, the term ''involved'' denotes Congress's recognition that the Department's regulation of institutions would necessarily impact groups that are not directly regulated, as is the case here. Finally, lenders, secondary markets, and collection agencies are certainly entities that are directly regulated by other government entities, yet are impacted by the Department's regulation of institutions and the title IV programs, similar to financial account providers in these regulations. We are regulating the disbursement process and institutions (and their servicers) that are authorized to disburse title IV funds under the HEA.

We also disagree with the commenter who argued that we do not have the authority to clarify the definition of disbursement services. In section 401(e) of the HEA, regarding Pell Grants, Congress directed that ''[p]ayments under this section shall be made in accordance with regulations promulgated by the Secretary for such purpose, in such manner as will best accomplish the purpose of this section.'' This section further states that ''[a]ny disbursement allowed to be made by crediting the student's account shall be limited to tuition and fees and, in the case of institutionally owned housing, room and board. . . .'' Under section 455(a)(1) of the HEA, Congress directed the Secretary to prescribe such regulations as may be necessary to carry out the purposes of the Direct Loan program. This includes regulations applicable to third-party servicers and for the assessment against such servicers of liabilities for violations of the program regulations, to establish minimum standards with respect to sound management and accountability of the Direct Loan programs. Section 487(c)(1)(B) of the HEA provides that the Secretary ''shall prescribe such regulations as may be necessary to provide for'' reasonable standards of financial responsibility, and appropriate institutional administrative capability to administer the title IV programs, in matters not governed by specific program provisions, ''including any matter the Secretary deems necessary to the sound administration of the financial aid programs.'' Third-party servicers are likewise by statute subject to the Department's oversight, including under HEA sections 481(c) and 487(c)(1)(C), (H), and (I) of the HEA.

Finally, we disagree with the commenter who argued that the proposed regulations violate the First Amendment. The regulations do not require an institution to endorse a particular banking product as a vehicle for title IV credit balance funds—in fact, the regulations prohibit institutions from expressly stating or implying that a particular account is required to receive their funds. We included this limitation to counteract the practices employed by some financial account providers that were leading title IV recipients to believe that a particular account was required. The provision requiring that the student be given a neutral list of accounts affords the student the opportunity to select an account that is the best fit for that individual. The requirement that a student's preexisting account be listed first and most prominently, rather than endorsing that option, simply ensures that students can easily locate and select the option to receive their funds via an account they have already chosen without confusion or additional steps. As we described in more detail in the NPRM,[4] we proposed this requirement because government and consumer reports found several examples where it was difficult or impossible for a student to determine how to have funds deposited in a preexisting account. In addition, we have eliminated the requirement for a ''default'' option (please refer to the student choice section of this preamble for further discussion); we believe that this will provide a student with a simple, neutral means of determining the available options for receiving title IV funds and represents the least restrictive means for doing so. For these reasons, among others, the provision does not violate the First Amendment, but is absolutely necessary.

Changes: None.

Possible Conflict With Existing Laws and Regulations

Comments: Some commenters argued that the Department's regulatory efforts are duplicative of, or will conflict with, existing banking regulations from other Federal entities. These commenters argued that other existing federal laws and regulations, including the Electronic Fund Transfer Act,[5] the Dodd–Frank Wall Street Reform and Consumer Protection Act,[6] the Truth in Savings Act,[7] the Expedited Funds Availability Act,[8] and the Federal Trade Commission Act of 1914,[9] already

[4] 80 FR at 28497–28499.

[5] Public Law 95–630, and implemented in Regulation E, 12 CFR part 205.

[6] Public Law 111–203.

[7] Public Law 102–242.

[8] Public Law 100–86.

[9] 15 U.S.C. 41–58.

provide sufficient student choice measures and protections and the Department's efforts would conflict with those provisions.

Commenters contended that the existence of these laws demonstrates a congressional intent to exclude the Department from regulating in this area, and that the Department lacks the expertise to do so. One commenter also alleged that the Department issued the proposed regulations based only on information from consumer advocacy groups and without consulting banking regulators.

Discussion: We disagree with commenters who argued that the proposed regulations would duplicate or conflict with existing banking regulations. As we repeatedly stated throughout the preamble to the NPRM, we are not regulating banks or banking products. As a threshold matter, to the extent that institutions elect to contract with other parties, the regulations may impact those contracted parties. That does not, however, make those parties the subjects of the Department's regulations.

We recognize that there are numerous laws, regulations, and government entities that govern the banking sector and we have specifically limited the reach of the regulations where there might have been conflict or overlap (for example, by not requiring a duplicative disclosure of account terms already required under banking regulations when a student has already selected an account outside the student choice menu). We wish to make clear that these regulations govern institutions and the arrangements they voluntarily enter into that directly affect title IV disbursements, recipients, and taxpayer funds authorized under the HEA.

The commenters did not identify language in any law or regulation administered by another Federal agency that conflicts with the regulations, and neither have we in conducting our review or consulting with other agencies, including the Consumer Financial Protection Bureau (CFPB). Congress entrusted the Department with the responsibility for protecting the integrity of the title IV, HEA programs, and that is the purpose these regulations serve.

We also disagree with the commenter who stated that the Department did not seek out the expertise of banking regulators. As stated in the NPRM, the Department ''consulted Federal banking regulators at FDIC, [the Office of the Comptroller of the Currency] OCC, and the Bureau of the Fiscal Service at the United States Department of the Treasury (Treasury Department), and CFPB, for help in understanding Federal banking regulations and the Federal bank regulatory framework'' while developing the proposed regulations.[10] We have continued discussing these matters as we developed the final regulations to ensure that any regulatory changes are appropriate given existing banking rules.

Changes: None.

Role of Existing Protections and Validity of Consumer and Government Reports

Comments: Some commenters argued that existing cash management regulations provide sufficient protections for students and these regulations are unnecessary. These commenters noted that existing regulations already contain certain disclosure, notification, and insurance requirements, as well as some fee prohibitions. One commenter argued that existing Federal requirements have already resulted in corrective action.

One commenter questioned the validity of the reports underlying the justification for the proposed regulations. This commenter noted that the Office of the Inspector General (OIG) only studied four schools, just one of which had a T2 arrangement, and that no issues were found regarding the T2 arrangement. This commenter also contended that the Government Accountability Office (GAO) stated that the practices it uncovered already violated current regulations and consumer protection laws.

Discussion: We disagree with the commenters who argued that the Department's existing cash management regulations provide sufficient protections to students. As commenters noted, our long-standing regulations authorized under the HEA already contain requirements relating to disclosures, notifications, fee prohibitions, and several other topics involving the institutional disbursement process. While we believe these protections are important for students, the numerous instances of troubling behavior identified by government and consumer groups and discussed in detail in the NPRM demonstrate that additional protection is necessary. We also note that while the legal system has addressed some issues associated with these types of arrangements, it has not and cannot resolve every issue that has been raised regarding T1 and T2 arrangements, and thousands of title IV recipients would be harmed in the intervening time. We believe the regulatory framework presented in this document is better suited to address the issues and recommendations jointly agreed upon by numerous government and consumer investigations.

We also disagree with the commenter who questioned the Department's reliance on an OIG report. Although the OIG reviewed the practices of only four schools, those schools collectively represent 158,000 enrolled students and 596.6 million title IV dollars in total.[11] The OIG noted in its report that under what would now been defined as T2 arrangements, ''students sometimes misunderstood how the two accounts worked and whether the checking account was required.'' [12] Additionally, the proposed regulations were based on much more than a single report. As we noted throughout the preamble to the NPRM, a number of independently prepared government and consumer reports from the GAO, United States Public Interest Research Group (USPIRG), Consumers Union, and others all came to a consensus (shared by the OIG report) regarding the severity and scope of the troubling practices employed by several financial account providers in the college card market. Additionally, legal actions, both by private individuals and government entities, substantiated many of the claims in these reports. These reports were also in agreement that corrective action and additional protections are needed. For all these reasons—rather than on the basis of a single, limited report as the commenter implied—we proposed regulatory changes to subpart K.

We also disagree that the GAO only found violations of current consumer protection laws and regulations. For example, the GAO specifically recommended several corrective actions for the Secretary to undertake, including developing requirements for distributing objective and neutral information to students and parents.[13] *Changes:* None.

Request for Extension of the Comment Period

Comments: In view of the length and nature of the issues discussed in the NPRM, some commenters requested that the Department extend the comment period. One commenter requested a 30-

[10] 80 FR at 28523.

[11] Office of the Inspector General. ''Third-Party Servicer Use of Debit Cards to Deliver Title IV Funds.'' [Page 3] (2014), available at *www2.ed.gov/about/offices/list/oig/auditreports/fy2014/x09n0003.pdf.* With subsequent references ''OIG at [Page number].''

[12] OIG at 11.

[13] United States Government Accountability Office. ''College Debit Cards: Actions Needed to Address ATM Access, Student Choice, and Transparency,'' page 35 (2014), available at *www.gao.gov/assets/670/660919.pdf* (hereinafter referred to as ''GAO at [page number]'').

day extension, while another commenter requested an extension of at least 60 days to be consistent with the general recommendations in Executive Order 13563.

Discussion: While we agree that the issues addressed in the proposed regulations are important and deserve thoughtful deliberation and discussion, we also have a duty to protect title IV funds, aid recipients, and taxpayers. If we had extended the comment period beyond 45 days, we would have been unable to comply with the master calendar provision of section 482(c) of the HEA, which requires that the Department publish final regulations before November 1 to take effect on July 1 of the following year. (In this case, we need to publish final regulations by November 1, 2015, in order for the regulations to be effective on July 1, 2016.) An extension of the comment period would therefore allow the abuses identified to persist an additional year. We also believe that 45 days provided the public a meaningful opportunity to comment, and this is supported by the complex and thoughtful comments we received.

Executive Order 13563 seeks, where feasible and in accordance with law, to promote participation and input by and from the public and interested stakeholders in general notice and comment rulemaking that is conducted pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553. The APA, in contrast to title IV, does not contemplate proceedings that include negotiated rulemaking—extensive additional participatory proceedings that are generally required by title IV and were in fact conducted as part of this rulemaking. Those negotiations, preceded by regional public hearings, provided opportunities for public participation and stakeholder input far in excess of 60 days. The purposes of the Executive order have been more than met, and a longer comment period would have been neither feasible, consistent with the master calendar provision, nor in the public interest.

We also note that we directly responded to each of the commenters who requested an extension of the comment period with a message similar in substance to the preceding discussion. We sent these responses as quickly as was practicable to provide notice to these commenters that we would not be extending the comment period and to give them sufficient time to submit substantive comments on the proposed regulations prior to the close of the comment period.

Changes: None.

Definitions (§ 668.161(a))

Comments: One commenter generally appreciated the inclusion of credit unions in the definitions of ''financial institution'' and ''depository institution.'' However, this commenter also asked that the Department recognize the unique structure of credit unions as ''member-owned cooperatives'' when drafting future regulations. Another commenter asked that the Department exempt credit unions that serve students and alumni of an institution. Another commenter praised the Department for adding definitions of ''access device,'' ''depository account,'' ''EFT (Electronic Funds Transfer),'' ''financial account,'' ''financial institution,'' and ''student ledger account.''

However, one commenter also asked that we include a clear definition of ''third-party servicer'' in the regulations, stating that it was unclear without such a definition whether certain banking activities could cause a financial institution to become a T1 entity.

Discussion: We thank the commenters for their support of our definitions, and we will take note of one commenter's request to keep the unique structure of credit unions in mind as we draft future regulations. However, on review of the final regulations, we have found no provisions warranting separate treatment of credit unions.

Finally, for a more thorough discussion regarding what types of activities would trigger the T1 requirements, please see the *Tier One (T1) Arrangements* section of this preamble.

Changes: Consistent with the removal of ''parents'' in § 668.164(d)(4)(i), (e), and (f) in this final rule(the reasons for which are discussed in the student choice section of this preamble), we have also removed references to ''parent'' from the definition of ''access device.''

Non-Prepaid/Debit Provisions

Paying Credit Balances Under the Reimbursement and Heightened Cash Monitoring (HCM) Payment Methods (§ 668.162(c) and (d))

Comments: Several commenters objected to the provision in § 668.162(c) and (d) under which an institution must pay any credit balance due to a student or parent before it seeks reimbursement from, or submits a request for funds to, the Secretary. For the benefit of the reader, HCM1 refers to the payment method described under the heightened cash monitoring provisions in § 668.162(d)(1) and HCM2 refers to the provisions in § 668.162(d)(2).

One of the commenters argued that a credit balance does not occur when an institution posts on a student's ledger account, as an ''anticipated disbursement,'' the amount of title IV, HEA program funds that the student is expected to receive. The commenter asserted that at the time the institution submits a reimbursement request such postings are merely transactions on student ledger accounts pending the Department's review and subsequent release of the funds associated with the posted amounts. The commenter argued that without a requirement on the Department to process reimbursement requests in a timely manner, institutions will have to wait for the requested funds through a process than can be arduous and riddled with delays, citing instances where reimbursement requests were delayed for 45 to 60 days because the analysts assigned by the Department to review those requests were out of the office or assigned to other projects. The commenter stated that these delays are further exacerbated by an administrative process under which the Department allows an institution to submit only one reimbursement request every 30 days, which further delays the release of title IV, HEA program funds to the institution to cover a student's direct cost of tuition, books, and fees. However, the commenter believed this proposal was reasonable for an institution placed on HCM1 because under that payment method the institution is not dependent on the Department to act timely—it controls the timing of its cash requests. Finally, some commenters stated that the HCM requirements were not clearly articulated in the proposed regulations, and questioned whether the requirement to first pay credit balances applied to an institution placed on HCM1. The commenters suggested that the Department only require institutions placed in HCM2 to pay credit balances before seeking reimbursement.

Another commenter noted that guidance published in the 2014–15 FSA Handbook already provides that an institution placed on reimbursement must first pay required credit balances before it submits a reimbursement request, but questioned why the Department extended that provision in the NPRM to apply to an institution placed on heightened cash monitoring. This commenter, and others, argued that the Department should consider the nature of the compliance concerns that trigger whether an institution is placed on reimbursement or HCM. For example, where there are serious concerns about an institution's ability to account appropriately for title IV, HEA program funds an institution would be placed on reimbursement, but for technical reasons or less troublesome compliance and financial issues, the institution could be placed on HCM1. The commenters noted that an institution is typically placed on HCM1 for failing to meet the financial responsibility standards under Subpart L of the General Provisions regulations; but under those regulations the institution must a submit a letter of credit for an amount determined by the Department and payable to the Department. The commenters stated that the letter of credit serves as a sufficient guarantee of the institution's ability to fulfill its financial obligations.

Under the circumstance where administrative capability is not at issue, the commenters questioned why the Department proposed to require the institution, which may be operating at lean margins at the beginning of a payment period, to ''front'' additional funds to pay credit balances to students that may include significant amounts for student housing and other living expenses. Similarly, another commenter believed that an institution would be penalized by having to act as a private lender of their own funds to students to meet the proposed requirement to pay credit balances before seeking funds from the Department. The commenter suggested regulatory language that would allow the institution to pay credit balances upon receiving funds from the Department. Alternatively, the commenter suggested changing the definition of disbursement for an institution placed on HCM or reimbursement to stipulate that funds requested for non-direct costs that would generate a credit balance are considered disbursed after the institution credits the student's account and receives the funds from the Department.

One commenter argued that requiring the institution to pay credit balances with institutional funds would push it into a temporary cash-flow position under which the institution would shoulder the costs of students' decisions about how much to borrow above the cost of tuition and fees, particularly where those decisions are beyond the control of the institution. The commenter stated that under the gainful employment regulations, the Department does not hold an institution accountable for costs that it does not control and should therefore refrain from placing undue financial strain on an institution that stems from decisions made by students. Moreover, because students may add or drop classes early in a payment period, students may move from one category to the other, introducing additional burden. For these reasons, the commenter suggested that an institution placed on HCM should have the option of (1) paying credit balances before seeking reimbursement, or (2) putting in escrow an amount equal to the expected credit balances and subsequently requesting funds prior to paying those credit balances.

One commenter stated that if the intent of the proposed regulations is to require an institution placed on HCM1 to first make credit balance payments, the commenter suggested that the Department explicitly require that as soon as an HCM1 institution initiates an EFT to the student's account, it may immediately request the funds from the Department and that those funds will be available within the same 24–48 hours timeframe that is currently in place.

A commenter questioned whether the Department intended to require an institution to credit all of a student's title IV, program funds at once, thereby creating a credit balance, or prohibit the institution from submitting a reimbursement request that includes a credit balance that has not been paid. The commenter provided the following example: a student is due to receive $15,000 in title IV program funds and institutional charges are $10,000. Can the institution credit just $10,000, get reimbursed, then credit or directly pay the other $5,000, and then get reimbursed for that, or must the institution credit all $15,000 and pay out the $5,000 before it can get any funds back in reimbursement? Along the same lines, another commenter argued that the proposed regulations present a significant administrative burden for an institution placed on HCM1 because the institution would need to seek payment from the Department separately for two categories of students—those who are expected to receive a credit balance and those who are not.

A commenter requested the Department to provide examples of documentation that may be considered appropriate proof that an institution paid credit balances prior to seeking reimbursement, and to outline the steps necessary for the institution to be removed from the HCM and reimbursement payment methods.

Discussion: As a general matter, under the current and previous regulations the payment method under which the Department provides title IV, HEA program funds to an institution does not in any way excuse the institution from meeting the 14-day credit balance requirements under § 668.164(h) or the provisions for books and supplies under § 668.164(m). In the NPRM, we proposed to require an institution placed on HCM or reimbursement to make any credit balance payments due to students and parents before the institutions would be able to submit a reimbursement request under HCM2 or submit a request for cash under HCM1, to assure the Department that the institution made those payments before title IV funds are provided or made available to the institution. We note that an institution may still make credit balance payments at any time within the 14-day timeframe, but if the institution wants to include in its reimbursement or cash request a student or parent who is due a credit balance, the institution must pay that credit balance even if there is time remaining under 14-day provisions to make that payment.

With regard to payment methods, under section 401(a)(1) of the HEA and § 668.162(a), the Secretary has the sole discretion to determine whether to provide title IV, HEA program funds to an institution in advance or by way of reimbursement. The Department places an institution on reimbursement or HCM for compliance, financial, or other issues the Department believes necessitate a higher level of scrutiny. In general, these issues relate directly to the compliance history of the institution or its failure to satisfy financial standards that serve as proxy for the institution's ability to (1) provide the services described in its official publications, (2) administer properly the tile IV, HEA programs in which it participates, and (3) meet all of its financial obligations. Requiring institutions to pay credit balances prior to obtaining funds from the Department is consistent with that higher level of scrutiny.

To provide the reader a more complete primer, under § 668.164(a), a disbursement of title IV, HEA program funds occurs on the date that the institution credits the student's ledger account or pays the student or parent directly with (1) funds its receives from the Secretary, or (2) institutional funds used in advance of receiving title IV, HEA program funds. With regard to crediting a student's ledger account, we clarified in the preamble to the NPRM published on September 23, 1996 (61 FR 49878) and in the preamble to the final regulations published on November 29, 1996 (61 FR 60589) that a ''credit memo'' is not a disbursement—it merely represents an entry made by the institution, noting the type and amount of the title IV, HEA program awards the student qualifies to receive, for the purpose of generating invoices or bills to students for institutional charges not covered by those awards.

With this background in mind, the comment that transactions on the student's ledger account are merely anticipated disbursements pending review by the Department of a reimbursement request is, at best, confusing. If the postings of anticipated disbursements are credit memos, then an institution placed on reimbursement or HCM cannot submit a reimbursement or cash request because it has not properly made disbursements to eligible students. If the postings represent actual disbursements, then regardless of any delays or administrative processes, under current and past regulations the institution is obligated to pay any credit balances due to students regardless of when the institution received funds to make those payments. With regard to comments about processing reimbursement requests timely, the Department takes care to assign adequate staff, but minor delays will occur from time to time. We note that the vast majority of delays in approving reimbursement requests occur because institutions do not provide the requested documentation or acceptable documentation.

With regard to the comments that the Department should distinguish between the alternate methods of payment (*i.e.,* between HCM and reimbursement or between HCM1 and HCM2) in applying the requirement to pay credit balances before requesting funds, we do not believe the distinction is warranted. Regardless of the alternate payment method the institution is placed on, or whether it submits a letter of credit to the Department for failing to satisfy the financial responsibility standards or for other reasons, the institution must still make required credit balance payments to students in a timely fashion. While we agree with the commenters that a letter of credit provides some measure of protection to the Department, it does nothing for students who are the primary beneficiaries of title IV, HEA program funds, and is not tied in any way that we can determine with the institution's fiduciary duty to make timely payments to students.

With respect to the comments that an institution would have to ''front'' institutional funds to students, that has always been and continues to be the nature of the alternate payment methods. As previously noted, in the ordinary course, an institution is placed on an alternate payment method based on concerns about its financial capacity or ability to properly administer the title IV, HEA programs. Requiring that the student beneficiaries are protected under these circumstances is consistent with the purpose behind the alternate methods of payment. In addition, we do not believe it is appropriate to change the disbursement process, such as putting credit balances in escrow or altering when funds are considered disbursed, to accommodate institutions with compliance issues.

With respect to the comment that the Department does not hold an institution accountable under the gainful employment regulations for costs it does not control, we note that a student's loan debt is capped at the total amount of tuition, fees, books, supplies, and equipment in determining the debt to earnings (D/E) rate of a program. So, to the extent that the student borrows funds in excess of that amount to pay for living costs, the excess funds are not counted in calculating the D/E rate, but all of the student's loan funds are counted in calculating the median loan debt of the program that is used for disclosure purposes. In any event, capping loan debt for the purpose of calculating a performance metric has no bearing on paying credit balances to students. Regardless of whether an institution has or exercises control of the amount of title IV, HEA program funds the student elects to borrow, the institution is responsible for disbursing the awards, including making credit payments to those students.

In response to the comment that the Department explicitly allow an institution on HCM1 institution to request funds immediately after it initiates an EFT to the student's account, we note that under § 668.164(a) an institution makes a disbursement on the date it credits a student's ledger account or pays the student directly. As provided in § 668.164(d), an institution pays a student directly on the date it initiates an EFT to the student's financial account. So, the regulations already provide that as soon as an institution on HCM1 makes a disbursement, it may request funds from the Department.

In response to the comment about whether an institution must credit the student's account with all the funds the student is eligible to receive for a payment period, it depends. For example, if the institution determines at or before the time it submits a reimbursement or cash request that a student is eligible for a Federal Pell Grant but not yet eligible for a Direct Loan (either because the student has not signed a master promissory note or for some other reason), the institution may include the student on that reimbursement or cash request. When the student establishes eligibility for the Direct Loan, the institution is required to credit the student's account with the loan funds and pay any resulting credit balance before including that student on a subsequent reimbursement or cash request. In most cases, however, the institution will have determined before submitting a reimbursement or cash request that the student was eligible to receive all of his or her awards for a payment period and therefore the amount of all of those awards will have to be credited, in full, to the student's ledger account and the institution will have to pay any resulting credit balance before including the student on a reimbursement or cash request.

With respect to the request that the Department provide examples of the documentation needed to prove that an institution paid credit balances and outline the steps necessary for an institution to be removed from the HCM and reimbursement payment methods, we believe that both of these issues are best addressed administratively on a case-by-case basis depending on how the payments were made or the steps than an institution takes to correct its financial or compliance issues.

Changes: None.

Institutional Depository Account (§ 668.163)

Comments: Under proposed § 668.163(a), an institution located in a State must maintain title IV, HEA program funds in an insured depository account. Some commenters supported the Department's proposal that an institution may not engage in any practice that risks the loss of Federal funds.

One commenter noted than an institution may have a ''sub'' account for title IV, HEA program funds within its operating account and asked whether this arrangement was acceptable or whether the institution needed to maintain title IV funds in a completely different bank account with no other operating funds and insured at the FDIC limit of $250,000. Similarly, another commenter asked the Department to clarify the insurance requirement because most institutions maintain title IV funds in accounts with balances that exceed FDIC or NCUA insurance limits.

Another commenter asked whether an institution had to disburse title IV, HEA program funds from the same account that the funds were originally deposited into, and, if not, whether the institution could sweep the funds in the account from which they are disbursed.

Another commenter stated that nightly sweeps are a standard practice for large organizations and the commenter is not aware of any losses stemming from funds held in secured investment accounts. However, because most colleges and universities disburse title IV funds before submitting a cash request or disburse shortly after receiving the funds, the commenter stated the issue of where the funds are held is less important than it was in the past.

Discussion: Under § 668.163(b), the Department may require an institution with compliance issues to maintain title IV, HEA program funds in a separate depository account. However, as a general matter, an institution may use its operating account, or a subaccount of its operating account, as long as the operating account satisfies the requirements in § 668.163(a)(2). With regard to the insurance limit, it does not matter whether an institution maintains title IV, HEA programs funds in a depository account in an amount higher than the insurance limit, it only matters that the account itself is insured by the FDIC or NCUA.

In response to whether an institution must use the same account for depositing and disbursing title IV, HEA program funds, the institution may choose to use the same depository account or different accounts (*e.g.,* a depository account into which title IV, HEA program funds received from the Department are transferred or deposited and an operating account from which disbursements are made to students and parents). Regardless of whether the institution uses the same account or more than one account, it must ensure that title IV, HEA program funds maintained in any account are not included in any sweeps of any account. For example, if an institution transfers funds from its title IV depository account to its operating account, any title IV funds held on behalf of students cannot be included as part of the sweep of other funds in its operating account.

With regard to the commenter who stated no losses have occurred on title IV funds held in secure investment accounts, we reiterate our position that, given the $500 limit on retaining interest earnings, there is no point in placing Federal funds at risk. About the comment regarding the declining importance of maintaining Federal funds in investment accounts, we assume the commenter is referring to the wind-down of the Federal Perkins Loan Program (see Dear Colleague Letter GEN–15–03). Previously, an institution could maintain its Perkins Loan Fund in a secure investment account and any interest earned would become part of the Fund and available to the institution to make Perkins Loans to students. Now that the statutory authority for institutions to make Perkins Loans has ended, there is no need for investment accounts.

Changes: None.

Comments: A commenter agreed with our proposal in § 668.163(a)(1) that the Secretary may approve a depository account designated by a foreign institution if the government of the country in which the institution is located does not have an agency equivalent to the FDIC or NCUA. However, the commenter believed that the requirements in § 668.163(a)(2)—that the name of the depository account must contain the phrase ''Federal funds'' or the institution must notify the depository institution that the account contains title IV, HEA program funds—were not meaningful in a foreign context and should be removed. In addition, the commenter noted that the laws in foreign countries may in some cases preclude an institution from maintaining funds in interest-bearing accounts as required under § 668.163(c). To avoid conflicts with the regulations in these instances, the commenter suggested that the provisions for interest-bearing accounts apply only to domestic institutions.

Discussion: We agree that the provisions for maintaining title IV, HEA program funds in interest-bearing accounts, and for including the phrase ''Federal funds'' in the name of the depository account or notifying the depository institution that Federal funds are maintained in those accounts, may not be meaningful or relevant to foreign institutions.

Changes: We have revised the notice requirements in § 668.163(a)(2) and the interest-bearing account requirements in § 668.163(c)(1) so they apply only to institutions located in a State.

Disbursements During the Current Payment Period (§ 668.164(b)(1))

Comments: Under proposed § 668.164(b)(1), an institution must disburse during the current payment period the amount of title IV, HEA program funds the student or parent is eligible to receive, except for Federal Work Study (FWS) funds or unless the provisions in 34 CFR 685.303 apply. Because § 685.303 contains a number of provisions, one commenter asked the Department to specify the provisions that apply to disbursing funds during the current payment period.

Discussion: We agree with the commenter that a specific cross reference to § 685.303 would be helpful. Under § 685.303(d)(4)(i), if one or more payment periods have elapsed before an institution makes a disbursement, the institution may include loan proceeds for completed payment periods in the disbursement. This is the only circumstance in § 685.303 that is an exception to the general rule specified in § 668.164(b)(1) that an institution must disburse during the current payment period the amount of title IV, HEA program funds the student or parent is eligible to receive.

Changes: We have amended § 668.164(b)(1) to specify that an institution must disburse during the current payment period the amount of title IV, HEA program funds the student or parent is eligible to receive except for FWS funds or unless 34 CFR 685.303(d)(4)(i) applies.

Confirming Eligibility (§ 668.164(b)(3))

Comments: Some commenters objected to the proposal in § 668.164(b)(3) under which a third-party servicer, along with the institution, would be responsible for confirming a student's eligibility at the time a disbursement is made. The commenters stated the current regulations are clear that a disbursement occurs when an institution credits a student's account with title IV funds or pays title IV funds to a student directly. These commenters argued that the proposal contradicts the existing provision in 34 CFR 668.25(c)(4) by expanding the requirement to confirm student eligibility to servicers who have any involvement with the disbursement process and not just to servicers who actually disburse funds as already provided in § 668.25. The commenters noted that many third-party servicers provide, among other services, reporting and reconciliation of institutionally provided data to the Department as a liaison between the institution and the Department. The commenters stated that extensive regulations already cover disbursement of Federal aid to eligible students, and that it is ultimately the institution's responsibility to ensure fiscal accountability and to fulfill its fiduciary duty under the terms of its Program Participation Agreement. The commenters opined that requiring a servicer to confirm a student's eligibility results in a higher standard of care, additional administrative burdens and cost being forced upon institutions that elect to engage a servicer that do not exist for institutions that do not use a servicer. The commenters argued that the additional and duplicative confirmation process would also likely result in unnecessary disbursement delays to eligible students. The commenters also objected to third-party servicers being held jointly responsible for the veracity of any information provided to them by the institution, arguing that servicers are not officials of the institution, or part of its ownership or on-campus management team. The commenters reasoned that requiring a servicer, or any other unrelated entity, to be responsible for information provided by its client institution is comparable to requiring a CPA or other tax preparation service to be responsible for the accuracy, completeness, and validity of their clients' income, expense, and deduction claims. Because rules are already in place regarding taxpayer and institutional liability for non-compliance with Federal aid disbursements, the commenters argued that expanding institutional liability to third-party servicers that have no authority to control the actions of institutions or their employees is unnecessary. The commenters stated that institutions that typically engage a servicer are small businesses and the significant cost that they would incur to have servicers perform a function that the institution is already required by regulation to perform would result in either school closures, higher tuition costs, or inexperienced aid administrators with no ability to engage a servicer.

Similarly, another commenter opined that the proposed regulations would apply to nearly all servicers since virtually all of them perform activities that could be characterized as ''leading to or supporting'' disbursements. The commenter stated that the function of confirming the enrollment and eligibility status for each student for whom a disbursement is ordered requires review of original source records and information created and maintained by the institution, a process which can entail a considerable amount of time. Although the commenter acknowledged that the Department indicated in the preamble to the NPRM that an institution and a servicer could establish a process under which the servicer periodically affirms that the institution confirmed student eligibility at the of disbursement, the commenter argued that the language in proposed § 668.164(b)(3) appeared to impose a duty on the servicers themselves to confirm enrollment and eligibility status. In addition, the commenter argued that the process discussed in the preamble was ambiguous, with many unaddressed factors including the frequency of servicer reviews, the percentage of files that need to be sampled, the method of selecting files, the level of error that should be cause for concern, and the course of action that should be taken if that error level is detected.

The commenter also inferred that third-party servicers who perform activities leading to or supporting a disbursement will be required to calculate the return of title IV funds for those students who withdraw prior to completing a payment period for which a disbursement is made. The commenter argued this proposal effectively redefines when a servicer is considered to be a servicer who ''disburses funds'' for purposes of 34 CFR 668.25(c)(4). Moreover, the commenter was concerned that if a servicer is considered to have a separate and independent duty to confirm enrollment and eligibility under § 668.164(b)(3), the servicer would be liable under 34 CFR 668.25(c)(3) for paying those liabilities in the event the institution closed. In addition, the commenter opined that the HEA does not authorize the Secretary to impose on servicers, through an expansive definition of disbursement, title IV functions and obligations of an institution that the servicer has not agreed to assume under its contractual relationship with that institution.

The commenter lastly opined that it would be inconsistent to treat a software provider as a third-party servicer if the provider used student aid information from its software product to perform COD reporting, reconciliations, or other business functions, but not treat as a third-party servicer a software provider whose product performs the same functions, including activities that lead to or support a disbursement, that are carried out by an institution. Along these lines, the commenter concluded that third-party servicers and software providers that perform title IV functions on behalf of institutions would potentially be jointly and severally liable for title IV errors, but a software provider whose product is used solely by an institution would not, even though that product performs functions that lead to or support disbursements. For these reasons, the commenter concluded that the proposed regulations likely will preclude many institutions from having access to the expertise and services provided by third-party servicers and software service providers and thereby will result in a higher incidence of title IV errors. In addition, the commenter argued that the proposed regulation likely will put some third-party servicers, software service providers, and institutions out of business.

Another commenter noted that organizations are considered third-party servicers if they deliver title IV credit balances, but opined that the cash management regulations appear to be written for a very small subset of servicers who have complete access to all award and billing information, enabling them to make title IV eligibility determinations and consequently control the disbursement process. The commenter stated that most third-party servicers participate in only a few steps of the overall disbursement process and have very little insight or influence on the process of awarding financial aid. These third-party servicers are not involved in determining the eligibility of students or the corresponding amounts to be disbursed. The commenter was concerned that unless the proposed rule is amended, the responsibility and potential liability of a service provider could far outweigh any reasonable charges for disbursement services, and suggested that the Department clarify the various types of service providers and the degree of responsibility and liability associated with each type.

Discussion: We disagree with the commenters that portray a third-party servicer as merely a liaison between an institution and the Department or as an unrelated entity that simply uses whatever information a client provides to conduct transactions on the client's behalf. As provided in § 668.25(c)(1), when a third-party servicer enters into a contract with an institution, the servicer must agree to comply with the statutory provisions in the HEA and the regulations governing the title IV, HEA programs that fall within the ambit of the activities and transactions the servicer will perform under that contract. In performing those activities and transactions on behalf of the institution, the third-party servicer must act as a fiduciary in the same way that the institution is required to act if it performed those activities or transactions itself. So, in the capacity of a fiduciary, the third-party servicer is subject to the highest standard of care and diligence in performing its obligations and in accounting to the Secretary for any title IV, HEA program funds that it administers on behalf of the institution.

In situations like those described in the NPRM, where a third-party servicer determines the type and amount of title IV, HEA program awards that students are eligible to receive, requests title IV funds from the Department for those students, or accounts for those funds in reports and data submissions to the Department, the servicer has a fiduciary duty to ensure that disbursements are made only to eligible students for the correct amounts. Otherwise, improper disbursements may be made to students that in turn affect the accuracy of the institution's fiscal records and data reported to the Department. Moreover, where a third-party servicer is engaged to perform one or more of these activities it is not possible to confine the servicer's fiduciary responsibilities to discrete functions, as the commenters proffer, because these activities are interrelated. For example, a servicer that determines the type and amount of awards that students are eligible to receive and requests funds from the Department, would rely on the award amounts for those students in requesting the funds necessary to meet the institution's immediate disbursement needs.

We disagree with the assertion made by the commenters that an institution is solely responsible for disbursement errors simply because the institution makes an entry crediting a student's ledger account. As a practical matter, where a third-party servicer is engaged to determine the type and amount of title IV, HEA program funds that a student is eligible to receive, the institution may reasonably rely on that information in crediting the student's ledger account. Moreover, disbursing funds is a process that begins with determining the awards that a student is eligible to receive and culminates in making payments of those awards to the student. So, the act of crediting the student's ledger account is just part of that process—it simply identifies the date on which the student receives the benefit of title IV, HEA program funds.

With regard to the concerns raised by the commenters that requiring a third-party servicer to confirm eligibility at the time of disbursement would be costly, cause delays, and duplicate the work of the institution, we believe those concerns are overstated. As discussed more fully in Volume 4, Chapter 2 of the FSA Handbook,[14] in confirming eligibility, an institution determines whether any changes or events have occurred, from the date that a student's awards were made to the date the student's ledger account is credited, that may affect the type and amount of those awards. Most of these changes and events relate to the student's enrollment at the institution—whether the student began attendance in classes, the student's enrollment status, whether the student successfully completed the hours in the prior payment period, and whether a first-time borrower has completed the first 30 days of his or her program. Other events include whether the institution has any new information that would cause the student to exceed his or her lifetime eligibility for Federal Grants, or for Direct Loans, whether the student has a valid master promissory note. These are basic enrollment and award tracking functions required of all institutions under the record retention provisions in § 668.24 and applicable program regulations, so we see no reason why it would be costly or time consuming for an institution to implement a process where this information is shared with its third-party servicer.

As we explained in the preamble to the NPRM (80 FR 28495), the institution and its third-party servicer may establish a process under which the institution confirms eligibility and the servicer verifies periodically that the confirmations were made in accordance with that process. With regard to the comments that the Department should specify the requirements or procedures used under these processes, we do not believe that is necessary—the institution and the servicer should be sufficiently motivated to implement credible processes because they are jointly responsible and jointly liable.

With regard to comments that the proposed regulations contradict the existing provisions in § 668.25(c)(4), the Department respectfully disagrees. As discussed previously in this section and in the NPRM, the language holding an institution and its third-party servicer responsible for confirming a student's eligibility is not a new policy or a change in policy—it merely emphasizes current requirements and reiterates institutional and servicer responsibilities.

In response to the comment about whether software providers or the use of their products are treated in the same way as third-party servicers, we would make that determination on a case-by-case basis depending on the how the software products are used and the role of the software provider in performing title IV functions.

With regard to the comments that the proposed regulations require servicers who perform activities leading to or supporting a disbursement to also calculate the return of Title IV funds for students who withdraw, that responsibility already exists in 34 CFR 668.25(c)(4)(ii). Changes to that regulation are beyond the scope of these regulations.

In response to the suggestion that the Department clarify the various types of service providers and the degree of responsibility and liability associated with each type, doing so is beyond the scope of these regulations. However, a third-party servicer is not subject to the provisions for confirming eligibility under § 668.164(b)(4) if, for example, the servicer is engaged only to deliver credit balance payments to students, or only to provide exit counseling to student loan borrowers.

Changes: We have revised § 668.164(b) to clarify that an institution remains responsible for confirming a student's eligibility at the time of disbursement. We also clarify that a third-party servicer is responsible for confirming eligibility if the servicer is engaged to perform activities or transactions that lead to or support a disbursement, and identify the general scope of those activities and transactions.

Books and Supplies (§ 668.164(c)(2))

Comments: Under proposed § 668.164(c)(2), if an institution includes the costs of books and supplies as part of tuition and fees it must separately disclose those costs and explain why including them is in the best financial interests of students.

Several commenters stated that these disclosures were redundant and unnecessary. Some of the commenters cited section 133 of the HEA and the Department's Dear Colleague Letters GEN 08–12 and GEN 10–09 that describe the provisions for textbook disclosures, and noted that, according to these sources, institutions are required to comply with the textbook disclosure requirements even if the textbooks are included as part of the tuition and fees. A few commenters believed the proposed disclosure requirements violate section 133(i) of the HEA, which prohibits the Secretary from regulating textbook disclosures.

In response to our request for comment about how and the frequency with which an institution should disclose the costs of books and supplies that are included as part of tuition and fees, one commenter recommended that the disclosures be made at the time of enrollment and then again at the beginning of each payment period.

Another commenter stated that if these disclosures would be most useful when a student is deciding whether to contract for the program of study, the disclosures should be made prior to a student entering into a financial obligation with the institution for enrolling in a program of study. Further, if the costs of books and supplies are included as part of tuition and fees for all students in a program, the commenter recommended that charges for those materials should be listed in an offer of admission and financial aid, so that students are able to make enrollment decisions that include all mandatory costs.

[14] Available at *https://ifap.ed.gov/ifap/byAwardYear.jsp?type=fsahandbook&awardyear=2015-2016.*

One commenter argued that there are no effective ramifications of the disclosure (*e.g.,* there is no obligation on the institution to reverse those charges so the student can purchase the materials elsewhere) so the only real effect of the disclosure is to persuade the student not to enroll or to seek a similar program elsewhere. However, the commenter did not recommend that an institution be required to reverse the charges, stating that would undermine legitimate efforts by the institution to negotiate better deals for students on a volume basis. The commenter, and others, also suggested that any student consumer information or disclosures should be not be part of the cash management regulations, but in subpart D of the General Provisions regulations.

Another commenter agreed with the Department's concerns regarding institutions artificially inflating the cost of books and supplies, but did not believe that such disclosures are warranted under the statute, and doubted that they would actually address the Department's concerns. The commenter contended that the disclosure provision would be potentially time-consuming and expensive to implement, and confusing or meaningless to students.

A commenter supported the disclosures arguing that the cost of books and supplies should be listed as specific line items on the bill or invoice sent to the student, along with the explanation of why those materials are required, so the student can make appropriate financial aid decisions.

A few commenters did not find compelling or relevant the Department's rationale for initially proposing that institutions may not include books and supplies as part of tuition and fees, and they stated that the attorneys present at the negotiated rulemaking sessions submitted documents that did not include any findings of institutions charging inflated prices. Although there was a report submitted at a Department hearing concerning books and supplies, the concerns raised in that report had more to do with manipulating credit balances to coerce students to buy books directly from the institution rather than the issues raised by the Department in the NPRM. In addition, the commenters stated that the Department's regulatory intent was not clear, with one commenter providing an example where an institution includes as part of tuition and fees the cost of a new hardbound textbook under an arrangement where it negotiated a discount in the student price of that textbook from $400 to $100. In this case, the commenter asked whether the Department would allow that arrangement as in the best financial interest of the student or disallow the arrangement because the textbook is nevertheless available in the marketplace.

The same commenters took exception to the Department's position in the preamble to the NPRM that the costs of attendance provisions in section 472 of the HEA treat books and supplies as separate from tuition and fees. One commenter argued that under the plain meaning of the statute, institutions have the sole discretion to determine what constitutes tuition and fees, pointing to the provision in section 472(1) of the HEA that states that tuition and fees may include the costs for rental or purchase of ''any materials'' or ''supplies.'' The commenter opined that these terms are broad enough to include learning materials like textbooks and digital learning platforms. Where tuition and fees do not include the costs of materials and supplies, the cost of attendance also includes an allowance for books, supplies, transportation, and other expenses under section 472(2) of the HEA. The commenters concluded that instead of providing the Department with authority to limit the institutions' ability to include books and supplies as part of tuition and fees, section 472 of the HEA appears to provide institutions with authority to do just that—*i.e.,* include books and supplies as part of tuition and fees. Moreover, the commenters contended that while section 401(e) of the HEA limits the disbursement of title IV funds to tuition and fees, because it is silent on the question of what constitutes tuition and fees, it does nothing to limit the discretion vested in institutions by section 472.

Some commenters argued that using title IV funds to pay for books and supplies included as part of tuition and fees benefits students in two ways. First, it ensures that students are able to have all the required learning materials in their possession on the first day of class, which educators agree is an important element in overall student success. Second, it often provides students with substantial discounts, because, by including books and supplies as tuition and fees, institutions are able to negotiate volume discounts on behalf of their students. In addition, as more classes are taught using digital learning platforms, institutions will require flexibility to adopt new models for how those materials may be used and purchased. Digital learning platforms fully integrate content with personalized learning technologies and other elements to provide students with a holistic learning experience that can be accessed with a laptop, a tablet, a smartphone or some combination of devices. The commenter stated that the emergence of digital learning platforms will also create new market dynamics. While many of these new dynamics are over the horizon, some are reasonably clear at present. Because digital learning platforms integrate content with personalized quizzes, exercises and problems as well as a calendar of assignments and student-faculty online communication, the platforms are not optional—students must have access to the digital learning platform by the first day of class. Moreover, the commenter contended there can be no legitimate aftermarket for digital learning platforms and there is no way to legitimately access the platforms except through portals authorized by the digital learning company. Consequently, including digital learning platforms as tuition and fees is one way to ensure that students have access to this new technology in a convenient and timely manner.

A few commenters stated that if the Department goes forward with the regulations, it should require that, as proposed by the community colleges during negotiated rulemaking, if an institution includes the cost of books and supplies as part of tuition and fees, it must separately and publicly disclose such costs in the schedule of tuition and fees along with a written statement justifying the reason for this inclusion and the value to students for taking this approach by the institution. The commenters argued that this proposal requires disclosure and promotes transparency, and also incorporates the concept of ''value to the student'' which would include both the financial best interest of the student as well as the pedagogical value to the student. The commenters explained that under the community colleges' proposal, books and supplies could be included as tuition and fees where there is pedagogical benefit to the student but the effect on the student's financial best interest is neutral. The commenters concluded by stating that it is clear that including books and supplies as tuition and fees can provide pedagogical benefits to students: Those benefits should be taken into account by any regulation promulgated by the Department and should be sufficient in and of themselves to justify including books and supplies as part of tuition and fees.

Other commenters agreed with the proposal. Some believed the proposal would provide helpful transparency around the practice of including charges for books and supplies along with tuition and fees which sometimes limits the ability of students to make purchasing decisions on their own. Another commenter noted this that this provision will prevent institutions from automatically lumping books and supplies into tuition and fees, which simply increases the amount of funds that the institution gets to keep before making credit balance payments to students. In addition, the commenter believed the provision provides students with needed transparency about precisely what is being charged by institutions, arguing that if an institution cannot provide a plausible explanation that it is providing the materials at below market cost or the provided materials are generally not otherwise available, then the institution will not be able to include these costs. Instead, those costs will be treated in the traditional manner as part of the additional cost of attendance and the aid that would have otherwise been used to pay those costs will be forwarded to the student.

While acknowledging the Department's concerns about overcharging for otherwise widely available materials, one commenter disagreed that imposing the ''best financial interest'' requirement on all institutions is warranted or applicable when course materials are not widely available or available electronically only through the institution. Instead, the commenter suggested that the regulations merely require an institution to disclose the amounts separately, arguing that this allows for students to do a cost comparison for materials that may be available through other channels and make an informed decision.

Discussion: After considering all of the comments received on this topic, we are revising the provision to set forth three conditions under which an institution may include the costs of books and supplies as part of tuition and fees. Because the final regulations do not require an institution to make textbook disclosures, we are not addressing as part of this discussion the merits of the comments regarding those disclosures.

We take issue with the notion that institutions enjoy complete discretion to include books and supplies in tuition and fees pursuant to section 472 of the HEA. Books are referenced in section 472(2), a paragraph separate and apart from section 472(1), the provision regarding tuition and fees. Moreover, ''supplies'' are addressed not only in section 472(1), but also in 472(2)—the first covering ''tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study,'' and the second covering ''an allowance for books, supplies, transportation, and miscellaneous personal expenses. . . .'' So section 472 on its face contains no justification for including books, whether paper or digitized, as tuition and fees; and it permits an institution to treat supplies as tuition and fees only if they are ''normally assessed'' and ''required of all students in the same course of study.'' This structure is inconsistent with the commenter's claims.

Furthermore, it would be unlawful to read section 472 in isolation from the other portions of title IV of the HEA. Whenever books and supplies are included in tuition and fees, this results in students having no opportunity to decide for themselves whether or how to obtain these materials or what if anything to pay for them. Two separate provisions of title IV prohibit such a result. Section 401(e) of the HEA, regarding Pell Grants, provides that ''any disbursement allowed to be made [by an institution] by crediting the student's [ledger] account *shall be limited* to tuition and fees and, in the case of institutionally owned housing, room and board. *The student may elect to have the institution provide other such goods and services* by crediting the student's [ledger] account.'' (Emphasis added). Section 455(j)(1) of the HEA, regarding Direct Loans, states that ''Proceeds of loans to students under this part shall be applied to the student's account for tuition and fees, and in the case of institutionally owned housing, to room and board. Loan proceeds that remain after the application of the previous sentence *shall be delivered to the borrower* by check or other means that is *payable to and requires the endorsement or other certification by such borrower.''* (Emphasis added). Sections 401(e) and 455(j)(1) serve to ensure students are free to make the choices they regard as in their own best interests as consumers. Under well-settled principles of statutory construction, these consumer rights cannot be read out of the statute through a construction of section 472(1) as permitting institutions broad discretion to designate charges for goods and services that are purchased rather than produced by the institution as tuition and fees. Instead, reading the statute as a whole and in harmony as required by law, any such discretion is circumscribed and must conform to the purposes of sections 401(e) and 455(j)(1) of protecting the rights of students as consumers.

With regard to the request that we adopt the community college proposal under which an institution that includes books and supplies as part of tuition and fees would provide a written statement justifying the reason and the value to student for doing so, we decline. As noted by the commenters, under this proposal an institution could provide a pedagogical reason for including books and supplies. Although well intended, the proposal would allow some institutions to include the costs of books and supplies as part of tuition and fees to the detriment of students. Neither students nor the Department would be positioned to evaluate claims regarding pedagogical value, and under HEA sections 401(e) and 455(j)(1) consumer protection supersedes pedagogy. For these reasons, and to enable to the Department to take enforcement actions, we proposed in the NPRM that including books and supplies had to be in the best financial interests of students. However, we are partially persuaded by the commenters to adopt a different approach that is beneficial to students and institutions, while also addressing the Department's concerns.

Under this approach, an institution may include the costs of books and supplies as part of tuition and fees under three circumstances: (1) The institution has an arrangement with a book publisher or other entity that enables it to make those books or supplies available to students at below competitive market rates, (2) the books or supplies, including digital or electronic course materials, are not available elsewhere or accessible by students enrolled in that program from sources other than those provided or authorized by the institution; or (3) the institution demonstrates there is a compelling health or safety reason.

The commenters made a persuasive argument that including books and supplies would not only enable an institution to negotiate better prices for its students, it would result in students having required course materials at the beginning of a term or payment period. Although the commenters did not elaborate on the extent to which an institution could negotiate better prices, if the price charged to students is not below prevailing market prices, the only remaining benefit to the student is that he or she will have the materials at the beginning of the term. But, that is already addressed by § 668.164(m), which requires an institution to provide a way for many students to obtain or purchase required books and supplies by the seventh day of a payment period. Therefore, we believe that arrangements with book publishers or other entities must result in books and supplies costs that are below competitive market rates.

However, even if the institution's prices are below competitive market rates, by allowing the institution to include books and supplies as part of tuition and fees, students will not have the option of seeking even lower cost alternatives such as used books, rentals, or e-books. This is the same outcome that may occur by the way an institution provides books and supplies to students under § 668.164(m). Under that section, the student may opt out of the way provided by the institution and use his or her credit balance funds to obtain books and supplies elsewhere. The same opt out provision is needed here to enable students to seek potentially lower cost alternatives. We note that a student who opts out under this section is considered to also opt out under § 668.164(m), and vice versa, because the student has determined to obtain books and supplies elsewhere. But, even with an opt out provision, we are concerned that students who would otherwise seek lower cost alternatives will settle, out of sheer convenience, for the price of books and supplies negotiated by the institution. So, we encourage institutions to negotiate agreements with publishers and other entities that provide options for students. Finally, we adopt for this provision the same approach used in § 668.164(m), that an institution must provide a way for a student to obtain the books and supplies included as part of tuition and fees by the seventh day of a payment period.

We are convinced that digital platforms, and digital course content in general, will become more ubiquitous and that including digital content as part of tuition and fees ensures that students have access to this technology. Similarly, we agree with some commenters that where books and supplies are not available from sources other than institution, those materials may be included as part of tuition and fees.

Lastly, as discussed during the negotiated rulemaking sessions, if there are compelling health or safety concerns, an institution may include, as part of tuition and fees, the cost of materials, supplies, or equipment needed to mitigate those concerns. For example, as part of a marine biology or oceanographic degree program, an institution requires students to take a scuba diving class where it is critical that those students have specific and properly functioning equipment to avoid serious health issues. To ensure the safety of its students, the institution maintained and provided the same equipment to all of the students in the class.

An institution that does not satisfy or choose to exercise at least one these options, may not include the costs of books and supplies as part of tuition and fees for a program. In that case, the institution has to obtain the student's authorization under § 668.165(b) to use title IV, HEA programs to pay for books and supplies that it provides. We remind institutions that under § 668.165(b)(2)(i), they may not require or coerce a student to provide that authorization. Therefore, an institution may not require a student to purchase or obtain books and supplies that it provides. This consequence, and the condition where an arrangement with a publisher or other entity must result in below market prices, addresses the Department's concerns that students may be overcharged for books and supplies.

Changes: We have amended § 668.164(c) to state that an institution may include the costs of books and supplies as part of tuition and fees if: (1) The institution has an arrangement with a book publisher or other entity that enables it to make those books or supplies available to students at below competitive market rates. However, the institution must provide a way for a student to obtain the books and supplies by the seventh day of a payment period and must establish a policy under which a student may opt out of the way provided by the institution, (2) the institution documents on a current basis that the books or supplies, including digital or electronic course materials, are not available elsewhere or accessible by students enrolled in that program from sources other than those provided or authorized by the institution, or (3) the institution demonstrates there is a compelling health or safety reason.

Prior-Year Charges (§ 668.164(c)(3) and (4))

Comments: Proposed § 668.164(c)(3) addresses the payment of prior year charges with current year funds. One commenter supported our proposal in § 668.164(c)(3)(ii) to define the terms ''current year'' and ''prior year'' in the same way those terms were defined in our Dear Colleague Letter GEN 09–11. However, another commenter suggested that the Department allow an institution the flexibility to determine the current year period when both loans and other title IV funds (*e.g.,* Pell Grants or campus-based funds) are in play. The commenter also stated that the guidance issued by the Department defining a prior year was confusing in a number of circumstances. In general, the commenter was concerned that the regulation's lack of flexibility could cause some undesirable outcomes when the loan period for a Direct Loan and the award year for a Pell Grant did not match up, for example, situations where there are multiple loan periods within the same academic year, and where institutions assign summer cross-over periods to either the upcoming award year or to the concluding award year. The commenter did not like the fact that in some situations, charges that fell within the same academic year had to be considered prior year charges because a loan period was being used instead of an award year to define the current year for payment purposes. The commenter also took issue with the fact that, because an institution has the authority to assign cross-over payment periods on a student by student basis, the results might vary student by student depending on which award year the institution assigns to a cross-over payment period. Basically, the comment reflected frustrations that others have expressed over the years with the fact that there is a limitation on the amount of a student's ''current year'' aid that can be used to pay for outstanding ''prior year'' charges.

On a separate issue, this commenter asked whether proposed § 668.164(c)(4) would work as intended when aid from different title IV, HEA programs comes in at different times. The commenter posited the example of a student getting Pell Grant and campus-based aid for the fall and spring terms on time, but also getting a Direct Loan (that was intended for the fall and spring) disbursed as a single late payment in the spring term. In view of proposed § 668.164(c)(4) which allows an institution to include in the current payment period allowable charges from a previous payment period in the current award year or loan period for which the student was eligible, if the student was not already paid for such a previous payment period, the commenter asked whether the portion of the loan applicable to the fall could be used to credit the student's account for allowable outstanding fall charges under proposed § 668.164(c)(1) (basically tuition and fees, and room and board charges) without the student's permission even though the student was paid other aid in the fall. The commenter also asked whether there would be an exception to the rule in § 668.164(c)(4) when institutional charges were greater in one term compared to another term, since Pell

Grant and Direct Loan payments are made in equal installments.

Discussion: The basic premise behind the limitation on the use of current year funds to pay for prior year charges is the statutory construct that title IV, HEA program funds are provided to a student to cover educational expenses associated with a particular period of time. Thus, it could be argued that none of a student's title IV, HEA program funds for a given year should ever be used to cover expenses associated with a prior year. However, because students may be prevented from registering for classes because of minor unpaid prior year charges and, more importantly, because these charges are small enough to be construed as inconsequential, the Department has taken the position that it is acceptable to use a corresponding *de minimis* amount of current year funds (currently $200 or less) to pay for prior year charges. It should be an unusual situation when title IV funds for a current period are used for expenses for a prior period, and such a use should only be allowed when the expenses in question are of a *de minimis* nature. This then left us with the issue of how to determine the period of time that should be used to define ''current year'' and ''prior year'' for purposes of this provision. Considering the complicating facts that (1) Federal title IV aid is often given for different periods of time, and (2) schools often comingle a student's aid from different sources in a single student account, the Department proposed a rule that would allow the school to use a single period of time as the current year, depending on whether a Direct Loan was part of the aid package. While this appeared to work well in the vast majority of situations for the past six years, we agree that less than desirable results can sometimes occur. Thus, we are revising the ''current year/prior year charges'' provision in § 668.164(c)(3) to allow a school some additional flexibility in this area, while still maintaining the concept that, except for the $200 that can be used for prior year expenses, aid intended for a current year must be used for expenses associated with that current year.

With regard to § 668.164(c)(4), we agree with the commenter who suggested that Direct Loan funds (or any title IV funds) that are intended to cover previous payment period expenses, but are disbursed late in a lump sum in a subsequent payment period, should be allowed to be credited to a student's account without the student's permission to cover unpaid charges from those previous payment periods, notwithstanding the fact that the student may have already been paid some other title IV aid for those previous payment periods. Had the aid in question been ideally disbursed, it would have been disbursed in all payment periods for which it was intended and such disbursements would have alleviated, or substantially reduced, any carry over charges from the earlier payment periods. In fact, we believe that the institution should be able to bring forward to the current payment period any unpaid allowable charges from previous payment periods in the current award year or current loan period for which the student was eligible for title IV, HEA program funds. The principle behind § 668.164(c)(1) is that an institution should not be able to collect from title IV funds institutional charges for the entire program in the first few payment periods, thereby denying the student the ability to use some of his or her funds for non-institutional educational expenses in those early payment periods. Ideally, some of a student's title IV aid should be available to the student to pay for non-institutional educational expenses in each payment period. However, if the student has allowable outstanding institutional charges associated with previous payment periods in the current award year or loan period, as opposed to charges associated with future payment periods, then we believe it is appropriate for the institution to be able to use title IV funds to cover those expenses before it makes those funds available to the student for non-institutional educational expenses.

Changes: We have revised § 668.164(c)(3)(ii) to state the following rules. If a student's title IV aid package includes only a Direct Loan, the current year is the current loan period. If a student's title IV aid package includes only non-Direct Loan aid, the current year is the award year. If a student's title IV aid package includes both a Direct Loan and other aid, the institution may choose to use either the loan period or the award year as the current year. And, we have clarified that a prior year is any loan period or award year prior to the current loan period or award year.

We have also revised § 668.164(c)(4) to indicate that all allowable unpaid prior payment period charges from payment periods in the current award year or loan period for which the student was eligible for title IV aid can be brought forward and associated with the current payment period.

Prorating Charges (668.164(c)(5))

Comments: When an institution charges a student up front (*i.e.,* it debits the student's account) for more than the costs associated with a payment period, for the purpose of determining the amount of any credit balance, the institution must prorate those charges under the procedures in § 668.164(c)(5) to reflect the amount associated with the payment period.

One commenter asked whether book charges must be prorated in the same way as tuition and fees, and room and board. Another commenter opined that the prorating provisions effectively preclude an institution from charging by the program. A third commenter believed that the proposed method for prorating charges was appropriate, but questioned whether it would have any effect on the regulation addressing the treatment of title IV funds under § 668.22 when a student withdraws from the institution. The commenter also noted that current rules addressing the cost of attendance for loan recipients require an institution that charges for more than one year up front to include all the program charges in the cost of attendance for a loan made for the first year, and include only costs other than the program charges in the cost of attendance for loans made for subsequent years. The commenter reasoned that this loan provision coupled with the proposed requirement to evenly prorate institutional charges over the number of payment periods in the program may result in large credit balances provided to the student for the payment periods covered by the first year loan, while the smaller, subsequent year loan payments applied to prorated charges may not produce any credit balances for the student.

Discussion: Under § 668.164(c)(5), an institution is required to prorate charges for books only if those charges are included as part of tuition and fees under § 668.164(c)(2), and the institution charges the student upfront for an amount of tuition and fees that exceeds the amount associated with the payment period.

Prorating charges under § 668.164(c)(5) does not affect the return of title IV funds calculation under § 668.22.

We acknowledge that that the cost of attendance rules for loans coupled with prorating charges could result in the outcome noted by the commenter. However, we believe the advantages of prorating charges—that students will generally have credit balance funds available to meet current educational expenses—outweigh the anomalous situation created by institutions that charge students upfront. If they choose, institutions can easily avoid the outcome of uneven credit balances by charging students each payment period, instead of upfront.

Changes: None

Direct Payments by the Secretary (§ 668.164(d)(3))

Comments: Although proposed § 668.164(d)(3) states that the Department may pay title IV credit balances directly to students or parents using a method established or authorized by the Secretary, it does not say that the Department will use that method. However, a number of commenters believed the regulation would set up such a payment system. Those who were against having such a direct payment system argued that it would cause delays for students, and stifle competition that could otherwise lead to improvements in payment systems. Some of these commenters also believed that the government usually does not perform as efficiently as private business and they worried about the transition between the current use of private sector systems and the ''up-coming'' use of a government system. Some commenters also believed that, with a government system set up to disburse title IV funds, there would still need to be a private system to disburse non-title IV funds and that the two systems would be costly and inefficient. One commenter argued that the government should not rely on its experience with the disbursement of Social Security benefits, noting a number of differences between that program and its recipients compared to the Federal student aid programs and its recipients. Several commenters urged the Department to engage in additional notice and comment rulemaking before implementing a governmental payment system.

Those who favored establishing a direct payment system noted that other Federal agencies have successfully implemented such systems and that the receipt of Federal benefits under those systems has gone smoothly. Some commenters also noted that government-issued cards can be a good solution for people without bank accounts; and one noted that the government's negotiating power could compel vendors to create a product with low fees and consumer-friendly features. Thus, some commenters urged the Department to continue to explore such a method of payment and, in fact, to expedite its initiation.

Discussion: Section 668.164(d)(3) states that the Secretary may pay title IV credit balances directly to students (or parents). This regulation does not set up such a payment system, but simply serves as a notice of the Secretary's prerogative in this area. If the Secretary should determine that it would be prudent to put such a system into effect, the Department would provide advance notice to institutions and others that the system will be implemented by publishing that information in the **Federal Register**. If the Secretary should adopt a method that requires a revision to existing regulations through negotiated rulemaking, the Secretary would initiate those proceedings. A determination on that matter, however, cannot be made unless and until the Secretary decides whether and how to exercise his or her authority in this area.

We thank all those commenters who shared their thoughtful analyses of whether such a direct payment system would be in the best interests of students, institutions, private parties, and the government itself. Their comments constitute a good beginning in the overall analysis of the possible benefits and pitfalls of establishing a direct payment system. We will consider this feedback as we continue to determine how title IV credit balance funds may be delivered to students in the most effective, efficient, and convenient manner possible.

Changes: None.

Tier One (T1) Arrangements (§ 668.164(e)(1))

Comments: We received several comments expressing support for our regulatory framework that differentiates the arrangements institutions enter into with third-party servicers that also offer accounts to students from arrangements between institutions and non-third-party-servicers that are typically more traditional banking entities (the accounts offered under these two types of arrangements were described as ''sponsored accounts'' during negotiated rulemaking and not differentiated in the regulations prior to the NPRM). These commenters stated that the proposed approach struck an appropriate balance in light of practices that led to the rulemaking. Some commenters who also served as non-Federal negotiators noted that this issue was particularly difficult for the rulemaking committee and commended the Department for employing an approach with differentiated levels of regulatory scrutiny that appropriately responded to the levels of risk presented by different arrangements. These commenters agreed that government and consumer reports illustrated both the incentives for securing short-term, fee-related revenue for T1 arrangements and the evidence that students opening accounts under such arrangements were more likely to face unusual or onerous fees. The commenters stated that the proposed regulations provided strong consumer protections in situations where USPIRG, Consumers Union, GAO, and OIG noted troubling practices.

Other commenters stated that the Department's increased scrutiny of T1 arrangements and third-party servicers was misplaced and unwarranted. These commenters argued that we did not demonstrate why a higher level of scrutiny was appropriate for third-party servicers that offer financial products than for more traditional banking entities that directly market their products to students.

Discussion: We appreciate the comments supporting our proposed regulatory approach and our decision to bifurcate the level of scrutiny applied to different types of arrangements that govern the accounts offered to title IV recipients. We agree with the commenters that noted the troubling examples cited in government and consumer reports and that led to legal actions against certain account providers, and believe that a higher level of regulatory scrutiny is appropriate for certain types of arrangements, especially with respect to fees, to protect title IV recipients from abusive practices and ensure they are able to access the student aid funds to which they are entitled.

We disagree with the commenters who asserted that we did not provide sufficient justification for subjecting accounts offered under a T1 arrangement to a higher level of regulatory scrutiny. To the contrary, in the preamble to the NPRM, we describe in detail the findings of several consumer groups and government entities. As stated in the NPRM, ''not all arrangements resulted in equivalent levels of troubling behavior, largely because the financial entities and third-party servicers with which institutions contract face divergent monetary incentives.'' [15] Banks and credit unions have incentives to create long-term relationships with college students because such providers are working to establish a relationship (and resultant fee- or interest-based revenue) long after the student has left the institution.[16]

Other types of entities—third-party servicers in particular—are more likely to ''seek to partner with schools to provide fee-based services to both the

[15] 80 FR at 28498.

[16] Consumers Union. ''Campus Banking Products: College Students Face Hurdles to Accessing Clear Information and Accounts that Meet Their Needs,'' page 5 (2014), available at: *consumersunion.org/wp-content/uploads/2014/08/Campus_banking_products_report.pdf* (hereinafter referred to as ''Consumers Union at [page number]'').

institution and the student.'' [17] The relationship with a student typically ends once the student is no longer enrolled, and ''the nature of this short-term interaction creates an incentive to increase fee revenue over what traditional banks might charge.'' [18] In addition, third-party servicers have privileged access to systems and data that more traditional banks not serving as third-party servicers do not. As a result, these third-party servicers have been able to brand or market access devices in ways that may be confuse students into assuming the device is required as part of enrollment, can prioritize electronic delivery of credit balances to a preferred account before a preexisting bank account, and access personal student information for targeted marketing purposes.

These issues are not merely theoretical. OIG found that ''schools did not appear to routinely monitor all servicer activities related to this contracted function, including compliance with all title IV regulations and student complaints.'' [19] There have also been a series of legal actions, including allegations by the FDIC of ''unfair and deceptive practices,'' and violations of the Federal Trade Commission Act.[20] [21] Third-party servicer practices were specifically and repeatedly highlighted in recommendations to the Department for a higher level of regulatory scrutiny.[22] For these reasons, and others discussed in the NPRM, we are declining to alter our heightened regulatory scrutiny of T1 arrangements.

Changes: None.

Comments: Several commenters pointed out what they believed were ambiguities in the proposed definition of ''T1 arrangement.'' These commenters stated that such arrangements only involved accounts offered by third-party servicers and that the rule should further clarify that the rules do not apply with respect to practices that do not create a third-party servicer relationship. Specifically, many commenters opined that ''treasury management services'' or ''normal bank electronic transfers'' should not be considered third-party servicer functions under paragraph (1)(i)(F) of the definition of third-party servicer at 34 CFR 668.2(b). These commenters described a situation where an entity contracts with an institution to conduct electronic funds transfer services to bank accounts, and that entity also offers bank accounts to the general public that are not offered in connection with the entity's contractual relationship with the institution. The commenters asserted that the existence of both a contractual relationship with the institution to provide disbursement services and account offerings to the public (some of whom may be students) would create a regulatory obligation on the part of the entity to ensure that all the entity's account offerings comply with the regulatory provisions of § 668.164(e). Consequently, the commenters requested that the Department explicitly exempt bank electronic funds transfers from establishing a third-party servicer relationship that would trigger the regulatory requirements of § 668.164(e).

Many of the same commenters also stated that the regulatory provisions establishing the conditions of a T1 arrangement were, in their opinion, overly broad. They argued that because many banking entities also provide third-party services, and because § 668.164(e)(1) establishes that accounts ''that are offered under the contract *or by the third-party servicer''* (emphasis added) fall under the purview of the regulations, these entities would have to comply with the T1 regulatory requirements regardless of whether the accounts are promoted specifically to students or selected through the student choice menu, noting that such accounts are ones that are also often offered to the general public. Therefore, they argued, such a set of circumstances would effectively require a banking entity that serves as a third-party servicer for even a single institution to ensure all of its accounts offered to the general public comply with the regulatory requirements of § 668.164(e). These commenters argued that it would be impractical, expensive, and outside the Department's legal authority to alter the account terms of such a broad swath of the general banking market. They also argued that such accounts were not those identified by government and consumer reports as requiring regulatory scrutiny. Some commenters recommended eliminating this provision entirely; others proposed that we limit the provisions of § 668.164(e) to only those accounts chosen under the student choice process.

Discussion: We agree with commenters who point out that the definition of ''third-party servicer'' under § 668.2 excludes ''normal bank electronic fund transfers.'' However, that same definition also explicitly includes as third-party servicing the ''receiving, disbursing, or delivering [of t]itle IV, HEA program funds.'' Rather than altering the definition of third-party servicer, these regulations specify that the third-party servicing activities that lead to or support making direct payments of title IV funds are those that are encompassed under § 668.164(e).

We understand and acknowledge that there are some entities that simply provide EFT services to institutions and may deliver funds electronically as a contracted function independent of their marketing of other banking services to the general public. However, contrary to commenters' fears, we are not altering the definition of third-party servicer, which already provides that ''normal bank electronic fund transfers'' does not trigger a third-party servicing relationship. Doing so would be outside the scope of this rulemaking. Because ''third-party servicer'' is a defined term, and these regulations refer to that defined term, we believe it is clear which entities are covered by the regulations and which are not. For entities that are not third-party servicers—for example, those whose sole function on behalf of the institution is normal bank electronic fund transfers—these regulations neither alter their status nor subsume the contract they have with the institution into a T1 arrangement. We therefore decline to include additional language exempting arrangements that do not go beyond normal bank electronic funds transfers from the regulatory description of T1 arrangement because our use of the defined term ''third-party servicer'' already does this.

We appreciate the comments that pointed out the consequences of the proposed definition of ''T1 arrangement,'' and that any third-party servicer that offers accounts generally to the public would fall under the provisions of § 668.164(e). We note, as a threshold matter, that it was not our intention to regulate accounts only incidentally offered to students. As we noted throughout the preamble to the NPRM, these regulations seek to govern institutions, third-party servicers, and the arrangements those entities voluntarily enter into that impact title IV funds.

We are persuaded that a portion of the definition of ''T1 arrangement,'' as

[17] USPIRG. ''The Campus Debit Card Trap,'' page 13 (2012), available at: *www.uspirg.org/sites/pirg/files/reports/thecampusdebitcardtrap_may2012_uspef.pdf* (hereinafter referred to as ''USPIRG at [page number]'').

[18] Ibid.

[19] OIG at 5.

[20] GAO at 24.

[21] ''FDIC Announces Settlements With Higher One, Inc., New Haven, Connecticut, and the Bancorp Bank, Wilmington, Delaware for Unfair and Deceptive Practices,'' page 1 (2012), available at *www.fdic.gov/news/news/press/2012/pr12092.html* (hereinafter referred to as ''FDIC at [page number]'').

[22] OIG at 5.

proposed in the NPRM, is overly broad. Section 668.164(e)(1), as proposed, stated that in a Tier one (T1) arrangement, an institution 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 to one or more financial accounts that are offered under the contract or by the third-party servicer, or by an entity contracting with or affiliated with the third-party servicer to students and their parents. We did not receive comments about the majority of this proposed language; however, we agree that the language ''or by the third-party servicer, or by an entity contracting with or affiliated with the third-party servicer to students and their parents'' would subsume accounts into the regulatory framework that we had not intended to cover.

As we explained in the preamble to the NPRM, our intent for including these additional clauses was to prevent an easily exploitable loophole whereby a third-party servicer who offers one or more accounts to title IV recipients simply omits any mention of such accounts from the contract with the institution. However, commenters correctly pointed out that some third-party servicers are also banking entities that offer several different types of accounts to the general public, and that by fulfilling both the condition of being a third-party servicer that performs one or more of the functions associated with processing direct payments of title IV, HEA program funds and the condition of offering accounts to the public, some of whom may be students, all of the servicer's generally-available accounts would be required to comply with § 668.164(e). This was not our intent, and we agree that the regulations should be modified to reflect these comments.

However, we disagree with commenters who recommended two alternative approaches—eliminating the provision entirely, or limiting the scope of the regulations to accounts chosen under the student choice process. For the reasons explained in the NPRM and the preceding paragraphs of this section, these alternatives would create a loophole easily exploitable by those seeking to evade the regulatory requirements applicable to T1 arrangements; simply omitting mention of the account in question from the contract establishing a T1 arrangement, establishing a separate contract, or involving a third-party as either the servicer or the account provider would render § 668.164(e) without effect. Similarly, limiting the provisions of § 668.164(e) to those accounts selected under the student choice menu would create an incentive to avoid the regulatory requirements by ensuring that students sign up for an account through any other method.

Instead, we believe an appropriate alternative is to continue to cover those accounts offered under the contract between the institution and third-party servicer, but limit other accounts covered by § 668.164(e) to those where information about the account is communicated directly to students by the third-party servicer, the institution on behalf of or in conjunction with the third-party servicer, or an entity contracting with or affiliated with the third-party servicer. This not only limits the scope of the provision to those accounts that are intended for title IV recipients but does so in a way where third-party servicers that also offer accounts to the general public can ensure that general-purpose accounts not actually marketed directly to students need not be covered by the regulations.

In Departmental reviews of accounts offered to students at institutions with contracts that would fall under § 668.164(e) as proposed, we have observed that the predominant practice of account providers under T1 arrangements is to offer a separate, standalone student banking product. While this practice may not be universal, its prevalence indicates that it is both financially and operationally feasible to offer students a standalone financial product that complies with the fee limitations and other requirements of § 668.164(e). To the extent that a student opens an account offered to the general public and not marketed under or pursuant to a T1 arrangement and then elects to use that preexisting account option under § 668.164(d)(4), that account would not be required to comply with the provisions of § 668.164(e). Therefore, if a third-party servicer were concerned that all of its general banking products would be covered by § 668.164(e) because it markets and promotes all of those products to students at the contracting institution, it can elect to establish a standalone banking product that complies with the provisions of § 668.164(e) and limit its direct marketing, promotion, and specialized communications to students at that institution to this latter bank account offering. This practice, which we have observed is already common among many third-party servicer financial account providers, would ensure that only the account designed for title IV recipients at the institution would have to comply with § 668.164(e).

Changes: We have amended § 668.164(e)(1) to replace the second and third references to an account ''offered'' by a third-party servicer or other entity with: An account where information about the account is communicated directly to students by the third-party servicer, the institution on behalf of or in conjunction with the third-party servicer, or an entity contracting with or affiliated with the third-party servicer.

Comments: Some commenters pointed out that they have multiple agreements with institutions and questioned whether it was possible under the proposed regulations to have accounts offered under both T1 and T2 arrangements with a particular institution, where the two accounts would have different regulatory requirements, as opposed to both accounts having to comply with the requirements applicable to T1 arrangements.

Some commenters requested that the Department provide specific examples of what would constitute a T1 arrangement, a T2 arrangement, or neither; these commenters stated that examples would assist institutions attempting to comply with the regulations. One commenter believed that an institution assisting a student in opening an account, regardless of the actual relationship between the institution and the bank, would give rise to a T1 arrangement.

We also received comments arguing that parents should not be included in the regulatory provisions under T1 arrangements because they are not typically the recipients of credit balances; and even when they are, such credit balances are typically transferred to a preexisting account, rather than an account offered under a T1 arrangement.

One commenter requested that we clarify whether the requirements for T1 arrangements continue to apply when the student is no longer enrolled at the institution.

Discussion: With respect to commenters' questions about whether it would be possible to have both T1 and T2 arrangements at a single institution, we note that this scenario would be possible. For this to occur, the institution would have to have separate agreements with *different* financial account providers: One that provided third-party servicing functions and the other that provided accounts that met the T2 arrangement direct marketing definition in some way, perhaps by offering account functionality through student IDs.

To the extent that a single provider serves as a third-party servicer and offers multiple account options to students of that institution, those account offerings must comply with the requirements for T1 arrangements even if, absent the third-party relationship, one or more of those offerings would only constitute a T2 arrangement. This is because the differentiating factor between these two types of arrangements is the presence of a third-party servicer that is offering (or communicating information about) the account to students. If a third-party servicer that contracts with an institution is offering or marketing multiple accounts to title IV recipients at that institution, all of those accounts would be required to comply with the requirements for T1 arrangements. We intended this different treatment because, as we explained earlier in this section of the preamble and in the NPRM, a third-party servicer exerts a tremendous amount of control over the disbursement process and timing. Simply because such a financial account provider offers functionality through, for example, a student ID that would only constitute a T2 arrangement absent a third-party servicer relationship, does not obviate the potential for abuse when such a third-party servicer relationship does exist. Therefore, it would not be possible for a single financial account provider to offer two different types of accounts at a single institution, one that was required to comply with the requirements for T1 arrangements and the other with the requirements for T2 arrangements.

In response to providing examples of what constitutes the two different arrangements under the proposed regulations, we believe the regulatory language and the extensive descriptions of these arrangements in the preambles to the proposed and final regulations provide sufficient detail. In short, accounts offered under the contract with third-party servicers or marketed by third-party servicers, their agents, or the institution on behalf of the third-party servicer, are T1 arrangements that fall under § 668.164(e). Accounts offered by non-third-party servicers and directly marketed to students (either by the institution, through the use of a student ID, or through a cobranding arrangement) are T2 arrangements that fall under § 668.164(f). Accounts offered to students that do not fall under either of these arrangements are not subject to the regulations. Examples of such circumstances include general marketing agreements (*i.e.* no direct marketing) that do not specify the kind of account or how it may be opened, arrangements sponsoring on-campus facilities (*e.g.,* stadium or building naming rights), lease agreements for on-campus branches or ATMs, or a list of area financial institutions recommended generally to students solely for informational purposes.

With respect to the commenter who stated that an institution assisting a student in opening an account would give rise to a T1 arrangement, this is not the case. An arrangement qualifies as a T1 arrangement only if an institution engages a third-party servicer to perform activities on its behalf.

We agree with the commenter who argued that parents should not be included in § 668.164(e). We discuss our reasons for this change in greater detail in the student choice section of this document.

Because the purpose of these regulations is to ensure that students have access to their title IV credit balance funds, we believe the regulations should not apply when a student is no longer enrolled and there are no pending title IV disbursements, because it is not then possible for the student to receive title IV credit balance funds into an account offered under a T1 arrangement. We are therefore adding a provision specifying this treatment; because the considerations are equally applicable to T2 arrangements, we will add an equivalent provision in § 668.164(f). However, we do not believe this should eliminate institutions' responsibility to limit the sharing of private student information and because institutions are already limited from sharing that information under the final regulation, we do not believe a continued limitation would present an additional appreciable burden.

For students who discontinue enrollment but then reenroll at a later date, either at the same institution or a different institution, they would go through the same student choice process described in § 668.164(d)(4)(i) as any other student receiving a credit balance. Such students would either communicate preexisting account information or select an account offered under a T1 arrangement from the student choice menu.

We note that this provision ending the regulation of accounts opened under T1 and T2 arrangements does not limit the requirement that an institution must report the mean and median annual cost information for students who were enrolled in a preceding award year. For example, a student is enrolled and receives credit balance funds in the 2018–2019 award year and then graduates at the end of that year. Although the provisions of § 668.164(e) would no longer apply to that student in award year 2019–2020, the institution would still have to include the student in its report of mean and median annual cost information for award year 2018–2019, even if the reporting itself is completed during award year 2019–2020.

Changes: We have removed references to ''parent'' in § 668.164(e).

We have added § 668.164(e)(3) to specify that the requirements applicable to T1 arrangements cease to apply with respect to a student when the student is no longer enrolled and there are no pending title IV disbursements at the institution, except for § 668.164(e)(2)(ii)(B) and (C), governing the limitation on use and sharing of private student information. We have specified in paragraph (e)(3) that this does not limit the institution's responsibility to report mean and median annual cost information with respect to students enrolled during the award year for which the institution is reporting. We have also clarified that an institution may share information related to title IV recipients' enrollment status with the servicer or entity that is party to the arrangement for purposes of compliance with paragraph (e)(3).

Tier Two (T2) Arrangements (§ 668.164(f)(1)–(3))

Comments: A number of commenters recommended that we apply the fee-related provisions under T1 arrangements to accounts offered under T2 arrangements. These commenters argued that the dangers present for T1 arrangements are equally applicable to T2 arrangements, in that the contracts governing both of those arrangements require direct marketing by the institution and are intended to strongly encourage students to deposit title IV funds into accounts offered under the arrangements. Moreover, the commenters believed there is no functional difference between accounts under these arrangements when those accounts are offered as a part of the disbursement selection process. The commenters noted that the proposed regulations treated the two types of arrangements equally for purposes of the student and parent choice protections (§ 668.164(d)(4)) and argued this was evidence that the fee provisions should apply equally as well. Other commenters noted that institutions benefit from T2 arrangements in the form of bonus payments or a share of interchange fees, and that title IV funds will almost assuredly be deposited into such accounts when title IV credit balance recipients are present at a particular institution—therefore, they argued, the Department has an interest in regulating such arrangements.

Several commenters argued that agreements that constitute T2 arrangements under the proposed regulations are outside the Department's purview. Some commenters argued that the simple presence of cobranding or direct marketing did not amount to coercion of students to sign up for the financial product in question. Others argued that the government and consumer reports cited by the Department in the NPRM did not single out arrangements that would constitute T2 arrangements as posing additional danger to students, and therefore regulation of these arrangements was unwarranted. Some commenters recommended that the Department eliminate the requirements relating to T2 arrangements; others suggested that we instead require institutions to prominently inform students that no account is required to receive title IV aid.

Discussion: We appreciate that the commenters who urged us to apply the fee limitation provisions for T1 arrangements to T2 arrangements believe that doing so would ultimately be beneficial to students. However, we believe that applying the fee limitations to T2 arrangements would be contrary to the rationale outlined in the NPRM and would effectively collapse any distinction between T1 and T2 arrangements. Although we acknowledge that T2 arrangements, as defined in the proposed regulations, involve products marketed to students with the apparent endorsement of the institution, we believe those products nevertheless represent a lower level of risk than products offered under T1 arrangements.

As we explained in the NPRM, T1 arrangements involve account offerings where the financial account provider acts in place of the institution as a third-party servicer, controlling the mechanics of the disbursement process itself. The arrangements are also geared toward shorter-term fee revenue,[23] whereas T2 arrangements usually involve more traditional banking entities that have an incentive to establish a longer-term banking relationship.[24] Indeed, GAO found that several of these types of providers do not charge fees ''higher than those associated with other banking products available to students.'' [25] The evidence presented in government and consumer reports bears out this difference in risk. The most troubling practices were predominantly employed by third-party servicers, and, in some cases, students with accounts offered under T2 arrangements actually received rates more favorable than available in the general market.

Nevertheless, contrary to the claims of the commenters who urged us to abandon the regulations governing T2 arrangements, these accounts are not without risks to title IV recipients. As we noted in the NPRM, the account offered under a T2 arrangement has an apparent institutional endorsement, and the marketing or branding of the access device associated with that account is likely to lead students to believe that the account is required to receive title IV funds. In addition, offering an account under a T2 arrangement gives students the impression that the terms of the account have been competitively bid and negotiated by the institution, or, at a minimum, represents a good deal because it has been endorsed by the institution. As we detailed in the NPRM, the institution's assistance in marketing activities and apparent seal of approval led to take-up rates far in excess of what would occur in the event of arms-length transactions by consumers choosing a product in their best interest.[26] The CFPB agreed with this conclusion, noting that the mismatched incentives created by these arrangements can lead to skewed adoption rates of these financial products.[27] Specifically, the special marketing advantage enjoyed by a financial account provider under a T2 arrangement, might still encourage providers to offer title IV recipients less competitive terms than those available on the market generally, although not as much as in T1 arrangements.

We believe the best way to mitigate the risks presented by accounts offered under different types of arrangements is the tiered framework we proposed in the NPRM. If we applied the fee provisions applicable to T1 arrangements to T2 arrangements, we believe this distinction would break down and we would not be applying a regulatory framework appropriate to the dangers that different types of accounts present to students receiving title IV aid. If we instead eliminated the proposed, more limited regulatory provisions governing T2 arrangements, the disclosure requirements would not be in place to serve the dual functions of ensuring that students receive adequate information prior to account opening and that institutions are entering into contracts that provide fair terms to aid recipients. We also note that consistent with some commenters' recommendations, the proposed regulations already required that institutions inform credit balance recipients that their receipt of title IV funds does not require that they open any particular financial account. As we explained in the NPRM, we believe the approach proposed strikes the proper balance and targets regulatory action to the areas where it is warranted.

Changes: None.

Comments: Some commenters argued that the Department does not have authority over accounts offered under T2 arrangements. One commenter supported the Department's intent to regulate only these arrangements when the disbursement of title IV funds is involved; another suggested that we only regulate arrangements that specifically address title IV disbursements in the contractual language establishing the arrangement.

We received a number of comments on the provision in the proposed definition of ''T2 arrangement'' and the limitation where the requirements do not apply if the institution awarded no credit balances in the previous year. Some commenters supported the approach in the proposed regulations and recommended that even if we altered the numerical threshold, we should maintain the structure of the provision, which requires institutions to document that they are exempt from the requirement, rather than establishing the presumption of an exemption.

Other commenters claimed that institutions would not be able to determine whether any students were credit balance recipients in the prior award year. Many commenters believed that a threshold of a single title IV recipient was not commensurate with the cost and burden imposed on institutions to comply with the requirements of § 668.164(f). Several commenters supported a ''reasonable'' threshold, but did not specify what ''reasonable'' would constitute. However, only one of these commenters offered an alternative threshold for a safe harbor. That commenter recommended a safe harbor threshold of 5,000 enrolled students (rather than title IV credit balance recipients) before applying the requirements of § 668.164(f), but did not provide any

[23] USPIRG at 13.

[24] Consumers Union at 5.

[25] GAO at 15.

[26] 80 FR at 28499.

[27] Consumer Financial Protection Bureau presentation. ''Perspectives on Financial Products Marketed to College Students,'' pages 14–15 (2014), available at: *www2.ed.gov/policy/highered/reg/hearulemaking/2014/pii2-cfpb-presentation.pdf* (hereinafter referred to as ''CFPB Presentation at [Page number])''.

basis for why this threshold should be adopted or why it should be based on enrolled students rather than title IV credit balance recipients.

Discussion: We agree with commenters who argued that we should not attempt to regulate arrangements wholly unrelated to disbursing title IV funds. As we stated in the NPRM, ''direct marketing by financial institutions in itself does not always establish that these accounts impact title IV aid. For example, a financial institution may contract with an institution to offer financial accounts to students in circumstances where no credit balances exist (typically at high-cost institutions), and students are therefore not receiving credit balances into the offered financial accounts. In these circumstances, the integrity of the title IV programs is not at issue.'' [28] For this reason, we explicitly proposed to limit our oversight of T2 arrangements to those instances where it is likely the case that title IV credit balance funds are at issue. In the NPRM, we recognized that our authority is limited in instances where no credit balance recipients exist at an institution and requested comment on whether this was an appropriate threshold. We disagree with commenters who recommended that we limit our oversight to those instances where title IV disbursements are explicitly mentioned in the contractual language of the arrangement or where the title IV funds are disbursed as part of the selection process. We believe such an approach would be easily circumvented by, for instance, not explicitly mentioning title IV funds in the contract establishing the relationship or by forcing students to sign up for an account outside the disbursement process in a deliberate effort to avoid the regulatory requirements. Instead, we believe that the combination of (1) the presence of title IV credit balances recipients at the institution, (2) the uptake rates of accounts that are endorsed or marketed by institutions,[29] (3) the requirement that institutions responsible for paying credit balances ensure that funds are disbursed to students in a timely manner, and (4) a contractual arrangement between the institution and financial account provider (evidencing that the account provider has privileged marketing access to a lucrative customer cohort) demonstrates that a T2 arrangement warrants regulations safeguarding the integrity of the title IV funds.

[28] 80 FR at 28499.

[29] Ibid.

As discussed below, we agree with commenters that a higher threshold of title IV recipients at an institution in a given year is appropriate for certain T2 requirements. Nonetheless, we agree with commenters who recommended that, whatever threshold applies, we should continue to require institutions to document that they are exempt, rather than establishing a presumption that institutions are exempt. We believe that for reasons of student protection and ensuring compliance with program reviews, requiring institutions to document that they qualify for an exception is a more appropriate framework.

We reject the assertion that institutions are unable to determine the number of credit balance recipients in a prior award year. Under the record keeping requirements of 34 CFR 668.24 and the 14-day credit balance requirements that have been in effect for many years, an institution is responsible not only for maintaining records of those credit balances, but for showing that those balances were paid in a timely manner to students and parents. Therefore, if a credit balance occurs, the school must not only pay it, but also have records of such payment.

We requested comment on whether the number of recipients should be expanded beyond a single credit balance recipient in the previous award year. While we appreciate that several commenters believed the threshold should be increased, with one exception, commenters did not offer alternatives and supporting evidence, as we requested. We are not adopting the only suggested threshold of 5,000 enrolled students for several reasons. First, there was no reasoning provided for this alternative threshold. Second, this number is based on enrollment rather than the number of title IV or credit balance recipients, and therefore is not sufficiently related to the Department's intent of exercising appropriate regulatory oversight of the title IV programs.

We continue to believe that a number of the T2 protections should apply unless the institution documents that it had no credit balance recipients in at least one of the three most recently completed award years. For example, if an institution had no credit balance recipients two years ago, but had credit balance recipients both last year and three years ago, it would not be required to comply with the regulatory provisions associated with T2 arrangements. This is to ensure that for an institution that had a credit balance recipient in only a single year and for which this was a unique occurrence, it would not be subject to regulatory requirements designed for institutions where credit balance recipients are consistently present. Under these final regulations, if an institution had at least one title IV credit balance recipient in each of three most recently completed award years, the institution: (1) Needs to ensure that students incur no cost for opening the account or initially receiving an access device; (2) must ensure that the student's consent to open the financial account is obtained before the institution or its third-party servicer provides any personally identifiable 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), sends the student a financial account access device, or validates a financial account access device that is also used for institutional purposes; (3) must include the account offered under the T2 arrangement on the student choice menu and disclose as part of that choice process the terms and conditions of the account; (4) must ensure that the account is not marketed or portrayed as a credit card; (5) must disclose the contract between the financial account provider and the institution by posting it on the institution's Web site and providing an up-to-date URL to the Secretary; and (6) must ensure that the provisions in the contract underlying the T2 arrangement are consistent with the regulatory requirements of § 668.164(f)(4).

We continue to believe the above provisions should apply unless there were no credit balance recipients in at least one of the three most recently completed award years for several reasons: To comply with provisions of the HEA; because of the risks present to students absent these protections; and because of the low burden of compliance for institutions. Most importantly, the prohibition on account-opening fees is mandated by, for example, HEA sections 487(a)(2) and 454(a)(5).

In addition, obtaining the student's consent before private information is shared, or an unsolicited access device is provided, is necessary to ensure the protection of student data and that students are given account information before being sent an access device. These provisions ensure that title IV does not become a vehicle for circumventing the privacy protections in FERPA. We also note that under the revisions made in these final regulations, the financial account provider may secure this consent.

The requirements to include the account on the student choice menu and provide the student with the terms and conditions of the account are likewise applicable under the final rule. All of the non-Federal negotiators and numerous commenters stated that a crucial principle in this rulemaking is ensuring that all students are provided account terms up front so they can properly understand the terms and fees of an account before they consent to open it. Because financial account providers will be required to comply with the upcoming CFPB card disclosures, and because those disclosures can be provided electronically, these provisions do not go beyond ensuring that information required to be disclosed anyway is furnished in a time and manner that is effective in helping title IV recipients choose a financial account. The burden associated with providing these disclosures to students as a part of the student choice menu is negligible and occurs at a juncture at which institutions are already required to communicate with prospective credit balance recipients. We see no justification for not providing these disclosures in any circumstance in which title IV credit balance recipients are among the population affected by a T2 arrangement.

We are also requiring that institutions post their T2 contracts to their Web sites and provide the Secretary with an up-to-date URL for that Web site (up-to-date signifying that should relevant documentation no longer be located at that URL, that the institution must provide the Secretary with an updated URL). The Department and the public have a strong interest in knowing the terms of marketing contracts shown to have the *potential* for operating to the financial detriment of the millions of students receiving millions of dollars in Federal student aid. The HEA strongly supports providing important consumer information to students and the public, as evidenced by, for example, Parts C and E of title I, and section 485 of title IV. Increased transparency will help ensure accountability and encourage institutional practices that are in the interests of students. We also note that at least one commenter who is a financial account provider expressed both willingness for contractual disclosure and the ability of all parties to the contract to be able to comply with disclosure requirements. Given that some States already require such disclosure and for the preceding reasons, we believe this requirement is not only important, but of minimal additional burden.

The final requirements for this credit balance recipient threshold, that the access device not be portrayed as a credit card and that the contract comply with the requirements of § 668.164(f)(4), are also important to ensure that even if a limited number of students receive credit balances, those students are not under the false impression that they have received a credit card, and that the institution's contract is in compliance with the regulatory requirements set out for T2 arrangements. We also note that these provisions present little additional burden to the institution. The credit card prohibition is an existing requirement and we do not believe institutions or their financial account providers will have difficulty continuing to comply with a requirement that prevents them from portraying an access device as a credit card. Similarly, because institutions with a contract governing the direct marketing specified in § 668.164(f)(3) will necessarily have to negotiate the terms of that contract, we do not believe appreciable additional burden is entailed by ensuring that such contracts comply with the applicable regulatory provisions outlined in these regulations.

However, we agree with the balance of the comments that one title IV recipient is too low a threshold for several of the other provisions in § 668.164(f)(4); and are therefore establishing a higher threshold of credit balance recipients that would trigger the requirements in § 668.164(f)(4)(iv)–(vi) and (f)(4)(viii). These requirements are: The yearly posting of certain cost and account enrollment figures on the same institutional Web site that contains the full posted contract—the requirement for which would already exist because of the presence of one credit balance recipient at the institution; the availability of surcharge-free ATMs; and the due diligence of institutions in entering into and maintaining T2 arrangements. While these provisions focus on the terms of the T2 contract and attempt to ensure, through transparency and affirmative requirements, that the accounts that institutions market to title IV credit balance recipients provide favorable terms and convenient access, we recognize that at many institutions that may have T2 arrangements, relatively high tuition and fees mean that students receiving credit balances may be the exception rather than the rule. At these institutions where title IV credit balances are atypical, if the number of credit balance recipients is sufficiently small, a number of factors come into play, drawing into question the benefit of applying one or more of the provisions at § 668.164(f)(4)(iv)–(vi) and (f)(4)(viii):

- As many commenters noted, these provisions do impose some burden. They involve the tracking, compilation, and public disclosure of statistical data and other information; are more likely to require negotiations between the institution and its T2 partner(s); and necessitate providing convenient ATM access and ongoing efforts on the part of the institution in providing the due diligence required.
- An institution with few credit balance recipients will, in all likelihood, be negotiating a T2 arrangement for accounts to be used almost exclusively by more affluent students able to maintain higher account balances. Such an institution will have different goals and account features in mind, and the financial account provider will have different incentives, than would be the case if the students enrolled included a significant number of lower-income credit balance recipients.
- More broadly, as mentioned, a number of financial institution commenters have questioned the link between campus marketing arrangements and title IV administration. Immediate prior history of the enrollment of a significant proportion of credit balance recipients at the institution establishes that credit balance recipients are necessarily among the intended targets of the marketing campaign and in sufficient numbers to justify requiring specific attention be paid to their interests.

After considering all of the above, we believe § 668.164(f)(4)(iv)–(vi) and (f)(4)(viii) should not apply to institutions at which the occurrence of credit balance recipients is purely incidental and *de minimis,* and have included in the rules criteria necessary to identify such institutions. Under these rules, institutions will be subject to the provisions in § 668.164(f)(4)(iv)–(vi) and (f)(4)(viii) unless they document that they fall below both of the following thresholds: (A) Five percent or more of the total number of students enrolled at the institution received a title IV credit balance; or (B) the average number of credit balance recipients for the three most recently completed award years is 500 or more.

The five percent figure is calculated by dividing:

(1) For the numerator, the average number of students who received a title IV credit balance during the three most recently completed award years;

(2) For the denominator, the average of the number of students who were

enrolled at the institution during the three most recently completed award years. We have defined enrollment for purposes of these thresholds as the number of students enrolled at an institution at any time during an award year. For both of these thresholds we are using averages to smooth fluctuations in enrollment or title IV credit balance recipients that may occur year to year. The three-year period for calculating the thresholds is consistent with the period of time for which an institution is required to maintain records under 34 CFR 668.24.

With regard to the threshold based on percentages of credit balance recipients, the Department has found a five percent threshold useful and reliable in other contexts in identifying when an occurrence or characteristic is too infrequent to warrant application of regulatory requirements. In the Department's financial responsibility regulations at 34 CFR 668.174(a)(2), we set a threshold of five percent of title IV funds received as the level at which liabilities assessed for program violations are significant enough to take the violation into account in determining the past performance aspect of financial responsibility. Likewise, 34 CFR 668.173(c) provides that an institution is not in compliance with the refund reserve requirements if a program review or audit establishes that the institution failed to return unearned funds timely for five percent or more of the students in the sample reviewed or audited. Similarly here, the five percent threshold operates to exempt institutions from the requirements in § 668.164(f)(4)(iv)–(vi) and (f)(4)(viii) where receipt of a credit balance is atypical. At the same time, the data related to the average enrollment among the various sectors of institutions (discussed in more detail in the Regulatory Impact Analysis section) shows that using a threshold of five percent will not stand in the way of these provisions reaching all sectors of institutions identified in the oversight and consumer reports as having card agreements.

We recognize that using a five percent threshold may, in a limited number of cases, affect smaller institutions with relatively few credit balance recipients. For example, an institution with 1000 students could conceivably have as few as 50 credit balance recipients before being required to comply with the entirety of the provisions relating to T2 arrangements. First, we note that such cases will be extremely rare. An institution with so few credit balance recipients is unlikely to provide a sufficiently large potential customer base for a financial account provider to enter into a T2 arrangement with the institution. Furthermore, it is entirely within the institution's control whether they choose to enter into a direct marketing contract with a financial account provider. If the institution decides that it would like to have a financial account available for its students, it can easily provide information about locally-available accounts without entering into a contract with a financial account provider at all. Alternatively, it can enter into a contract with a financial account provider, but ensure that the institution is not directly marketing the account or providing, for example, cobranded card features. By ensuring that the account is only generally marketed to students, the school can choose not to have a T2 arrangement and will not have to comply with the regulatory requirements.

The final rule supplements the five percent threshold with a threshold relating to the average number of credit balance recipients, because at large institutions, a five percent threshold, standing alone, would leave large numbers of title IV credit balance recipients without the protections of § 668.164(f)(4)(iv)–(vi) and (f)(4)(viii). We believe § 668.164(f)(4)(iv)–(vi) and (f)(4)(viii) should, at a minimum, apply to any institution at which credit balance recipients are numerous enough, standing alone, to significantly impact the commercial viability of entering into a T2 arrangement. Based on the data currently available to the Department, we have determined that a threshold of 500 credit balance recipients satisfies this test and have incorporated that figure as a separate threshold triggering applicability of § 668.164(f)(4)(iv)–(vi) and (f)(4)(viii). In establishing that threshold, we note that, in examining publicly available institutional and financial account provider data reflecting the institutions that have elected to enter into agreements with financial account providers, institutions with an average enrollment as low as approximately 2,000 students nevertheless had a sufficiently large student population to lead to formation of these agreements. Five hundred credit balance recipients would represent almost 25 percent of the students receiving T2 marketing materials at these institutions.[30] Furthermore, given evidence gathered by the GAO that the take-up rate for T2 accounts ranges between 20 and 80 percent,[31] a 500 credit balance recipient threshold would approximate, standing alone, a sufficient market to support a T2 arrangement experiencing a take-up rate at the lower end of this range in take-up rates. Accordingly, where on average at least 500 credit balance recipients are included in the school's enrollment, we see no justification for the institution failing to negotiate with their interests in mind and providing them with the protections described in the regulations. In addition, at the average level of 500 credit balances over three years, we believe a high-tuition institution has shown sufficient commitment to low-income students that it will not eliminate tuition discounts as a means of avoiding applicability of these rules.

In sum, we believe that requiring that an institution have credit balance recipients either comprising five percent of enrollment or totaling 500 students, averaged over three years, before § 668.164(f)(4)(iv)–(vi) and (f)(4)(viii) are triggered will exclude institutions at which credit balances are atypical and credit balance recipients are few, while maintaining a separate threshold to provide students the other benefits and protections afforded under T2 arrangements and in providing the Department and the public with information regarding the nature of these arrangements. We also note that these thresholds do not preclude schools from providing this information to the Department or negotiating their contracts in the best interests of students, and have added regulatory language reflecting this fact. Ultimately, we believe this will assist in future policymaking to ensure we are properly balancing the considerations discussed in the preceding paragraphs. We recognize that some institutions exempted by our thresholds will nonetheless provide all of the protections described in the final rule, and we are including a provision encouraging them to do so.

Changes: We have revised § 668.164(f)(2) to specify that an institution does not have to comply with the requirements described in § 668.164(d)(4)(i) or (f)(4) if it documents that no students received a credit balance in at least one of the three most recently completed award years, and that it does not have to comply with

[30] While there were few credit balance recipients at some of the smaller institutions in question, we have no evidence that a higher number of credit balance recipients would have adversely impacted the viability of the T2 arrangements. In fact, according to the GAO, some institutions make cards available only to students receiving balances. GAO report at 12. The Department's experience indicates that there may be a variety of factors that cause smaller institutions not to have credit balances.

[31] 80 FR at 28499.

the requirements described in § 668.164(f)(4)(iv)–(vi) and (f)(4)(viii) if it documents that the average number of students who received a title IV credit balance during the three most recent completed award years is less than five percent of the average number of students enrolled during those years, and the average number of credit balance recipients in the three most recently completed award years is also less than 500. We have defined enrollment for purposes of these thresholds as the number of students enrolled at an institution at any time during an award year. We have added § 668.164(f)(4)(xii), encouraging institutions falling below these thresholds to comply voluntarily with all the requirements of paragraph (f)(4).

Comments: We received a number of comments regarding the proposed definition of ''direct marketing,'' specifically as it relates to cobranded cards. Commenters argued that many cobranding agreements are not marketed to students, but instead offered by the financial account provider to the general public as part of ''affinity arrangements.'' As described by the commenters, under these arrangements cobranded card products are offered to any customer of a financial institution—the cobranded products are not marketed principally to title IV recipients, and the financial institution may have little or no on-campus presence or affiliation with an institution beyond the use of the institution's logo. The commenters stated that affinity arrangements required a contractual agreement with the institution (in order to use the institution's intellectual property) and that cobranded products under these arrangements are offered as a benefit to existing or prospective accountholders rather than used as a method to market accounts to title IV recipients, or to imply an institutional endorsement of the cobranded product. Some commenters recommended that we specifically exempt general affinity cobranding agreements if the cobranded access device is available universally to the public (not just enrolled or prospective students) and the institution does not communicate information about the account underlying the access device to students or parents or assist them in opening that account. Other commenters recommended that we ban cobranding on cards under T2 arrangements entirely. Some commenters requested that we provide further guidance specifying the meaning of cobranding under the regulations.

Some commenters also opposed categorizing student IDs with financial account access features as accounts that are directly marketed to students for purposes of § 668.164(f)(1). These commenters stated that the dual functionality provided by these products are a benefit to students and are not the types of products that students may confuse as a required prerequisite to enrollment or receipt of title IV funds.

Some commenters expressed concern that the definition of a ''T2 arrangement,'' especially with respect to direct marketing, was vague. These commenters argued that the regulations would introduce uncertainty as to whether certain products would constitute directly marketed accounts for purposes of § 668.164(f)(1). Another commenter requested that we specify that the examples cited in the preamble were illustrative, not comprehensive, and that other types of arrangements could also fall outside the definition of ''T2 arrangement'' under § 668.164(f)(1). Some commenters asked that we further define ''direct marketing.'' For example, one commenter asked whether a financial account provider that directly markets a product without assistance from the institution would be conducting direct marketing under § 668.164(f)(1).

Other commenters contended that the proposed regulations would discourage institutions from informing students about the types of accounts available for receiving their student aid funds, arguing, this would constitute direct marketing activity that would create a T2 arrangement. These commenters believed that institutions should be able to inform students and parents of all the options available for obtaining title IV credit balances.

Some commenters requested that we exempt general marketing, lease agreements, and other non-direct marketing activities from § 668.164(f). Commenters also requested that we incorporate the preamble discussion from the NPRM into § 668.164(f) and enumerate through regulation examples of practices to which § 668.164 does not apply.

Discussion: With respect to affinity agreements, we are persuaded that the proposed definition of cobranding under § 668.164(f)(3) may be too expansive because card products under these agreements are generally intended for banking consumers or other groups and not for students with the title IV credit balances.

Nevertheless, based on consumer reports, there are several instances of cobranding arrangements outside of the student ID context in which students are subject to the types of direct marketing specified under § 668.164(f) and therefore the risks we have described are still present. For this reason, although we are narrowing the types of cobranding arrangements that will constitute financial accounts that are directly marketed for purposes of § 668.164(f), we believe it is appropriate to include certain instances of cobranding. Based on program reviews, and as described in the comments, we believe the distinguishing characteristic between affinity agreements and those instances where students are the subject of direct marketing is whether the access device is principally marketed to students, rather than offered as a perquisite to the general public.

We believe that in the vast majority of cases this distinction will be plainly evident from the underlying contracts, based on the descriptions of how those contracts in public comments and the practices identified in consumer and government reports. In affinity agreements, the contract typically covers the use of the intellectual property, whereas in cases where there is a more comprehensive cobranding marketing contract, bonuses or incentive payments may compel an institution to take actions to sign up a certain number of accountholders. This likely explains some of the practices observed during program reviews such as the presence of the financial account provider at registration events or the institution's administrative offices. Therefore, we will limit the requirements relating to T2 arrangements to those cobranding arrangements where the access device is marketed principally to students at the institution. For institutions with affinity agreements, the widespread availability of a cobranded access device (as well as devices with cobranding of entities other than a single institution of higher education) to the general public and the language of the agreement itself will be strong evidence that the underlying agreement is not a T2 arrangement.

However, in order to ensure that institutions and financial account providers are not exploiting this safe harbor, an institution must retain the contract and document, if applicable, why the contract does not establish a T2 arrangement (*e.g.,* because of the widespread availability from the account provider of the institution's cobranded access device, and of access devices cobranded with a variety of entities rather than exclusively with the T2 postsecondary institution). This will enable the Department to determine during program reviews that institutions with T2 arrangements are not evading the disclosure requirements by falsely claiming that cobranded card products are marketed under an affinity agreement. We believe this is a balanced approach. Rather than banning the use of cobranding altogether in connection with accounts in which title IV credit balances are received or subjecting all cobranded accounts, including those available to the general public, to the requirements of § 668.164(f), it targets the protections to those instances of cobranding that occur in the context of the T2 arrangement and accordingly pose the danger of exposing title IV credit balance recipients to the problematic marketing practices identified in consumer and government reports.

We disagree with the commenters who suggested that student IDs should not be covered under the regulations. While we agree that student IDs with financial account functionality may represent a convenience for some students, that fact does not obviate the concerns regarding marketing and institutional endorsement identified in the NPRM, especially if the terms of the underlying account are not favorable to the student. We disagree with commenters who argued that students would not confuse such functionality with a requirement to use the account as a condition to enroll or receive aid. To the contrary, most student IDs are institutional requirements, provided by the institution itself, and certainly bear the branding of the institution. We believe that students could easily be led to believe that activating financial account functionality on such a student ID is tantamount to activating the student ID itself; and therefore, disclosure requirements for these accounts are necessary under these circumstances.

We disagree with the commenters who argued the definition of ''direct marketing'' is vague. In § 668.164(f)(3) we proposed a general set of actions and circumstances that would be considered direct marketing under the regulations. To ensure the regulations are understandable and because it would not be feasible to address every possible circumstance in detail, we decline to set out a list in the regulations of all specific actions and circumstances that may or may not constitute direct marketing. However, we agree with the commenters who noted that the examples provided in the preamble to the NPRM are illustrative of conduct that does not constitute direct marketing, rather than comprehensive, and decline to include those examples in the regulations. We believe those examples on their face fall outside the plain language of § 668.164(f)(3) and its description of ''direct marketing'' for the purposes of the T2 arrangement requirements. We believe that institutions and financial account providers considering whether their agreements fall under the definition of ''T2 arrangement'' can determine whether the institution itself communicates information directly to its students about the financial account and how it may be opened. If, for example, the institution publishes instructions for opening the account on its Web site, sends students links via text message to a Web page with promotional materials for the account, or sends a mailing to students with account information produced by the account provider, these practices are plainly direct marketing because the institution is directly conveying information about the account itself or how to open it. If, in contrast, the institution includes advertisements for the financial account provider (rather than the account itself) in a magazine or displays the financial account provider's logo in a dining hall or Web site, these practices would not fall under the ''direct marketing'' definition in the regulations and would be considered general marketing, as described in the NPRM. To the extent that a financial account provider markets a product to students without assistance from the institution (and if the product is not a cobranded access device or student ID), that is not direct marketing by the institution under the regulations for the preceding reasons.

We also disagree with commenters who argued that institutions would be discouraged from informing students about the types of accounts available for receiving their student aid funds because that would constitute direct marketing activity and would create a T2 arrangement. Institutions that sincerely believe that an account is a good deal for students can continue to provide information about that account absent a contractual agreement with the financial account provider. However, we believe that when an agreement is entered into, the institution has an obligation to promote the account, resulting in an intensity of effort more likely to prompt students to regard the account as a requirement for receipt of title IV aid.

We also disagree with the commenter who stated that a lease agreement would constitute a T2 arrangement. This is plainly not direct marketing under our definition and was highlighted in the NPRM as an example of general marketing that does not constitute direct marketing.

Changes: We have revised § 668.164(f)(3)(ii) to specify that a cobranded financial account or access device is marketed directly if it is marketed principally to enrolled students. We have also added § 668.164(f)(4)(xi) to provide that if an institution enters into an agreement for the cobranding of a financial account with the institution's name, logo, mascot or other affiliation but the account is not marketed principally to its enrolled students and is not otherwise marketed directly within the meaning of paragraph (f)(3), the institution must retain the cobranding contract and other documentation that the account is not marketed principally to its enrolled students, including documentation that the cobranded financial account or access device is offered generally to the public.

Comments: One commenter pointed out that institutions that did not have to comply with the T2 arrangements provisions under § 668.164(f)(1) because they did not have any title IV credit balance recipients in the preceding award year would still have to comply with the requirements of § 668.164(d)(4) to establish a student choice menu.

Although the commenter did not explicitly argue that this requirement was inappropriate, it appears that the commenter believed that the accounts offered pursuant to a T2 arrangement at an institution where there are no credit balances should not be subject to the student choice requirements.

We also received comments arguing that parents should not be included in the regulatory provisions under T2 arrangements because they are not typically the recipients of credit balances; and, even when they are, the credit balances are typically transferred to a preexisting account, rather than an account offered under a T2 arrangement.

One commenter noted that once a student is no longer enrolled at an institution and therefore will no longer be receiving a title IV credit balance disbursement, the regulatory requirements should no longer apply.

Discussion: We agree with the commenter who pointed out that under the proposed regulations, an institution would have to establish a student choice menu under § 668.164(d)(4)(i), even if no student received a title IV credit balance in the prior year. We have included a cross-reference to § 668.164(d)(4)(i) to address this issue.

We agree with the commenter who argued that parents should not be included in the provisions of § 668.164(f). We discuss our reasons for this change in greater detail in the student choice section of the preamble.

We also added a paragraph specifying that the requirements relating to T2 arrangements no longer apply when a student ceases enrollment at an institution. For a detailed discussion of this issue, please refer to the preamble discussion in the section on T1 arrangements, where we have added an equivalent provision.

Changes: We have removed the references to ''parent'' in § 668.164(f).

We have added paragraph § 668.164(f)(5) to specify that the requirements for T2 arrangements no longer apply when the student is no longer enrolled and there are no pending title IV disbursements at the institution. We have also specified that paragraph (f)(5) does not limit the institution's responsibility to report mean and median annual cost information with respect to students enrolled during the award year for which the institution is reporting. We have also specified that an institution may share information related to title IV recipients' enrollment status with the financial institution or entity that is party to the arrangement to carry out this paragraph.

Student Choice (§ 668.164(d)(4))

Comments: Under proposed § 668.164(d)(4), if an institution has a T1 or T2 arrangement under § 668.164(e) or (f) and plans to pay credit balances by EFT, it must establish a selection process under which a student or parent chooses an option to receive those payments. This selection process must present various options in a neutral manner. One commenter noted that it has been extensively documented by the Department's Inspector General, the GAO, the CFPB, the Federal Reserve, and independent research that institutions and banks engage in a variety of practices intended to steer students into accounts offered under T1 or T2 arrangements. This commenter stated that students have been forced into accounts by deceptive marketing practices that make it seem as if the sponsored account is the only feasible choice, and that the proposed regulations would correctly restore choice to the extent possible without a complete ban on revenue sharing or third-party servicing account offers. Another commenter echoed this sentiment, stating that the reforms proposed by the Department correct a history of deceptive practices and will help students shop for the best accounts that meet their financial needs. In addition, this commenter urged the Department to require schools to communicate with students about their disbursement choices early, before funds are ready to be disbursed, so that students who do not have bank accounts have the opportunity to open an account that works best for them. Students who have existing accounts (or open new ones) should be able to provide the bank account and routing numbers in advance so that funds can be directly deposited as soon as possible. Several commenters noted that the proposed regulations would provide relief for students who have often been compelled to sign up for an institutional-sponsored bank account by: Prohibiting deceitful tactics that enable financial institutions to mail an institutional-sponsored debit card to a student aid recipient before the student gets to campus; stopping the prioritization of financial aid deposits into institutional-sponsored accounts while delaying deposits into existing bank accounts; prohibiting the creation of non-essential barriers that make it more time-consuming for the student to choose his or her existing account over one sponsored by the institution; and requiring marketing material to be presented in a neutral way that enables the student to choose either his or her own account or the campus account without being coerced into choosing the campus account. A number of commenters voiced strong support for the concept of a neutral presentation of options within the school's selection process, with one commenter suggesting that language be added to prevent a school or financial account provider from undermining that neutrality by communicating with the student outside the selection process or telling the student that the institution endorses or otherwise recommends a certain provider or its products. Other commenters suggested that, notwithstanding the desire for an overall neutral presentation of options, the student's existing account should be the prominent first option.

Discussion: Section 668.164(d)(4) of the proposed regulations would require institutions that are making direct payments to students or parents by EFT and that have entered into a T1 or T2 arrangement under § 668.164(e) or (f) to establish a selection process under which students or parents choose how they will receive those payments. Under this selection process in the proposed regulations, the institution must (1) inform the students and parents that they are not required to use a financial account offered by any specific financial institution, (2) ensure that the various options in the selection process are presented in a clear, fact-based, and neutral manner, (3) ensure that initiating payments to the student's or parent's existing account is as timely and easy for the student or parent as initiating payments to any accounts offered in the selection process under T1 or T2 arrangements, and (4) allow the students or parents to change their choice about which account is to be used with written notice provided in a reasonable time. Further, in listing the options in this selection process under the proposed regulations, the institution (1) must prominently present the student's or parent's existing account as the first and default option, (2) must identify the major features and fees associated with any account offered under a T1 or T2 arrangement that the school lists in the selection process, and (3) may provide information about certain other accounts.

We generally agree with the commenters who stated that proposed § 668.164(d)(4) provides relief for students who have often been compelled to sign up for certain institutionally-sponsored accounts, and continue to believe that a number of choices for receiving credit balance payments should be available to students in certain circumstances, such as those associated with the required selection process described above. In particular, for reasons we discussed at length in the NPRM, we believe that the basic requirement that certain options be presented to students in a clear, fact-based, and neutral manner is very important.[32] However, presuming that most students with an existing bank account have already, to some degree, made their choice, we believe that the selection process should continue to prominently list the student's existing bank account as the first option. Certainly, it is possible that one or more of the remaining options offer the student a better deal than his or her existing account, and that the existing account may not have the same protections that are afforded to students under these regulations. However, the clear, fact-based information associated with the required presentation of the student's options will allow the student to compare and choose how to receive his or her title IV funds. In addition, the requirement that the student be allowed at any time to change his or her choice (as long as written notice of such a requested change is provided within a reasonable time) provides even greater assurance that the student has a real opportunity to receive title IV funds in an inexpensive and convenient manner that suits the student's needs.

We agree that it is important for the student to be given neutral information about account choices. However, we do

[32] 80 FR at 28501–28503.

not agree, as one commenter suggested, that there is a need to add language to the regulations that would prevent an institution or financial account provider from undermining that neutrality through communications with the student outside the selection process. Indeed, this outside direct marketing activity is what distinguishes many of the arrangements that are covered by the regulations. Nor do we believe that additional language is needed in the regulations to require institutions to communicate early with students about their disbursement choices. By requiring, in certain situations, that an institution establish a selection process for students to choose how to receive their credit balance payments, § 668.164(d)(4) already sufficiently contemplates that.

Changes: None.

Comments: One commenter stated that the student choice provisions strengthen the student's ability to deposit disbursements into an existing account, which is often the best option. The commenter further noted that ensuring that direct deposit remains a choice has been a consistent challenge in the face of attempts to mandate use of a specific product under contract. Another commenter suggested that we require the institution to make direct deposit to an existing account the most prominent and default option for receiving funds. However, several commenters objected to requiring institutions to list an existing account as the prominent first option, arguing that it may mislead individuals into thinking that it is the best option (which may not be the case). These commenters stated that existing accounts would not be subject to the same requirements as would accounts offered under T1 or T2 arrangements and, thus, students would not receive the benefit of the protections provided under the regulations related to those accounts. They also noted that it is problematic to make an existing account the default option if an election is not made as to how to receive the credit balance. Without existing account EFT information, an institution would have no way to disburse funds into the appropriate account. In the absence of an election, the sole way to comply with the 14-day credit balance regulation would be to issue a check (a far less efficient and manual process). The commenters contended that setting an existing account as the default option would imply the school's endorsement of the existing account (about which the school has no information). Institution would be steering recipients toward their existing accounts, with no way of knowing whether those accounts are the best option. Further, a number of commenters stated that making the existing account the default option goes against the Department's encouragement of a clear, fact-based, and neutral presentation of options. This, the commenters argued, could discourage students' review of other options that could be more affordable and more convenient for their needs. Other commenters noted that many students with existing accounts do not attend college in the same city where the existing account is located. They stated that participation in institutional-sponsored accounts ensures that those accounts are ones that provide ATMs on campus (whereas the existing account might not). Another commenter stated that experience has shown that many students prefer not to put their credit balance payments in their checking accounts in order to keep those funds separate from their other funds. Still another commenter stated that the majority of students at many colleges come to campus without a banking relationship, and that creating a default to an existing account will cause confusion among those students and result in their receipt of a check. This commenter noted that EFT is a more appropriate solution based on its security, convenience, and efficiency and that any action that will hinder this process should be reconsidered. One commenter contended that the vast majority of college students either already have bank accounts when they enroll, or would be able to easily obtain a bank account on the open market. This commenter stated that the neutrality provision of the proposed regulations encourages an open and free market, and that this competition will result in better and more innovative financial products and accounts for students that have low fees and meet their needs.

One commenter noted that, in its 2014 report, the GAO identified situations in which schools did not present disbursement options in a clear and neutral manner, and appeared to encourage students to select school-sponsored accounts. In some cases, choosing a different option—such as the student's existing bank account—required additional documentation that was time-consuming to locate, and often was not readily available online. This commenter noted that, when making a disbursement selection, a student is effectively at the point of sale and, therefore, most vulnerable to steering practices, and that the Department may want to further specify the order in which the disbursement options must be displayed. The commenter pointed out that, at the negotiated rulemaking session, some negotiators recommended a two-step approach whereby the disbursement selection screen would offer the direct deposit option in a prominent and central location, and then include links further down the page that students could click on if they did not have existing account information to provide.

Discussion: It was not our intent under the proposed regulation that a student's existing account be used for the receipt of credit balances in the event that a student makes no affirmative selection or does not provide his or her existing account information. Rather, our intent was that the existing account option would be preselected on the choice menu. This was proposed in response to concerns that institutional-sponsored accounts had been preselected in the past. However, the menu would allow students to change that account by selecting any other option (account). Certainly, the student must provide the necessary information associated with his or her account to enable the institution or third-party servicer to use it. If a student does not make an affirmative selection from the student choice menu, the institution will still have to comply with the appropriate 14-day time-frame in § 668.164(h)(2) and pay the student the full amount of the student's credit balance due by EFT, issuing a check, or dispensing cash with a receipt signed by the student.

However, based on the concerns expressed, we are eliminating the proposed requirement that the student's existing account must be pre-selected on the choice menu (*i.e.,* that it must be a ''default'' option). Instead, no option may be pre-selected, making the selection process more neutral in terms of how options are presented. We do not believe that it is necessary to further specify the order in which disbursement options are presented. Instead, we are convinced that the approach of establishing a clear, fact-based, and substantially equal presentation of options (with the student's existing account being prominently presented first) is sufficient to prevent institutions or others from unfairly steering students toward accounts that may not be in their best interest.

Changes: We have revised § 668.164(d)(4)(i)(B)(*1*) by removing the reference to ''default'' to indicate that the student's existing financial account must be prominently presented as the first option in the selection process without requiring that it be a default option. We have added § 668.164(d)(4)(i)(A)(*5*) to indicate that no option can be preselected in the student choice process. We have also added § 668.164(d)(4)(i)(A)(*6*) to specify that if a student does not make an affirmative selection from the student choice menu, the institution must still pay the full amount of the student's credit balance within the time-period specified in § 668.164(h)(2), using a method specified in § 668.164(d)(1), *i.e.,* by initiating an EFT to the student's financial account, issuing a check, or dispensing cash with a receipt signed by the student within the appropriate 14-day time-period.

Comments: One commenter indicated that an institution should not be forced to offer any sponsored accounts to students under a selection process, and another commenter argued that establishing a selection process places a burden on colleges that are trying to find ways to cut costs and operate more efficiently under budget limitations. This commenter questioned whether the college would have to act as a personal banker during the admissions process. The commenter also asked whether the college would have to compare account options and, in essence, become an extension of the financial (banking) industry, or whether communicating to students that they can use an existing account or utilize a sponsored account would be enough.

Discussion: We disagree with the commenter who stated that institutions should not have to include sponsored accounts in a selection process. And, we disagree with the commenter who stated that institutions should not have to establish a selection process. When an institution chooses to make direct payments to a student by EFT and has entered into an arrangement under § 668.164(e) or (f) (a T1 or T2 arrangement), the Department believes that it is imperative that students be given a choice as to where they will receive their title IV credit balances. As discussed elsewhere in this document, students have too often been forced to receive their credit balances in accounts that have proven to be too costly for them. Establishing a selection process under which the student is presented information about various options (financial accounts) and is able to choose one of them for receiving his or her title IV credit balance payments corrects many of the problems that students have encountered in the past. Institutions do not have to act as a personal banker under this requirement. However, in compliance with § 668.164(d)(4), if they have a T1 or T2 arrangement, they will have to describe the student's options, including listing and identifying the major features and commonly assessed fees associated with financial accounts described in § 668.164(e) or (f) (T1 or T2 arrangement accounts) that are options in the selection process.

Changes: None.

Comments: One commenter indicated that banks embrace informed choice as a vital consumer protection, and stated that it is critical for a student refund selection process to offer information about credit balance payment options in a clear, fact-based, and neutral manner. But, the commenter argued that, only if the credit balance payment process facilitates the opening of an account as an integrated step within the process, should the account be part of the selection process. Thus, the commenter stated that it is critically important to distinguish between accounts opened for receipt of title IV credit balances within the selection process, and ordinary bank accounts opened for general use—including accounts available for use with a validated access device that is also used for institutional purposes (such as a student ID), enabling the student to use the device to access a financial account (previously we had referred to this type of arrangement as an account linked to a card used for institutional purposes, but we have changed our terminology to better conform with banking regulations). This commenter contended that the proposed regulations would convert traditional, general-use, deposit accounts into accounts regulated by the Department, and that it would, therefore, obligate institutions with stand-alone campus card or cobranded debit card programs—T2 arrangements as described in § 668.164(f)—to list all such T2 accounts within the institution's credit balance payment selection process, even though the card programs operate completely independently from those arrangements. The commenter noted that, because some T2 arrangements allow a student ID card to become a validated access device, enabling the student to use the device to access a financial account, the proposed regulations could require schools to list terms and conditions for not just one account, but for a bank's entire selection of eligible consumer-deposit accounts. The commenter concluded that the appropriate focus for the proposed regulations should be on non-standard deposit accounts opened through the title IV credit balance payment process. Thus, the commenter argued that T2 accounts should be excluded from the scope of the student choice process.

Another commenter echoed this sentiment, stating that colleges and universities should not be required to bring T2 financial accounts into the selection process for title IV refunds. This commenter noted that at many schools T2 arrangements are completely independent of the credit balance payment process and are not explicitly offered as a choice at the time a student is asked to tell the school how he or she prefers to receive credit balance payments. The commenter noted that this is particularly true when the student financial accounts offered under a T2 arrangement take the form of a checking account. The commenter argued that the college typically has no role in the student's effort to open an account. With respect to the selection process, this commenter argued that students who have opted to open an account at a bank with a T2 arrangement should simply be viewed as having an existing account that they will designate for direct deposit of their credit balances. Along similar lines, another commenter urged the Department to amend proposed § 668.164(d)(4) to provide that an institution does not have to provide students with specific options for receiving title IV payments if it: (1) Requests that students or parents simply identify a deposit account to receive their funds when setting up credit balance payment plans, and (2) makes no specific recommendations on the deposit account to be used during the process of setting up those plans.

Discussion: We disagree with the argument that an account offered under a T2 arrangement should only be required to be part of the selection process if the account is opened for the purpose of receiving credit balance payments. T2 arrangements involve accounts that are opened under institutional contracts with financial entities (such as banks or credit unions) and that are offered and marketed directly to students. When a financial entity enters into a contract with an institution with 500 credit balance recipients or five percent or more of its enrollment comprised of credit balance recipients and, pursuant to that contract, it or the institution markets financial accounts directly to students, it is reasonable to conclude that the parties anticipate that some or all of the students opening the accounts will use them to receive title IV credit balances. This is true regardless of whether the contract or arrangement is agreed to independent of the credit balance payment process, and regardless of whether the institution makes any specific recommendations on the deposit account to be used when setting up credit balance payment plans. Thus, we believe it is reasonable to require that accounts offered under a T2 arrangement be a part of the selection process in all situations. By doing so, we are making it easier for students to make informed choices regarding where their credit balances are to be sent. Financial entities that have objected to having accounts offered under a T2 arrangement be part of the selection process have done so on grounds that institutions must list the major features and commonly assessed fees associated with such accounts and that these accounts may include a number of general use deposit accounts that happen to be campus card or cobranded debit card accounts. However, we are unpersuaded by these concerns. Both the financial entities offering these accounts and the institutions that have contracted with them are benefitting from the direct marketing of those accounts to students. These students, if they are receiving title IV student aid, should be afforded the benefits and protections associated with having these accounts be a part of the selection process for the payment of credit balances. As noted above, the parties to a T2 arrangement are free to develop a standalone account for purposes of the arrangement and avoid subjecting general use deposit accounts to these rules.

Changes: None.

Comments: One commenter suggested that an institution that enters into a contractual arrangement with a third party to provide deposit services or distribute title IV funds should be required to establish a review process or panel to ensure that certain benefits and protections are provided to its students. As envisioned by this commenter, this panel or process would:

(1) Ensure that bank account fees and ATM locations meet regulatory requirements;

(2) Guarantee that all bank accounts are insured ones and that any fees are charged and received by the insured (banking) institution;

(3) Decide the order in which the various options to receive credit balances are presented to the student, based on how well each account provides banking services, considering costs, convenience and other factors;

(4) Ensure that all student options are presented in a neutral manner;

(5) Ensure that student payments are made as expeditiously as possible;

(6) Share appropriate personal information in a timely manner so that each depository institution can meet its obligations to verify the student's identity and other information necessary to expedite the delivery of funds;

(7) Require third-party servicers who disburse or accept title IV funds to enter into non-disclosure agreements to protect student privacy and commit to not using the personal information for anything other than its intended purposes without the student's consent;

(8) Allow the depository institution to charge a reasonable fee for more than one overdraft a month; and

(9) Require that financial literacy education be provided to students as part of each bank offering.

Discussion: We disagree. Institutions are required to ensure that they comply with all aspects of the regulations and, in order to ensure that compliance, an institution could establish a panel or process, but it could also ensure compliance in other ways. The Department has also decided not to adopt some of the requirements that the commenter suggested with regard to a panel or process. For example, the final regulations do not require an institution to base the order in which student options are presented on how well each account provides banking services, considering costs, convenience, and other factors. We believe that the existing regulatory requirements that the student's options be presented in a clear, fact-based, and neutral manner are sufficient to ensure that necessary protections are provided to the student. Thus, after prominently listing the student's existing account as the first option, there is not any other mandatory order in which the options must be presented. And, while we agree that financial literacy education would benefit students, we believe that the required disclosures that institutions must make with regard to the major features and commonly assessed fees associated with accounts described in § 668.164(e) and (f)(T1 and T2 accounts) will provide students with sufficient information to make an informed choice. Many of the commenter's other suggestions that certain benefits and protections are provided to students—such as requiring institutions to present options in a neutral manner, ensure that student payments are made expeditiously, share only appropriate personal information, and not use such information for anything other than its intended purposes without the student's consent—are incorporated in various ways in other parts of the regulations and are discussed elsewhere in this preamble.

Changes: None.

Comments: One commenter noted that few institutions offer parents the option to receive credit balance payments for PLUS loans by EFT. This is generally because institutions do not maintain separate records for parents in their databases and are not inclined to gather and manage this additional information. Further, the commenter stated that it is rare for institutions to include financial accounts for parents within the scope of their agreements with servicers and financial institutions. Thus, this commenter argued that, even if the institution offers parents a choice of an EFT or check, it does not make sense to require the institution to provide information and disclosures to parents unless the institution also offers them an account under a T1 or T2 arrangement.

Discussion: We agree that it may not be necessary to require institutions to provide information and disclosures to parents in their credit balance selection process. Credit balance payments for PLUS loans to parents are often sent to the student's account (on whose behalf the parent borrowed the money), even though the parent can choose to have the money sent to himself or herself. And, even if the credit balance portion of the PLUS loan is sent to the parent, the parent generally has more experience with, and a better understanding of, banking account options, and is more likely to already have a bank account, than a student. Thus, we are changing the final regulations so that § 668.164(d)(4) addresses ''student'' choice, and not ''student or parent'' choice, in the institution's selection process for an EFT option for the receipt of title IV funds. Section 668.164(e) and (f) (T1 and T2 arrangements) will similarly be modified to clarify that they apply only to students. Thus, institutions may, but will not be required to, provide the parents of students with a choice of options as to how they will receive title IV funds, and they may, but will not be required to, have the accounts offered pursuant to their T1 and T2 arrangements to the parents of their students comply with the provisions of § 668.164(e) and (f) when those parents receive parent PLUS loan credit balance funds.

Changes: We have removed the references to ''parents'' in § 668.164(d)(4)(i). However, we retained the reference to ''parents'' in § 668.164(d)(4)(ii) to specify that an institution does not have to set up a student choice menu if it has no T1 or T2 arrangement but instead makes direct payments to a student's or parent's existing financial account, or issues a check or disburses cash to the student or parent.

Comments: Several commenters stated that there should be no delays in receiving funds via direct deposit to an existing account, *i.e.,* that it should be as fast as when funds are deposited into an institutional-sponsored account. On the other hand, numerous commenters noted that while institution can indeed initiate electronic payments in a timely manner without regard to which account the funds are being sent, as required under § 668.164(d)(4)(i)(A)(*3*) of the proposed regulations, they have no way to ensure that electronic payments made to existing accounts are received in as timely a manner as disbursements made to accounts offered under T1 or T2 arrangements. According to one commenter, after an institution initiates an EFT, it can take between two and four business days for the funds to be received at the financial account in question, depending on the receiving bank's policy. This commenter also pointed out that there are currently disbursement methods that provide students with access to their funds within 15 minutes when those funds are directed to a prepaid card.

Discussion: If the student chooses to use an existing account, there should be no delay in transmitting funds, *i.e.,* the deposit to an existing account should be initiated as quickly as it would be if funds were deposited into an institutional-sponsored account. The requirement that deposits be as timely regardless of which account a student chooses pertains to initiating electronic payments by the institution or its servicer, not the actual date when funds are received by the bank in question. The proposed regulation reflected this concept. The Department understands that once an electronic payment is initiated the institution does not have any control over the practices of the bank offering the student's existing account with respect to when that bank makes the funds in question available to the student.

Changes: None.

Comment: Another commenter raised a couple of technical concerns with proposed § 668.164(d)(4)(i)(A)(*3*), recommending that we replace the phrase ''initiating direct payments electronically to a financial account'' with the phrase ''initiating direct payment by EFT . . .,'' since the term EFT is used in other places in the regulations, and also pointed out that technically an EFT would not be made to an access device, but rather to the financial account underlying that device.

Discussion: The Department agrees to use the term ''EFT'' in place of the word ''electronically'' in § 668.164(d)(4)(i)(A)(*3*), and that we should eliminate the concept that payments can be made by EFT to an access device.

Changes: We have revised § 668.164(d)(4)(i)(A)(*3*) to indicate that initiating direct payments by EFT to a student's existing financial account must be as timely and no more onerous to the student as initiating direct payments by EFT to an account offered pursuant to a T1 or T2 arrangement. We have also revised § 668.164(d)(4)(i)(A)(*3*) by removing the reference to an ''access device'' to indicate that, even if an access device is used, the direct payment is made to the financial account that is associated with that access device, and not to the access device itself.

Comments: One commenter contended that the requirements related to student or parent choice with respect to a selection process for receiving credit balance funds are impractical for a foreign institution wishing to provide timely processing of student loan funds. According to the commenter, in many cases, it may not be possible to use the various alternative methods of processing payments anticipated by the proposed regulations. This commenter argued that if this provision is applied to foreign institutions, the result will be delays in processing payments, which not only can be inconvenient but can result in visa problems for the students, who often must be able to show that they have sufficient funds to support themselves before they are permitted to travel to the foreign institution. Thus, this commenter stated that the provisions of § 668.164(d)(4) should apply only to domestic institutions.

Discussion: We agree that the requirements related to student choice in a selection process for receiving credit balance funds may be impractical for many foreign educational institutions wishing to provide timely processing of student loan funds. We recognize that both the foreign educational institutions and the students attending them often face problems that domestic institutions and their students do not—including potential visa problems. Thus, we agree that the provisions of § 668.164(d)(4) should apply only to domestic institutions.

Changes: We have revised § 668.164(d)(4) to state that the student choice provisions apply only to institutions located in a State.

Comments: With respect to § 668.164(d)(4)(i)(A)(*4*) (the requirement that schools allow students the option to change their choices as to how the payment of credit balances are to be made, so long as they provide the school with written notice within a reasonable time), one commenter questioned what a reasonable time would be and encouraged the Department to offer some guidance in this area.

Discussion: The institution should accommodate a student's written request to change financial accounts or payment options as soon as administratively feasible. We recognize, however, that in cases where the institution or third-party servicer receives the student's request shortly after it has initiated an EFT or issued a check, there may be delays in honoring the student's request pending the disposition of the funds disbursed. In these cases, the institution may have a policy regarding how or whether it will reissue the check, initiate an EFT to the new account, or recover the funds disbursed. Consequently, we are not specifying a timeframe.

Changes: None.

Requirement To Include Checks as an Option for Receipt of Title IV Credit Balance Funds (§ 668.164(d)(4)(i)(B)(4))

Comments: A number of commenters stated that including checks as a disbursement choice is impractical, short sighted, and old fashioned. Others stated that checks are a costly and inefficient option that many institutions are trying to avoid as they will cause a delay in the receipt of funds by students. Several commenters noted that a large number of institutions offer only electronic disbursement options upfront for security and efficiency. One commenter specifically mentioned the time and expense required to issue checks and postage, to reissue lost checks, to complete stop payment processes, and complete escheatment processes for uncashed checks. Other commenters noted that some students have to take their checks to a check-cashing facility and pay significant fees, which undermines a goal of the regulations—to give students fee-free access to their funds. Some commenters also stated that fraud is more prevalent with checks, and several noted that checks are easily lost, misplaced, or stolen. Several commenters noted that the check option creates greater risk than other options, particularly with putting unbanked students in a position where they are carrying large amounts of cash. They argued that even if students have bank accounts and deposit their checks into those accounts, they will typically have their funds held for 3–5 business days, negating the intended benefit of the regulations to give students timely access to their financial aid funds. Another commenter stated that the Department's goal should be to enable students to have access to a cost-effective, low-risk, FDIC-insured account, so that they have an opportunity to manage their title IV funds wisely for the entire school year. This commenter argued that, with the fee restrictions proposed on accounts offered under T1 arrangements, there is no reason not to continue to pursue a goal of 100 percent electronic disbursement to an FDIC-insured account. Several commenters also mentioned that the requirement to offer a check option to students runs counter to the regulations encouraging electronic disbursement of refunds and certain Federal requirements for electronic disbursement of Federal benefits. The commenters noted that, according to the Treasury Department, direct deposit is safer, easier, faster, and more convenient than checks. One commenter argued that the use of prepaid cards in lieu of checks has enabled government agencies to outsource many of the administrative responsibilities associated with managing a payment program and, in the process, reduce costs. The commenter noted that prepaid cards also offer numerous advantages to students over checks, such as real-time access to funds, a means to participate in the modern economy, and access to the same consumer protections that apply to traditional debit cards. The commenter stated that requiring schools to specifically offer students the option of receiving their credit balances by check ignores this trend and that including this method of disbursement as a student choice would signal a backward movement in getting funds to students in a safe and efficient way. Reiterating that direct deposits are usually a better option than checks, several commenters suggested that the Department keep its current practice of allowing an institution to ''establish a policy requiring its students to provide bank account information or open an account at a bank of their choosing as long as this policy does not delay the disbursement of title IV, HEA program funds to students.''

On the other hand, several commenters supported the requirement that schools include checks as an option in their selection process for the receipt of credit balances. One commenter stated that, while most students today may opt for electronic receipt of their financial aid funds, some may find that a check better meets their needs. Further, some institutions 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. The commenter argued that, for these reasons, retaining the check option makes sense at least in the short term. The commenter suggested that the Department could consider a gradual phase-out of 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 institutions. Another commenter noted that, in fiscal year 2014, his school issued 18,999 refunds, totaling $23.9 million. Of those 18,999 refunds, 10,794 were checks and 8,205 were EFT direct deposit (*i.e*, 57 percent of students at this school chose the check option). Based on this, the commenter encouraged the Department to maintain the check option. The commenter further suggested that the Department should consider eliminating the cash option, as institutions of higher education should not be placed in the position of handling potentially millions of dollars in cash. Another commenter stated that offering a check as an option provides some benefit toward student choice. While acknowledging that a check may represent the least convenient option for students, and is potentially a more costly option for schools, this commenter suggested that the presence of a check option, which permits a student to fully ''opt out'' of the processes associated with EFT, may serve a purpose in providing an incentive for all parties to ensure that EFT methods work well, are convenient to access, and are priced appropriately.

Discussion: We invited comments in the NPRM as to whether the option to receive a check should be affirmatively offered to students through a school's selection process, and we received a number of comments on both sides of that issue. However, the majority of commenters believed that checks, in most circumstances, should be used only as a last resort. We agree that, in many circumstances, checks are a less efficient means of transferring money and understand the desire of many to move exclusively (to the extent possible) to electronic banking methods. We also find persuasive the fact that many government agencies are moving away from checks to electronic banking methods because direct deposit is safer, faster, easier, and more convenient, and the argument that the Department should not ignore this trend. While we understand that some students may prefer to receive a check, we do not believe that fact should dictate to an institution that it must write checks to anyone who wants one when the institution wishes to move forward to a more cost-effective and secure method of disbursing money to its students. This does not mean that the institution cannot choose to use checks in those situations where it finds doing so is to its benefit, just that it should not be forced to affirmatively offer a check option to its students. Similarly, with regard to institutions that find themselves in a position in which they cannot use electronic banking options, such institutions always have the option of choosing to use checks or including them in the student choice selection process. For similar reasons, we do not find persuasive the suggestion that the Department implement a gradual phase-out of paper checks over three to five years. If an institution wants to continue to use checks or include them in a student choice selection process, it may do so. With regard to the comment that acknowledges that checks are an inferior way of disbursing money in most instances, but that the check option should perhaps be preserved anyway to provide an incentive for all parties to ensure that EFT methods work well, are convenient to access, and are priced appropriately, we do not believe that that is the best way to achieve that goal. We believe that the regulations sufficiently address these goals and that any incremental value in keeping checks for this purpose is outweighed by the costs to institutions of requiring checks as a payment option.

The Department acknowledges that there are times when issuing a check will be necessary to pay a credit balance to a student. As is the case under the current regulations, when an institution wishes to pay a student with an EFT, but the student does not choose such an option, or otherwise fails to supply the institution with sufficient information in a timely manner to allow the institution to disburse the title IV credit balance in the desired fashion, the institution must still pay the student. The institution can then issue a check to that individual to fulfil the requirement. And we acknowledge that some institutions may choose to use checks exclusively or in limited circumstances. However, after considering the arguments made by the commenters, we agree that a check is not usually the best choice for the institution or the student and that the Department should not require it to be offered as an option to the student in the selection process. The institution should be left with the option here, and be able to choose to use checks exclusively or move its disbursement process towards electronic processes and only have to issue a check (or pay with cash) as a last resort.

Finally, with regard to the suggestion to eliminate the cash option, the Department believes that, while it is probably only rarely used, it may be a convenient way for an institution to pay a student in some circumstances and, therefore, is being retained. However, this option is not required to be listed in a school's selection process and, thus, is not one that a student can choose.

Changes: We have revised § 668.164(d)(4) by removing the requirement that an institution must include checks as an option in its selection process, and we are adding a requirement that indicates that the institution must be able to issue a check or disburse cash in a timely manner to a student in situations where the student does not provide the institution with the necessary information to receive a disbursement under one of the methods in the institution's selection process.

Ban on Sharing Student Information Prior to Account Selection (§ 668.164(e)(2)(i)(A) and (f)(4)(i)(A))

Comments: Several commenters expressed support for limiting the amount of personally identifiable information shared between schools and financial institutions or third-party servicers that offer financial products to students. However, other commenters expressed concerns that the Department's proposal, as written, would not allow institutions to share enough information with their servicers to prevent fraud and ensure accuracy. These commenters suggested that, at minimum, a servicer would need a student ID number to authenticate a student's identity. Commenters also suggested that a photograph, a unique identifier, the amount of the disbursement, the date of birth, and a ''shared secret'' would also be necessary to ensure the security of title IV funds.

One commenter stated that universities have the right to share information relating to their business practices with third-party servicers without requesting prior permission and that this provision could cause delays in transferring title IV funds to students. Another commenter stated that the allowable data that could be disclosed under the proposed regulations would be more limited than what educational institutions are permitted to disclose under the directory information exception to consent under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g(a)(5) and 34 CFR 99.31(a)(11) and 99.37.

Commenters also expressed concern that the proposed regulations could cause increased administrative burden for institutions. One commenter suggested that institutions would have to implement a roundabout process wherein institutions themselves would ask students if they wanted to open a financial account and then, only upon receiving consent to the opening of the account, share the information necessary to permit the third-party servicer to authenticate the student's identity or cut a disbursement check. That commenter noted that such a process would be impractical. Other commenters suggested that the proposed language would interfere with a student's ability to select another disbursement option such as a check or EFT to a preexisting account.

One commenter suggested that current regulations prevent student information from being used for purposes other than identification, and noted that other government programs use Social Security numbers or dates of birth for identification purposes. Another commenter recommended that the Department revise the regulations to clarify that third-party servicers are still able to obtain information required to perform general administrative purposes.

However, other commenters suggested that the proposed regulations did not go far enough. These commenters expressed concern that even the limited personal information that servicers and financial institutions can receive prior to a student giving consent allows account providers to market accounts to students and that the materials received by students under these circumstances imply a school's endorsement of those accounts. Commenters also suggested that we include a provision strictly limiting use of data shared with a third-party servicer to the processing of title IV disbursements, and prohibit institutions from disclosing this information to any other entity except for the purposes of fulfilling title IV duties.

Discussion: We generally agree with the commenters who stated that some additional information is necessary for third-party servicers to ensure that title IV funds are safely transferred to the students for whom they are intended. For example, we agree that sharing a student ID number (as long as it does not include the Social Security number of the student); the amount of the disbursement; and a password, PIN code, or other shared secret provided by the institution that is used to identify the student serves a legitimate authentication purpose. We also believe the regulations should provide for the sharing of any other data deemed necessary by the Secretary in a **Federal Register** notice, so as to ensure that the regulations can be kept up to date with technology and changes in best practices. As a result, we have added these items to the list of data an institution may share with an account provider under a T1 arrangement. We have also accommodated the need of servicers for additional information by making this information available upon selection by the student of the servicer's account in the student choice process. We note that this information sharing is unnecessary if the student opts to use an existing account, but if the student chooses the servicer's account, we regard that as tantamount to consent to sharing by the institution with the servicer of the information necessary to authenticate the student's identity for purposes of making the title IV payment. We did not wish to delay disbursement in the latter situation.

We disagree with the commenter who stated that universities have the right to share any information they choose with their business partners without prior consent. FERPA, 20 U.S.C. 1232g and 34 CFR part 99, contains broad limits on the right of educational institutions and agencies receiving funding under a program administered by the Department to disclose an eligible student's personally identifiable information from education records without the student's prior, written consent. Wholesale sharing of information, beyond the information needed to perform the servicing tasks, is not within the servicer's purview under title IV.

We also disagree that this regulatory provision, with the changes described above, will cause significant delays with regard to transferring title IV credit balances to students. An institution desiring to share additional information needed by the servicer only has to ensure that the student made a selection in the student choice process that triggers additional disclosure of personally identifiable information.

We agree with the commenter who stated that the provision, as proposed in the NPRM, would have been more restrictive than FERPA with respect to the disclosure of directory information. As a result, for accounts offered under T1 arrangements, we have clarified that an institution may share directory information, as defined in 34 CFR 99.3 and in conformity with the requirements of 34 CFR 99.31(a)(11) and 99.37, in addition to the student ID number; the amount of the disbursement; and a password, PIN code, or other shared secret provided by the institution that is used to identify the student prior to selection of the account in the student choice process. For accounts offered under T2 arrangements, we have clarified that an institution may share directory information, as defined in 34 CFR 99.3 and in conformity with the requirements of 34 CFR 99.31(a)(11) and 99.37—but nothing else—with the account provider prior to obtaining consent to open an account.

We acknowledge that the restrictions on information sharing may create additional administrative burden for institutions. However, we believe that the changes made to these provisions ensure that institutions that have T1 arrangements will not have to engage in the two-step process envisioned by these commenters to deliver a credit balance. We believe that the changes to the regulations ensure that institutions can continue to use third-party servicers to contact students, safely identify them, and guide them through the selection process. A student can then either choose an account offered under a T1 arrangement, prompting the sharing of additional information, or provide his or her banking information at the selection menu. For this reason, we do not believe these regulations will interfere with a student's ability to select his or her own, preexisting account.

In addition, we do not believe that the restrictions on information-sharing as they apply to accounts offered under T2 arrangements are problematic from a credit balance delivery perspective since account providers under T2 arrangements do not manage direct payments of title IV funds. Before the student has agreed to open the account, there is no need or justification for sharing the student's non-directory information with the account provider. We disagree with the commenter who suggested that current regulations have been sufficient to deter unwarranted sharing of personally identifiable information. Oversight reports [33] have shown otherwise. Moreover, while other government programs may use Social Security numbers or dates of birth for identification purposes, in light of the noted concerns about unwanted (and unnecessary) sharing of student personally identifiable information, we do not believe that there is any need for sharing personally identifiable information beyond that permitted by the regulations, as revised, prior to selection by the student of the servicer's account or consent from the student to the opening of an account offered under a T2 arrangement.

We disagree with the commenter who suggested that we clarify that third-party servicers are still able to obtain information required to perform general administrative purposes. We believe such a statement is too broad and would undermine our ability to ensure that student information is not used for purposes other than the delivery of title IV credit balances.

We agree with the commenters who suggested that the provision as drafted did not address the fact that shared information should only be used for legitimate title IV purposes and not the marketing of financial accounts. As a result, we have revised the section on T1 arrangements to state that institutions must ensure that information shared prior to student selection is used solely for activities that support making direct payments of title IV funds and cannot be shared with any other affiliate or entity. We have not made a similar change to the provisions governing accounts offered under T2 arrangements because those account providers do not process title IV funds. Furthermore, under the regulations account providers under T2 arrangements will not have any non-directory information to disclose prior to the student's consent to opening the account.

Changes: We have revised § 668.164(e)(2)(ii) to state that, under a T1 arrangement, the institution must ensure that any information shared as a result of the institution's arrangement with the third-party servicer before a student makes a selection of the financial account associated with the third-party servicer as described under paragraph (d)(4)(i) of the section does not include information about the student other than directory information under 34 CFR 99.3 and disclosed pursuant to 34 CFR 99.31(a)(11) and 99.37, beyond—

- A unique student identifier generated by the institution that does not include a Social Security number or date of birth, in whole or in part;
- The disbursement amount;
- A password, PIN code, or other shared secret provided by the institution that is used to identify the student; or
- Any additional items specified by the Secretary in a notice published in the **Federal Register**.

We have also revised § 668.164(e)(2)(ii) to provide that the institution must ensure that the information—

- Is used solely to support making direct payments of title IV, HEA program funds and not for any other purpose; and
- Is not shared with any other affiliate or entity for any other purpose.

We have also revised § 668.164(f)(4)(i)(A) to state that, under a T2 arrangement, the institution must ensure that the student's consent to open the financial account is obtained before 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.

Sending an Access Device Prior to Consent (§ 668.164(e)(2)(i) and (f)(4)(i)(B))

Sending an Access Device Not Used for Institutional Purposes

Comments: While many commenters expressed strong support for the provision preventing institutions from sending an access device to a student before receiving consent to open an account on the grounds that this procedure implies that the card is required to receive title IV funds, some commenters did object to the ban on sending access devices prior to receiving consent.

Several commenters who objected stated that this provision would slow the speed with which students are able to receive their title IV funds and that this provision would create more administrative burden for institutions, financial institutions, and third-party servicers in delivering credit balances to students. Other commenters also stated that this provision disproportionally disadvantaged unbanked students and students who do not currently have a preexisting bank account by delaying their access to title IV funds.

Several commenters contended that requiring institutions to obtain consent would greatly increase administrative burden. One commenter in particular noted that, while they supported the provision generally, the regulatory language suggests that a school must obtain the consent from a student to open an account, even if the student has already provided consent to the third-party servicer or a financial institution. This commenter suggested that requiring a school to obtain consent could confuse students. The commenter requested that we clarify that a third-party servicer or financial institution is able to obtain the consent necessary to receive an access device.

Finally, several commenters suggested that existing laws and regulations make

[33] OIG at 19.

this provision unnecessary, and that the existing requirement to disclose terms and conditions of an account prior to its opening provides sufficient consumer protections for students. Commenters also argued that strict requirements regarding financial accounts already exist and that it could be difficult for financial account providers to comply with new requirements.

Discussion: While we acknowledge that prohibiting an institution or third-party servicer from sending an access device to a student prior to the student's consent may in some cases cause delays in disbursing title IV funds, we do not feel those delays outweigh the concerns stated in the NPRM that the pre-mailing of an inactive access device implies that the associated account is required by the institution.[34]

We also acknowledge the commenter's concerns that this provision would disproportionally disadvantage students without existing bank accounts by delaying their access to title IV funds. However, we do not feel that this provision creates a significant disadvantage since students will still be able to obtain an access device after providing consent to open an account. Institutions may time their student choice process so as to accommodate these students.

With regard to the comment that the proposed regulations implied that the institution, not the third-party servicer or financial institution, would have to obtain consent to open a financial account before sending an access device, we note that this was not our intention. We have revised § 668.164(e)(2)(i)(A) and § 668.164(f)(4)(i)(B) of the final regulations to clarify that a third-party servicer or financial institution can obtain the consent before sending an access device. We believe this also addresses the commenters who raised concerns about administrative burden for institutions. However, we note that institutions are responsible for ensuring that a process is in place to obtain consent before an access device is sent.

We respectfully disagree with the commenters that argued that sufficient consumer protections already exist in current law or in other provisions of these regulations that render this provision unnecessary, especially in light of adoption rates ranging from 50 percent to over 80 percent at some institutions.[35] We also agree with the commenters that stated that this provision is necessary to dispel the implication that these cards are required for students to access their title IV funds.

Changes: We have condensed the two separate provisions regarding sending and validating an access device into a single provision. We also have revised § 668.164(e)(2)(i)(A) and (f)(4)(i)(B) to remove language specifying that it must be the institution that obtains the student's consent to opening the financial account before an access device may be sent to a student.

Sending an Access Device Also Used for Institutional Purposes

Comments: Many commenters expressed support for the provision that would ban the practice of allowing an access device used for institutional purposes to be validated to enable the student to access the financial account before the student consents to open the financial account. However, several commenters stated that this provision still does not go far enough, arguing that allowing access devices used for institutional purposes to be validated still suggests that such an account is a preferred option. Other commenters expressed concern that sending a cobranded student ID card that has this capability still allows a third-party servicer or financial institution to send access devices to students before they have consented to open an account. One commenter requested that the Department prohibit all cobranding of student ID cards.

Finally, one commenter suggested that, while they agree with the provision, third-party servicers and financial institutions should be allowed to collect the consent needed to validate an access device that is also used for institutional purposes, arguing that forcing the institution to do so creates unnecessary administrative burden.

Discussion: We acknowledge that allowing access devices used for institutional purposes to be validated, enabling the student to access a financial account, still implies that such an account is preferred or required. However, we do not feel that concerns over this implication outweigh the benefits a student might receive from such an arrangement and have chosen not to regulate this practice beyond what was proposed in the NPRM.

We also acknowledge that this provision may allow an institution and its third-party servicer or financial institution to send unsolicited access devices that also function as school ID cards before a student consents to open an account. One possible approach to this circumstance would be to prohibit an institution from sending a student ID with an inactive access device and effectively require institutions and their third-party servicer or financial account provider to send a second student ID with an activated access device only after the student consents. As we explained in the NPRM, we recognize the costs to institutions with mandating such a framework and therefore declined to require this two-step process in the regulations. Nevertheless, we note that financial institutions must still comply with consumer protection rules regarding unsolicited access device issuance (as set forth in Regulation E, 12 CFR 1005.5).

We disagree with the commenter who requested that we ban all cobranding on access devices used for institutional purposes. Our concern with respect to these arrangements is the effect of cobranding on a participating institution's discharge of its responsibilities for delivering title IV funds. The related requirements in the regulations are tailored to that purpose.

Finally, as with the provision requiring institutions to obtain consent to open an account before sending an access device, we have clarified that a third-party servicer or financial institution can collect the consent required prior to validating an access device that is also used for institutional purposes.

Changes: We have condensed the two separate provisions regarding sending and validating an access device used for institutional purposes into a single provision, and we have changed the language referencing ''linking'' an access device used for institutional purposes to ''validating'' in order to better conform with banking regulations and terminology. We also have revised § 668.164(e)(2)(i)(B) and (f)(4)(i)(C) to remove language specifying that it must be the institution that obtains the student's consent to open an account or validate an access device.

Disclosure of Account Information (§ 668.164(d)(4)(i)(B)(2))

Comments: Several commenters expressed concern that the disclosure requirements in § 668.164(d)(4)(i)(B)(*2*) could conflict with the disclosure forms the CFPB is developing. Commenters also noted that having duplicative disclosures could confuse students and significantly increase costs for account providers. Some of these commenters also requested that the Department specify that any disclosures required by the CFPB would satisfy the requirements under these regulations. One commenter contended that a

[34] 80 FR 28504.

[35] Consumer Financial Protection Bureau, Request for Information Regarding Financial Products to Students Enrolled in Institutions of Higher Education (Feb. 2013) (hereinafter referred to as ''CFPB RFI'').

standard disclosure would not capture the disparate needs of various institutions and the students they serve.

Some commenters also expressed concern over transparency, and other risks of duplicative or conflicting requirements. One commenter stated that standard banking disclosures are sufficient to inform students of the terms and conditions of an account and asked that we strike this requirement entirely. Another commenter stated that transparency was already in the best interests of the financial institutions as they compete for business. Another commenter contended that requiring disclosures for only accounts offered under T1 or T2 arrangements would not be helpful or transparent for students since they would not receive comparable information regarding check fees or preexisting financial accounts. Finally, one commenter suggested that requiring these disclosures may inadvertently compel institutions to market these accounts to students.

Commenters also stated that there may be insurmountable difficulties in delivering these disclosures in certain situations. For example, some commenters noted that, for a student opening a bank account at a financial institution prior to enrolling in an institution of higher education, it would be impossible to give that student the disclosure, as the financial institution would not know that the prospective accountholder was planning to become a student at an institution where a T1 or T2 arrangement exists.

Other commenters expressed concerns with the process of developing the disclosures. One commenter expressed disappointment that a prototype of the disclosures was not included in the NPRM. Other commenters opposed the creation of a disclosure form without notice and comment rulemaking. One commenter expressed concern that the NPRM did not elaborate on what would constitute a ''commonly-assessed fee'' and how we would determine which fees would be included in the disclosure. Another commenter asked that we create a consumer-friendly and consumer-tested format for these disclosures, and that the Department seek feedback from students, families, and other groups when developing the form in a process similar to the development of Truth in Lending Act disclosures for private student loans.

One commenter stated that the Department should ensure that there is adequate time for financial institutions to develop and begin delivering disclosures to students.

However, several commenters noted that they supported the idea of increased transparency for students and the creation of the new disclosures. One commenter in particular requested that the Department create a database containing all of the disclosures collected from financial institutions with T1 or T2 arrangements.

Finally, one commenter noted the importance of disclosing the manner in which a financial institution calculates overdrafts in the forms, including the order in which transactions are processed, the maximum number of overdrafts that can be charged in a day, any exceptions to the overdraft fee, sustained overdraft fees and the number of days before that fee is charged, and alternatives to overdraft fees.

Discussion: The Department appreciates the commenters' concern that having duplicative disclosures could be both confusing for students and expensive for financial account providers to develop. However, as explained in the NPRM, because the CFPB's disclosure forms have not yet been finalized and because, as proposed, they would apply only to certain kinds of accounts, we are unable to determine that those specific disclosures will be appropriate for all accounts offered under T1 and T2 arrangements.[36] These disclosures also would not necessarily be triggered by the student choice process established by these regulations. Nevertheless, we will continue to work with the CFPB as it finalizes its disclosure forms to ensure that our forms do not conflict with the CFPB's final disclosures and, to the maximum extent possible, we will work to ensure that the CFPB's disclosures and the disclosures required for accounts offered under T1 and T2 arrangements are as similar as possible to mitigate confusion and administrative burden.

We disagree with the commenter who stated that the disclosures would not be helpful because different institutions and different students have different needs, and we believe the nature of these disclosures will make it easier for students to determine whether the accounts meet their needs, since the information will be presented in a standardized way.

We continue to believe that clear, short-form disclosures are necessary for students to make informed choices regarding financial accounts opened for deposit of title IV funds. For the reasons expressed in the NPRM,[37] including concerns regarding the need for objective and neutral information laid out in numerous government and consumer reports,[38][39] we do not believe that current banking disclosures and free-market principles regarding transparency guarantee that title IV recipients are fully informed of the most relevant terms of their accounts or their rights and options when asked by or on behalf of their educational institution to select a financial account into which their title IV funds will be deposited.

We disagree with the commenter that stated that these disclosures would not be helpful to students since they do not receive comparable information for other account options. Because accounts are marketed specifically to students through T1 and T2 arrangements by institutions of higher education that participate in the title IV, HEA programs, we believe that a higher standard of disclosure is required to ensure that students are informed of the terms and conditions of the account before the account is opened, enabling them to make the choices best suited to maximizing the value of their title IV awards. We also disagree that objectively disclosing the terms of the accounts in the selection menu constitutes marketing by the school or the financial institution because the information is given as a standardized disclosure of consumer information and a student's own bank account is required to be the first, most prominent choice in the selection menu.

We thank and agree with the commenters who stated that it would be impossible for financial institutions to guarantee that students receive disclosures in cases where students open an account at a location outside the selection menu, such as at a bank branch. In response, we would like to note that these disclosures only have to be made in the selection menu in order for institutions to meet the requirements of § 668.164(d)(4)(i)(B)(*2*). In addition, the regulations impose no requirements in the student choice process as to disclosures with respect to pre-existing bank accounts.

We understand the concerns of the commenters who would have preferred for the forms to be published as part of the NPRM. However, because some of the accounts will be subject to CFPB disclosure requirements, we believe it is crucial to ensure that the student choice disclosures for those accounts dovetail with the CFPB's requirements once finalized to avoid confusion. When the Department's disclosures are developed, they will be published in the **Federal**

[36] 80 FR 28503.

[37] 80 FR 28503.

[38] USPIRG at 28.

[39] GAO at 35.

Register, and we will provide notice and an opportunity for comment at that time. This process will provide interested parties with the opportunity to comment to the Department and for the forms to ultimately reflect input received from both the CFPB and the Department. The Department's notice will also clarify which fees the Department considers to be ''commonly assessed.''

We agree with the concern that there may not be enough time for institutions to implement this requirement given that the disclosures have not yet been developed. For this reason, we have delayed implementation of this requirement to July 1, 2017.

We thank the commenter who suggested that we create a database of these disclosures. However, we believe that this is contrary to the purpose of the disclosures. The disclosures are meant to be given to students at the time they select an account for title IV purposes to ensure that they understand the features and fees associated with the account. We believe that creating such a database would not be consistent with this function and may in fact cause unnecessary confusion for students.

We thank the commenter who asked that we use consumer-testing and seek feedback from student and families. However, since we intend to work closely with the CFPB to mirror their consumer-tested forms and since we will subject the disclosures to publication in the **Federal Register** and notice and comment, we believe that additional formal consumer-testing is unnecessary in this case.

Finally, we thank the commenter who asked that we require institutions to disclose the manner in which overdrafts are calculated. We will take this feedback into account as we work to develop the disclosures.

Changes: We have revised § 668.164(d)(4)(i)(B)(*2*) to specify that institutions will not be required to list and identify the major features and commonly assessed fees associated with accounts offered under T1 and T2 arrangements until July 1, 2017.

General Comments on Fees (§ 668.164(e)(2)(iii)(B) and (f)(4)(ix))

Comments: There was strong support from several commenters for the fee limitations proposed in the NPRM. These commenters noted the importance of providing students protections sufficient to ensure they have reasonable opportunities to access their title IV aid without fees and are not charged unreasonable, onerous, or confusing fees. The commenters also agreed with the extensive documentation of unreasonable fee practices in consumer and government reports and discussed at length in the NPRM in support of these fee limitations.

Several other commenters opposed the proposed limitations on fees, arguing that student choice was a sufficient protection, and students affirmatively choosing to select a particular account will have a reasonable understanding of the fees associated with that account. These commenters also argued that the fee limitations would increase costs and burden on institutions and financial account providers because they would limit the costs that could be assessed to accountholders for the convenience of utilizing the accounts. Some commenters argued that limitations on fees would discourage responsible behavior on the part of accountholders—specifically, that learning to deal with account fees is part of becoming a responsible accountholder.

Some commenters also expressed support for the existing provision, maintained in the proposed regulations, that prohibits a fee for opening an account.

Commenters also submitted numerous additional recommendations specific to the individual fee provisions. We discuss those comments in subsequent sections of the preamble.

Discussion: We appreciate the support from numerous commenters for the proposed limitations on fees under § 668.164(e)(2)(iii)(B) and (f)(4)(ix). We agree with commenters that the specific fees prohibited are especially confusing, uncommon, or onerous, or otherwise have a high likelihood to deprive title IV recipients of an opportunity to reasonably access their student aid. We also thank commenters for supporting our decision to maintain the prohibition on a fee for opening an account.

We disagree with those commenters who argued that the fee limitations are unnecessary. We discussed in great detail our reasons for proposing to limit fees in the NPRM, and we believe the comments generally support those limitations.[40] We also believe the extensive documentation of troubling behavior by financial account providers in consumer and government reports reflects structural problems that prevent market mechanisms—disclosures and choice alone—from sufficiently protecting title IV recipients. We also disagree with commenters who argued that the fee limitations would lead to irresponsible accountholder behavior. On the contrary, government and consumer reports documented that the practices of account providers in the college banking market are troubling and not representative of the typical banking practices in the broader marketplace. These fee limitations are designed to eliminate the confusing, uncommon, and onerous fee practices of financial account providers that act in place of the institution and provide students with account options that allow them to access their title IV aid.

We agree with the commenters who argued that the proposed provisions will limit the ability of institutions and financial account providers to pass the costs of administering the title IV, HEA programs on to students. While we have allowed a reasonable fee structure to remain in place, an important impetus behind this rulemaking was a recognition that too many institutions were passing along the costs of administering financial aid programs to the aid recipients through these arrangements and generating artificial demand for otherwise uncompetitive financial accounts. This also resulted in the financial account providers profiting at students' and taxpayers' expense. In light of the fiduciary role of institutions as stewards of the title IV, HEA programs, we believe that this institutional cost shifting is an impermissible development and that students should not be in the position to pay significant, unavoidable, and misleading costs as a prerequisite to obtaining their Federal student aid.

Changes: None.

Prohibition on Charging an Account-Opening Fee (§ 668.164(e)(2)(iv)(B)(1) and (f)(4)(x))

Comments: Some commenters expressed concern over prohibiting a fee for account opening as it relates to student ID cards that serve both institutional and financial purposes. They suggested either altering or removing this provision, arguing that these multi-function cards primarily serve institutional purposes.

One commenter described student ID cards as primarily serving an institutional need and only including payment functionality as an ''incidental'' mechanism. The commenter expressed concern that under the account-opening fee provision, schools could not charge students to obtain these cards, resulting in a lack of funding for other programs. The commenter also expressed concern that this provision would prohibit charging a student for replacing an ID card.

[40] 80 FR 28505–28509.

Another commenter noted that a fee normally charged for opening a student ID card is allotted to a ''campus access control system,'' and eliminating the fee would result in less robust campus security.

Both commenters recommended that the Department exclude student ID cards from the provision prohibiting fees for account opening.

Discussion: We believe the concerns expressed by these commenters address an issue separate from the account-opening fee subject to these regulations. We understand that student IDs are by their nature primarily used for institutional purposes—whether for simple identification or to access student services, such as libraries, fitness facilities, and on-campus housing. However, the prohibition on fees charged for opening an account has been a longtime requirement under existing regulations.

Existing § 668.164(c)(3)(iv) requires that an institution ensure that the student does not incur any cost in opening the account or initially receiving any type of debit card, stored-value card, other type of [ATM] card, or similar transaction device that is used to access the funds in that account. We have retained this existing requirement in the final regulations—specifically, § 668.164(e)(2)(iv)(B)(*1*) and(f)(4)(x) require that an institution ''ensure students incur no cost for opening the account or initially receiving an access device.''

It appears that the commenters' concern derives from the use of the term ''access device.'' However, this term is distinguished in the regulations from ''a card or tool provided to the student for institutional purposes, such as a student ID card'' (see, *e.g.,* §§ 668.165(e)(2)(i)(C) and 668.164(f)(4)(i)(C)). To the extent that an institution recoups the costs of disseminating a student ID card to all its enrolled students through direct fees, tuition costs, or other measures, this is not prohibited under the regulations. However, we maintain in the regulations the prohibition on charging a fee when a student ID card is validated, enabling the student to use the device to access a financial account or when the underlying financial account is opened.

While we intended this distinction in the proposed regulations and we are making no substantive change to the proposed regulations, we recognize that additional clarifying language will ensure that students are not charged a fee to open an account into which title IV funds will be deposited.

Changes: We have revised § 668.164(e)(2)(iv)(B)(*1*) and (f)(4)(x) to clarify the prohibition of a fee for allowing a card or tool provided to the student for institutional purposes, such as a student ID card to be validated, enabling the student to use the device to access a financial account, in addition to the existing prohibition on opening the account or initially receiving an access device.

ATM Access (§ 668.164(e)(2)(iii)(A) and (f)(4)(v))

Comments: Several commenters praised the Department for proposing regulations that would provide for the availability of free access to ATMs. These commenters noted the problems cited in consumer and government reports demonstrating that in several instances students attempting to withdraw their title IV funds were faced with an insufficient number of ATMs, ATMs running out of cash, ATMs in locked buildings, and other factors forcing students to out-of-network ATMs where they incurred quickly mounting fees. These commenters encouraged the Department to maintain requirements ensuring ATM access to title IV recipients.

Some commenters expressed support for the Department's approach of providing more specificity for the term ''convenient access'' than exists under the current regulations, while still allowing sufficient flexibility to provide ATM access tailored to individual institutions. Other commenters requested that the Department provide additional detail, expressing concern that without explicit guidance, financial account providers would be reluctant to offer campus cards for fear of running afoul of the regulatory requirements.

Several commenters argued that the requirement for access to a national or regional ATM network was both unnecessary and economically infeasible. One commenter argued that the OIG report showed that ATM access at the reviewed institutions was not an issue and that students had sufficient access to funds. Other commenters stated that the ATM access requirements would prevent providers from offering cost-efficient services and the costs of providing a fee-free network would be passed on to students or result in financial firms exiting the campus financial products marketplace. Other commenters also contended that the ATM access requirements are unnecessary, arguing that cash is increasingly becoming an outmoded method of payment, especially among students.

Some commenters stated that the requirements for access to a national or regional ATM network should apply equally to T1 and T2 arrangements. One commenter also stated that solely applying the requirements to T1 arrangements demonstrated the Department's unjustified preference for preexisting accounts. Another commenter recommended that the requirements be applied to T2 arrangements to ensure that students have sufficient access to their student aid credit balances.

One commenter expressed concern regarding withdrawal limits and noted that for students with large credit balances, daily limitations on the amount of funds that can be withdrawn would effectively eliminate the convenient access requirements under the regulations. This commenter recommended that we provide a mechanism by which students have fee-free access to their title IV refunds throughout the payment period.

Several commenters expressed concern that the convenient access requirements would be difficult for campuses located in rural, less populated areas. These commenters argued that ATMs have relatively high maintenance costs (one commenter stated that these costs are $20,000 to $40,000 per year), making it economically infeasible to install an ATM at those locations. Most of these commenters suggested that the Department establish a safe harbor providing a minimum number of students before the ATM access requirements would apply at a location; however, no commenters provided a recommendation for such a numerical threshold or justification for a particular number of students. Another commenter suggested that the Department should, rather than quantifying a required threshold for ATM access, evaluate each school on an individual and ongoing basis to ensure that students had sufficient ATM access. Other commenters recommended that we simply remove the convenient-access requirement from the regulations.

Some commenters noted that ATM access provided to accountholders in the general financial products marketplace rarely includes international access to ATMs. These commenters recommended that the provision governing convenient access to ATMs apply only to domestic ATM access.

Some commenters also noted that certain ATMs provide functionality unrelated to more traditional banking services, such as purchasing postage or other services. These commenters recommended we limit fee-free access to the more traditional banking services.

Finally, some commenters stated that out-of-network ATM fees are instrumental in recovering the funds lost in allowing out-of-network activity. These commenters recommended that the Department not prohibit fees charged for out-of-network ATM access for students.

Discussion: We appreciate the support from numerous commenters for the Department's proposal to provide specificity to existing regulations requiring that title IV recipients have convenient access to ATMs. As we explained in detail in the NPRM, there have been numerous troubling instances of students without the access required under the regulations, especially among third-party servicers offering financial accounts. An example of this included a financial provider which is responsible for disbursing title IV funds at about 520 schools, but, with 700 ATMs in service,[41] the number of ATMs at a given location may be insufficient for students to have a reasonable opportunity to access their funds at the surcharge-free ATM. As we explained in the NPRM, in the worst cases, this can cause a ''run'' on surcharge-free ATMs, especially during periods when funds are generally disbursed to students, that can result in these ATMs running out of cash[42] or causing dozens of students to line up to withdraw their money.[43] This raises a number of concerns regarding student access to title IV funds, not the least of which is the numerous fees many students incur when they are forced to withdraw their funds from out-of-network ATMs, sometimes at $5 per withdrawal.[44]

We also appreciate commenters' recognition, discussed during the negotiated rulemaking, that the Department has provided more specificity to the meaning of ''convenient access,'' while still recognizing that different institutional profiles require that we provide flexibility for account providers to meet this requirement. While we appreciate the request from some commenters that we provide even more detail, we believe that, by setting a clear standard without specifying one particular method by which providers ensure there are sufficient funds available, we take a balanced approach that recognizes the challenges of serving a varied higher education market.

In general, we disagree with commenters who claim access to a regional or national ATM network is unnecessary and economically infeasible. As described by the GAO report, and not disputed during negotiations by those representing financial institutions and servicers, the common approach in the financial products market is to provide a network, either regional or national, of surcharge-free ATMs. Even third-party servicers who, for some product offerings, restrict surcharge-free access still provide broader network coverage for a flat monthly fee, indicating this requirement should be feasible for providers.[45] We believe that this practice is already employed in the market, demonstrating that such products are economically feasible, and will not force account providers to stop providing cost-efficient services, or opt out of the market entirely. For these reasons, we also agree generally with commenters arguing that the ATM requirements should apply to both T1 and T2 accounts.

As discussed in a prior section we have, however, limited the ATM requirements applicable to T2 arrangements at institutions where the incidence of credit balances is *de minimis* as measured against thresholds of five percent of enrollment or 500 students.

With respect to the commenter who expressed concern that students would not have sufficient access to their title IV aid due to withdrawal limits, we believe this concern, while well-intentioned, will have limited practical impact because of the other regulatory provisions. Most relevant are the changes we describe in the section discussing the NPRM's 30-day fee restriction (discussed subsequently), which we proposed in part to address the situation described by this commenter. We believe that by providing students a method to withdraw a portion or the entirety of their aid free of charge students will be ensured sufficient access to funds to cover educationally related expenses. We also believe that the requirement for neutral presentation of account information will allow students to make an account choice that further limits the negative circumstances the commenter describes. Similarly, we see no utility in regulating for a cash-free economy that does not yet exist, at a time when cash remains a convenient means of exchange readily accepted from and usable by all students.

We recognize the merit of commenters' concerns about providing ATM access to all institutional locations, especially those with few title IV recipients. While we do not agree with the cost estimates provided in the comments—especially for ATMs located in less populated areas[46]—we believe it is important to balance the cost and burden of providing ATMs against the real need for students to have convenient access to their student aid, which is an existing regulatory requirement. We agree that institutions and their partner financial account providers' responsibility for providing an ATM at an institutional location should depend on the title IV credit balance recipient population at a particular location. Because commenters did not provide any estimate of what such a limit should be or basis on which such a limit should be calculated, we believe it would be overly proscriptive to set a particular numerical threshold that may bear little resemblance to the varied needs of divergent institutional locations. Instead, we believe that the additional detail we included in the NPRM with respect to the meaning of ''convenient access'' provides sufficient specificity. By requiring that there are in-network ATMs sufficient in number and housed and serviced such that the funds are reasonably available to the accountholder, the students will have access to their funds while institutions will have flexibility in instances where few credit balance recipients are enrolled. For example, at a large campus with thousands of title IV recipients, it is likely that several ATMs would be required. In contrast, if an institution has a location with only a few credit balance recipients, or a location where students are only taking one class, an ATM that is part of a larger regional network at a store several blocks away may be sufficient. A location of an institution providing students with 100 percent of an educational program in a small town in a rural region would need to provide ATM access on campus if students would otherwise have no free access to their funds through an in-network ATM or branch office of the account provider located in the town.

We believe that § 668.164(e)(2)(viii) and (f)(4)(viii), which govern the best interests of accountholders, will enable institutions to ensure they are complying with this provision. If there continues to be ''runs'' on fee-free ATMs, or if students are forced to incur an abnormally high number of out-of-network ATM fees, or if the institution receives complaints about the number and location of its ATMs (all indicators that were cited in consumer and

[41] USPIRG at 16.

[42] Ibid. at 17.

[43] GAO at 22.

[44] USPIRG at 17.

[45] GAO at 22.

[46] The cost of providing such ATMs is discussed in further detail in the *Regulatory Impact Analysis* section of this preamble.

government reports), there would be good evidence that the institution is not complying with the fee-free convenient ATM access provisions of the regulations and would need to evaluate whether additional ATMs or different locations would be necessary.

It is also our expectation that, in practice, student access to a national or regional ATM network required under T1 arrangements will compensate for the absence of ATMs at very sparsely attended locations and will help bolster the number of fee-free ATMs at highly attended locations where market demand would be met by ATMs provided by a national or regional network. We believe that this approach will obviate the need for the Department to conduct ongoing monitoring of ATMs at each institution, which we think is unworkable. Instead, we think that periodic compliance reviews, in combination with access to fee-free ATM networks, will significantly improve student access to ATMs.

We also agree that fee-free international ATM access is not a common feature of the financial products marketplace, and we are accepting the commenters' suggestion that we limit this provision to domestic ATM access. In addition, we clarify that it was our intent to limit this provision to the basic banking functions of balance inquiries and cash withdrawals, and we did not intend to include more atypical or nonfinancial transactions.

Finally, we recognize that out-of-network ATM fees are both a common feature of the market and necessary in recovering the costs of providing access to such ATMs. While we never prohibited the owners of ATMs from assessing fees, we proposed to limit the imposition of an additional fee by the *student's* financial account provider for 30 days following each disbursement of title IV funds. However, due to changes we are making to that provision, which are discussed in detail in the section on the 30-day fee-free restriction, we are no longer limiting those fees.

Changes: We have revised § 668.164(e)(2)(iv)(A) and (e)(2)(iv)(B)(*3*) to specify that the institution must ensure that a student enrolled at an institution located in a State, has convenient access to the funds in the financial account through a surcharge-free national or regional ATM network that has 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 the student financial accounts. Similarly, for financial accounts under T2 arrangements, we have revised § 668.164(f)(4)(vi) to specify that an institution located in a State must ensure that students have access to title IV funds deposited into those 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 makes direct payments of those funds. Finally, we have revised both provisions to limit the fee-free access requirement to balance inquiries and cash withdrawals.

Prohibition on Point-of-Sale (POS) Fees (§ 668.164(e)(2)(iii)(B)(2))

Comments: There was universal support among commenters for prohibiting POS fees that accompany the debit and PIN transaction system for T1 arrangements. Commenters characterized these fees as unusual, expensive, and atypical of the financial products marketplace. Since POS fees are generally not part of regular banking practices, commenters argued that students do not realize that the fees exist when opening an account. Commenters contended that it is entirely appropriate for the Department to ensure a fee is not charged to title IV recipients when that fee is not generally assessed in the banking market.

Some commenters suggested broadening the provision to ban all fees that serve to steer accountholders to a particular type of payment network. One commenter also explained that evolving payment systems may lead to additional, unforeseen fees that should be covered in the POS fee provision. This commenter recommended that the Department prohibit ''any discriminatory cost . . . for the use of any particular electronic payment network or electronic payment type.''

One commenter noted that it is customary practice for banks to charge per-purchase transaction costs for international purchases and recommended that we limit the POS fee prohibition to transactions conducted domestically.

Discussion: We appreciate the support of commenters for this provision and the idea that students' title IV aid should be protected from fees that are difficult to understand or anticipate, and are unusual or present particular danger to student aid recipients.

As we stated in the NPRM, most campus cards are portrayed as debit cards (or having functionality more similar to a debit card than a credit card) and students are therefore likely to misunderstand that selecting a ''debit'' option is not required to complete a transaction, or that doing so would result in a fee.[47] [48] Because these POS fees can quickly add up, depriving students of the title IV funds to which they are entitled,[49] [50] and because these fees are atypical to the market,[51] we agree with commenters that it is especially troubling that these fees are charged to student aid recipients, many of whom may still be gaining a familiarity with banking products. Because of the practices employed by certain providers and identified in consumer and government reports, we continue to believe that a prohibition on this fee for T1 arrangements is appropriate.

While we appreciate the principle underlying commenters' recommendation to expand this prohibition, we continue to believe that doing so to include T2 arrangements is unwarranted at this time. For the reasons discussed at length in the NPRM and reiterated in the section discussing fees generally, we believe it is appropriate to apply the fee restrictions only to T1 arrangements. Because POS fees are not charged by traditional banking entities [52] we are not expanding this provision to T2 arrangements.

We acknowledge the commenter's interest in protecting students against unforeseen fees that may become established as technology progresses and other payment methods gain widespread use. Throughout the negotiated rulemaking process, we received a significant amount of feedback emphasizing that the financial products marketplace is changing and will continue to change rapidly. We have made a significant effort throughout this rulemaking process to protect student aid recipients and safeguard taxpayer dollars, while remaining mindful of possible unintended consequences, such as the restriction of technological progress. We believe we have struck a balance in the regulations that will allow students the opportunity to make an individualized choice of account option with sufficient protections, while giving account providers flexibility to develop new student-friendly payment methods.

The commenter's suggested language to prohibit all unanticipated fees is well intentioned, but we believe it is overly broad. We believe that it would be infeasible to determine the

[47] OIG at 13.

[48] GAO at 20.

[49] Ibid.

[50] CFPB RFI.

[51] GAO at 20.

[52] USPIRG at 27.

permissibility of a fee based on whether a cost is ''discriminatory.'' Instead, we have designed § 668.164(e)(2)(viii) and (f)(4)(vii) to accomplish the goals implicit in the commenter's suggestion. By requiring that institutions conduct reasonable due diligence reviews regarding the fees under the contract, we believe the regulations will help prevent fees similar to POS fees from being charged to students.

Finally, we agree with the commenter that international per-purchase transaction fees are a common characteristic of financial products, and it is reasonable for students to expect those fees. We are therefore altering the POS fee prohibition to reflect that it will apply only to domestic transactions.

Changes: We have revised § 668.164(e)(2)(iii)(B)(*2*) to specify that the institution must ensure that the student does not incur any cost assessed by the institution, third-party servicer, or third-party servicer's associated financial institution when the student conducts a POS transaction in a State.

Overdraft Fee Limitation/Conversion to Credit Instrument (§ 668.164(e)(2)(v)(B) and (f)(4)(vi))

Comments: Several commenters expressed support for the overdraft fee limitations, citing not only the supporting research we highlighted in the NPRM, but also additional support from government sources including the CFPB, as well as their own experiences with overdraft fees, particularly those imposed on students at their institutions. These commenters noted that students may be particularly vulnerable to overdraft fees because of their relative inexperience with banking products. They also noted that title IV recipients would be vulnerable to these fees, because many have relatively lower incomes. Commenters further stated that overdraft fees are of particular concern because overdrafts are more likely to occur without the knowledge of the student.

Multiple commenters stated that the overdraft fee limitation should extend to students with accounts offered under T2 arrangements as well, arguing that the dangers of overdraft fees for T1 arrangements are equally present in T2 arrangements.

In contrast, other commenters argued that overdrafts represent a benefit to accountholders. These commenters argued that overdrafts (and their associated fees) represent a protection, allowing recipients to utilize the overdraft feature in the case of an emergency, which would be impermissible with the overdraft fee limitation. These commenters also stated that the proposed fee limitation ignores current regulatory procedures (including Regulation E and Regulation DD) that require accountholders to opt-in to enable overdrafts and the related fees. These commenters argued that overdraft fees are common to the banking market and that it would be operationally difficult to apply a particular fee limitation to a subset of accountholders. For these reasons, these commenters recommended removing the limitation on overdraft fees in the regulations.

Some commenters suggested that the regulations specify that the overdraft fee limitation does not apply to bounced checks or Automated Clearinghouse (ACH) over-withdrawals. Another commenter asked for clarification on whether the provision only applies when the student is using a card or if it applies to any transaction that exceeds the balance of the financial account. Another commenter requested clarification as to whether schools would automatically violate the provision if a student with pre-approved overdraft services retains his or her account when enrolling.

That commenter also stated that the term ''credit card'' is not defined in the proposed regulations, and suggested that we clarify that the provision does not apply to financial institutions when they are marketing credit cards outside of a T1 or T2 arrangement. Finally, the commenter recommended that we clarify that the provision does not apply to linking an account to a credit card for the purpose of making credit card payments or covering insufficient funds when a credit card product is opened under a mechanism separate from the depository account.

We also received a limited number of comments from a financial account provider and its payment processer that currently offer a financial product that does not allow overdrafts or charge any related fees. These comments were more technical in nature and laid out a set of scenarios where the proposed regulations would create significant operational difficulties for the functioning of their voluntary prohibition on overdrafts. While the commenters' specific accounts prevent accountholders from exceeding the balance in their accounts, the commenters pointed out that there are circumstances where an overdraft of the account is unavoidable. The simplest iteration is force-post transactions (where a matching authorization is not received prior to the settlement of the transaction, often when a merchant authorizes a transaction but does not settle it with the issuer until a later date). An example of such a transaction would be if an accountholder has sufficient funds to charge a restaurant bill and the transaction is therefore approved, but the accountholder adds a tip after the transaction is approved that exceeds the remaining account balance; when the transaction processing is completed, the accountholder has a negative balance. The commenters stated that the financial account provider is unable to know of these circumstances at the point of the transaction is approved and thus cannot deny the initial transaction without overly onerous transaction-denial practices (*e.g.,* denying a charge on a card if the remaining balance after the charge would be less than $50).

These commenters identified three other types of situations where similar circumstances exist: Stand-in processing (where the amount charged cannot be determined due to a communication error between the account provider and the transaction processer but the parties have an agreement for a limited pre-approved charge amount); batch processing (when transactions are not approved in real time but are instead ''batched'' and approved in 24-hour increments or a similar time period); and offline authorizations (where a communication error occurs in the merchant's system, the merchant nevertheless accepts the charge but the payment cannot be reconciled by the issuer or account provider at the moment of the transaction, so the accountholder's balance will not accurately reflect the balance or prevent future overdrafts). In all of these cases, the commenter noted, the overdraft is inadvertent on the part both of the account holder and the account provider, and a product of the operational realities of the payment processing system common to financial accounts. For the commenters' customers, no fees are charged to the accountholder for these overdrafts.

The commenters noted that while we acknowledged these scenarios in the preamble to the NPRM, we did not create an exemption for these technical limitations. They encouraged the Department to create an exception for these limited, more technical overdrafts without changing the overall structure of the overdraft fee limitation, arguing that in the absence of such an exception they would not be able to offer accounts that already disallow overdrafts and related fees.

Discussion: We appreciate the commenters who supported our decision to propose an overdraft fee limitation in the NPRM. As we explained in detail in the NPRM, there are numerous reports that document the many dangers of overdraft fees, particularly to title IV recipients.[53] These fees can quickly add up with little notice to the accountholder, can exceed some students' total credit balance, and are easily misinterpreted as a benefit when in fact a transaction can easily be denied at no cost to either the accountholder or account provider. We believe these concerns are further supported by the successful implementation of accounts such as those described by commenters that generally do not allow accountholders to overdraft and thus prevent the student from incurring multiple fees that can potentially cost hundreds of dollars.

The facts supporting the overdraft fee limitation were not sufficiently rebutted by commenters who recommended that we eliminate the limitation. Contrary to commenters' arguments, we believe a financial institution that charges accountholders a fee that often far exceeds both the cost of the underlying transaction and the cost of providing the service itself is not providing a benefit, especially when the charge can be denied prior to a cost being incurred. The evidence that some account providers purposefully reorder transactions to maximize overdrafts fees helps persuade us that charging overdraft fees in general is simply a way to extract the maximum amount of fee revenue from accountholders, rather than serving as a benefit to accountholders.[54]

While we acknowledged in the NPRM that, under other Federal regulations, an opt-in is required before overdraft charges are assessed, the research we cited [55] demonstrating that individuals are easily misled into believing that overdraft ''protection'' actually prevents the account provider from charging overdrafts calls into serious question commenters' claim that we were disregarding the existing opt-in requirements as providing sufficient protection for title IV recipients. With respect to commenters' argument that overdraft fees are common in the banking market, given the general confusion about them, we think additional protection for title IV recipients is warranted in the interests of responsibly administering the title IV programs. Notwithstanding the prevalence of these charges, we detailed in the NPRM why overdraft charges are particularly dangerous for students and title IV credit balance recipients specifically.[56]

With respect to commenters that stated it would be operationally difficult to apply the overdraft fee limitation to a subset of accountholders, where an institution and a financial account provider choose to voluntarily enter into a contract that gives rise to a T1 arrangement but nevertheless regard this operational hurdle as impossible to overcome, we believe that one alternative would be to offer title IV recipients at the contracting institution a standalone bank account that complies with the requirements for T1 arrangements. For a further discussion of this issue, please refer to the discussion under the section discussion T1 arrangements generally.

However, we decline to expand the overdraft provision to T2 arrangements for the same reasons we are not expanding the other fee-related provisions applicable to T1 arrangements. As we discuss in more detail in the other relevant sections of this preamble, we believe that expanding the fee provisions as commenters suggested would collapse the distinction between T1 and T2 arrangements and would not properly reflect the respective levels of control over the disbursement process and risk presented by different types of arrangements.

With respect to commenters' questions regarding what types of practices are included in this overdraft limitation, the text of the regulations make clear that it is any transaction that causes the balance to be exceeded, whether completed at an ATM, online, or with a physical card or access device. However, it was not our intent to include bounced checks or inbound ACH debits (*i.e.,* those authorized to a merchant and merchant's financial institution) as a part of this limitation because the consumer's institution is unable to decline such transactions when these transactions are initiated. On the other hand, we do not find this same distinction in the case of outbound ACH payments (*i.e.,* bill payments in which the consumer provides authorization and instruction directly to his or her institution). In contrast to checks and inbound ACH, an account provider could deny an outbound ACH payment request before the transaction is submitted to the ACH network, regardless of whether the payment is a standalone request or recurring preauthorized payment.

We appreciate the detailed comments laying out the specific circumstances under which overdrafts are unavoidable as an operational matter even for products that do not allow accountholders to overdraft. We are persuaded that there are circumstances outside the control of both the accountholder and financial institution in which inadvertently authorized overdrafts can occur. We also understand that these circumstances are relatively limited in nature, are all characterized by the fact that the overdraft cannot be preempted, and do not prevent the financial account provider from preempting the more typical and more harmful overdrafts that occur when the transaction exceeds the account balance at the time of authorization. Most importantly, accountholders are not charged a fee for these transactions. In these instances, the accountholder would be informed that they have exceeded the balance on their account when the student checks their account balance, the financial institution notifies the student (such as through text message), or when a subsequent transaction is rejected, and would therefore be quickly informed that additional funds should be deposited on the account without incurring a fee. Permitting these inadvertently authorized overdrafts would also allow the account provider to continue offering its present services. We are persuaded that it is reasonable and practical to allow for a limited set of circumstances in which accounts may exceed the remaining balance, but do not result in fees imposed on students. We were initially concerned that negative balances arising from inadvertently authorized overdrafts would result in inquiries and negative ratings on accountholders' credit bureau reports. However, following conversations with the CFPB, we believe these concerns are not sufficient to disallow this practice. Based on these conversations, we believe that credit bureau reporting would be unlikely, both because financial account providers would be unlikely to report them, and because accountholders, in most cases, would be able to easily replenish the negative balances on their accounts. Even in the event of credit bureau reporting, the amounts in question are so small that it would be relatively easy to cure such a negative report.

For these reasons, we are establishing an exception for the overdraft limitation where, in the case of an inadvertently authorized overdraft (specifically, force-post transactions, stand-in processing, batch processing, and offline authorizations), it is permissible for an

[53] 80 FR 28508–28509.

[54] 80 FR at 28508.

[55] Ibid.

[56] Ibid.

account balance to be negative so long as the accountholder is not charged a fee for the inadvertently authorized overdraft.

For accounts that are offered under a T1 arrangement, such accounts would have to be in compliance with the overdraft provision on or before the effective date of the final regulations. We also note that accounts offered under T1 arrangements would have to comply with this provision regardless of whether the student has already elected to receive an account with overdraft services.

We believe the term ''credit card'' is sufficiently clear—the credit card prohibition has long been part of the cash management regulations and, to our knowledge, has not caused any confusion. For accounts that link a preexisting credit card or a credit card that is opened in a distinct process and that complies with existing credit card regulatory and statutory requirements, we do not believe that credit is being extended to the account offered under a T1 arrangement and therefore the overdraft limit is not at issue. In this circumstance, the credit is being offered under a distinct product and account that must comply with separate banking and credit card requirements.

Changes: We have revised § 668.164(e)(2)(v)(B) to allow for an inadvertently authorized overdraft where an accountholder has sufficient funds at the time of authorization but insufficient funds at the time of transaction processing, so long as no fee is charged to the student for the inadvertently authorized overdraft.

30-Day Free Access to Funds (§ 668.164(e)(2)(iii)(B)(4))

Comments: The overwhelming majority of commenters objected to this provision for several reasons. Many commenters noted its broad application, which would effectively prohibit fees assessed to students for banking transactions that are unusual or not typically provided free of charge. Such transactions identified by commenters included, among others, wire transfers, bounced checks, replacement cards, and international transactions. These commenters noted that this broad application would allow students to use their accounts in irresponsible ways, would force account providers to cover costs not typically provided for free to the general market, and would increase costs to an extent that account providers would exit the student market.

Several commenters argued that this provision would ultimately harm students. These commenters suggested that a 30-day window would provide strong incentives for students to spend their funds more quickly than they otherwise would, encouraging irresponsible spending at the expense of building good savings habits. These commenters also suggested that because such a provision is so at odds with normal banking practices, it would be counterproductive from a financial literacy standpoint because it would not paint a realistic picture of the banking options students will have upon graduation.

Many commenters presented operational concerns about the 30-day fee restriction, arguing that tracking separate, perhaps overlapping 30-day timeframes for multiple disbursements would be overly complex and expensive. These commenters noted that some disbursements to financial accounts contain title IV funds, but others do not, or may contain a combination of Federal funds, State funds, and private or institutional funds. The commenters asserted that the difficulty associated with separately identifying and tracking a 30-day period associated with only certain disbursements vastly outweighs the benefits provided to the student. Some commenters also noted that for institutions that offer FWS funds or make multiple disbursements within a payment period, additional disbursements may occur more frequently than every 30 days. They noted that for these institutions and their title IV recipients, such a circumstance would effectively create a perpetual fee prohibition. They noted that this may have the unintended consequence of discouraging institutions from experimenting with methods involving multiple, smaller disbursements.

Some commenters noted that the underlying purpose of this provision was to provide students a reasonable opportunity to access their title IV funds free of charge, and contended that by providing ATM access and banning POS fees and overdraft fees, the Department had already met that goal. These commenters also asserted that this provision in particular runs contrary to the Department's goal of allowing a reasonable fee structure to remain in place to support the continued viability of account offerings, as account providers generally incur some costs. A few commenters in particular recommended that as an alternative to the Department's proposal, students should have a method by which to access their funds without charge, and without regard to a time period.

One commenter suggested that we expand the time period for access to funds for the entire payment period, to ensure that the student is able to withdraw their funds without fees at any time. Another commenter suggested that 30 days is too long and that the time frame should be changed to 14 days. Some commenters argued that this prohibition is necessary to ensure students have fee-free access to their accounts when it is most likely that title IV funds will be present. Other commenters noted that this provision would be less beneficial to the student than intended, because it assumes that the student knows and is able to keep track of when the 30-day window begins and ends. These commenters stated that students may incur fees, believing they are still protected when in fact the relevant time period has elapsed.

Discussion: In our discussion of the 30-day fee restriction in the NPRM, we stated that ''[t]he proposed regulation barring servicers or their associated financial institutions from assessing a fee for 30 days following the receipt of title IV funds is also consistent with our objective of affording students a reasonable opportunity to access their full title IV credit balance.'' [57] We continue to believe that title IV recipients should have a reasonable opportunity to access their student aid funds without charge. This principle endures notwithstanding how common such a practice may be in the general banking market, because the HEA directs the Department to ensure that students are provided with the full amount of their Federal student aid. However, we are persuaded by the commenters' arguments that, for several reasons, the provision as proposed is too broad to achieve this objective.

Commenters correctly pointed out that, as proposed, the provision allows students to conduct unusual or ancillary transactions that would incur a fee under nearly all typical banking arrangements. Commenters are also correct that for some students and some institutions, multiple frequent disbursements would create a situation where an account provider is effectively prohibited from charging any fees at all. These outcomes are inconsistent with our intent. We acknowledged throughout the NPRM that we believe account providers delivering services beyond simple delivery of credit balances should be allowed to charge reasonable fees to provide student banking products.

We are also persuaded that the time-based structure of the proposed provision is impractical for operational reasons. We agree that tracking

[57] 80 FR 28509.

individual disbursements on an ongoing basis and logging multiple, perhaps overlapping time frames and matching such time periods with fee limitations would present an operational burden and costs in excess of the benefit it would provide to students. For these reasons and consistent with commenters' recommendations, we have decided to eliminate the 30-day time frame in this provision. We are also persuaded that the treatment should be adjusted in a way that does not preclude fee structures that are reasonable and that support continuing availability of accounts, without increased costs to students.

Nonetheless, we continue to agree with the commenters who recommended that we provide a mechanism by which title IV recipients can have reasonable, fee-free access to their student aid. As an alternative to our proposed provision, we are instead requiring that under a T1 arrangement, students must be provided with convenient withdrawals to access the title IV funds in their account, up to the remaining balance in their account, in part and in full, at any time without charge for the withdrawal.

From the student perspective, we believe this approach is an improvement. It maintains the overarching goal that aid recipients have fee-free access to withdraw their title IV funds, up to the remaining balance in the account. It relieves students and financial institutions of having to keep track of a 30-day period, limits confusion about why fees are charged at certain times but not others, and no longer forces students to spend or withdraw their funds more quickly than they might want or actually need to. It ensures that at any time, even more than 30 days following a disbursement, a student can still have full access to his or her funds, up to the remaining balance in the account, without a fee charged for the withdrawal.

From the perspective of financial account providers, we also believe this approach is an improvement. We believe it addresses all commenters' concerns, especially regarding the effective blanket prohibition on all fees and the operational burdens of having to track 30-day windows for multiple disbursements and determine whether such disbursements trigger the requirement. Instead, providers will have to determine at least one method by which the aid recipient may withdraw or use his or her title IV funds, up the remaining balance in his or her account, in whole or in part, without charge. For example, a more traditional bank may find it more feasible to allow fee-free withdrawals from a local branch location. Another provider may instead allow unlimited fee-free withdrawals from in-network ATMs without daily or monthly withdrawal limits. This also limits the burden on financial account providers of having to track the source of the funds deposited into the account and determine whether those funds stem from title IV aid programs or originate from another source. The basis of the limit will be the total title IV dollars deposited—*i.e.,* once a student has exhausted the amount of title IV funds in the account, the fee-free access requirement no longer exists. To the extent that financial account providers do not want or are unable to track the amount of each title IV deposit, they can continue to offer the withdrawal method(s) to accountholders. We believe that, in contrast to the proposed rule, continuing to offer the withdrawal method(s) represents a small marginal cost after establishing the withdrawal method(s) initially.

This approach will also address commenters' concerns (addressed in the section of the preamble discussing ATM access) that limits on ATM withdrawals will limit the effectiveness of that provision. This provision would require that the provider either eliminate such withdrawal limits or provide another convenient method for students to access their title IV funds.

Changes: We have revised § 668.164(e)(2)(v)(C) to specify that under a T1 arrangement, an institution, third-party servicer, or third-party servicer's associated financial institution must provide 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.

Disclosure of the Full Contract (§ 668.164(e)(2)(vi), (e)(2)(viii), (f)(4)(iii), and (f)(4)(v))

Comments: Many commenters supported the provision requiring institutions to post the full contract for T1 or T2 arrangements on their Web site, stating that the release of the contract would allow policymakers to analyze these agreements and help make sure that students are well-informed about their financial choices. One of these commenters also noted that this provision was likely to promote competition by encouraging new providers to enter the market.

However, some commenters raised concerns about the provision. Several commenters noted that the posting of a lengthy legal document would do little to inform students about the arrangement between an institution and a third-party servicer or financial institution. Another commenter suggested that students already have enough information to make an informed decision, rendering the disclosure of the contract and summary unnecessary. Some commenters suggested that, rather than posting the full contract, we should consider simply requiring institutions to post a statement informing the public that an arrangement exists between the institution and third-party servicer or financial institution. Another commenter suggested that we require disclosure of the contract data only and not the publication of the full contract. One commenter also expressed concerns that this requirement may be duplicative of some State laws.

Other commenters raised concerns about the effect the posting of the full contract may have on their business models. For example, some commenters argued that this requirement, even with the option to redact information regarding personal privacy, proprietary information technology, or the security of information technology or of physical facilities, would still require third-party servicers and financial institutions to disclose confidential business information that could damage competition in the marketplace. One commenter contended that the proposed allowable redactions did not allow third-party servicers or financial institutions to redact proprietary business information. Another commenter asserted that one unintended consequence of this could be that financial institutions would be less likely to enter into specialized deals with institutions. One commenter stated that the release of this information raises antitrust concerns that could conflict with the Federal Trade Commission's restrictions on price fixing.

Discussion: We thank the commenters that expressed support for this provision on the grounds that increased transparency will help ensure that students are protected from abusive practices in the future. We agree that posting the full contract to an institution's Web site is necessary to ensure that these agreements are more beneficial to students in the future and that this requirement is likely to increase competition in the marketplace.

We disagree with the commenters who stated that disclosure of the full contract would not help inform students about the terms and conditions of T1 and T2 arrangements. A common criticism of these agreements between institutions and financial institutions is the lack of transparency, and we believe that posting the full contract will allow all interested parties to review these agreements and ensure that the terms of T1 and T2 arrangements are fair for students.

We also disagree with the commenters who stated that a summary of the contract would be sufficient for consumer information purposes. The contract data, while helpful, will not allow interested parties to view the agreement as a whole and will not be available at all institutions with T2 agreements. We are also concerned that the required disclosures in the summary alone will not allow students, researchers, and policymakers to understand the entire scope of the agreement. A summary by its nature is selective, and we do not agree that it would enhance competition or work to prevent abuse to allow those parties broad discretion to decide which terms will be made public and which will not.

We disagree with the commenter who suggested that students already have enough information to make an informed decision. As stated elsewhere in this preamble, because these financial products are so specifically targeted to students, and because the title IV disbursement system creates unique consumer protection challenges, we believe that this additional disclosure, specific to the title IV context, is necessary.

While we recognize that certain institutions are subject to very strict State ''sunshine'' laws that similar to these requirements, we note that not all institutions are subject to those laws, and that even where they apply, the difficulty interested parties face in attempting to access these contracts varies by institution. For the sake of consistency, we believe it best to ensure that these disclosures are adopted uniformly across all institutions that receive title IV aid and have T1 or T2 arrangements with third-party servicers or financial institutions.

We disagree with the commenters who stated that disclosures of contracts with only specific information redacted would result in decreased competition. We continue to believe that disclosures of this type increase competition, and in the absence of very specific recommendations regarding other types of information that should be redacted from the contract posted to an institution's Web site, we have made no changes to the types of information that may be redacted from a contract.

We disagree with the commenter who suggested adding proprietary business information to the list of allowable redactions as we believe that the reference to ''proprietary information technology'' addresses this concern in part. In addition, we believe that ''proprietary business information'' is too broad a term and that, if added, it could undermine our efforts to ensure transparency of T1 and T2 arrangements.

While financial institutions may no longer enter into special or unique agreements with institutions, this is a decision that will lie with financial institutions. Financial institutions will have the option to decline to offer the same arrangement to every institution if they wish. However, we agree with the commenter who stated that posting these agreements may encourage new providers to enter the market. With more than one provider offering services to an institution, access to this information could allow new providers to offer more competitive deals to institutions.

We also disagree that the posting of contracts governing T1 and T2 arrangements could result in price fixing or antitrust concerns, especially since other Federal laws already require the disclosure of contracts for public review. For example, the Credit CARD Act of 2009 requires institutions to ''publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card.'' [58] We also continue to believe that posting these agreements increases competition in the marketplace.

Changes: In § 668.164 (f)(4)(iii), we have removed the phrase ''provide to the Secretary'' in order to clarify that institutions need only post the contracts to their Web sites and provide the URL to the Secretary for publication in the database. We have also clarified the regulatory language to state that institutions must comply with this requirement by September 1, 2016.

Disclosure of Contract Data (§ 668.164(e)(2)(v)(B)–(C) and (f)(4)(iii)(B)–(C))

Comments: Many commenters expressed support for the publication of contract data, stating that it would be easier for students to understand than the full contract document and would act as an important source of consumer information. In addition, other commenters asked that we include additional information, such as: The duration of the contract, any benefits that the institution might accrue under the contract, any minimum usage requirements, the number of students receiving a disbursement, the amount of disbursed funds issued, and the frequency of each method of disbursement delivery.

Many commenters expressed concerns about how institutions would calculate the data required in the disclosure. Specifically, commenters asked how institutions could calculate the number of accountholders and the mean and median of the actual costs incurred by those accountholders, especially in cases where a student opened a bank account before choosing to enroll in an institution. One commenter noted that universities do not typically track the costs of the accounts their students use. Other commenters stated that it would be difficult for financial institutions to know who is and is not a current student at an institution without a list of current students. These commenters also pointed out that this list would have to include personally identifiable information about those students in order to ensure that the calculations are accurate. Another commenter stated that tracking costs becomes even more difficult in cases where the accountholder has received a parent PLUS loan. One commenter also stated that calculating the mean and median costs would be impossible without defining which costs must be included in that calculation. Another commenter expressed concerns that inactive accounts or accounts that are used for short periods (such as a semester) could skew the data and that publishing fee information violates a student's privacy.

Other commenters expressed concerns that the statistics disclosed may not be helpful. Specifically, one commenter stated that information about whether or not a school receives remuneration under the contract would not be likely to impact a student's decision whether or not to open a financial account. That same commenter, along with others, stated that the size of the student population, the differing needs of students at different types of institutions, and the behavior of accountholders could result in higher or lower fees, rather than reflect the behavior of a financial institution. One commenter stated that because these data only contain information about one account, they lack context for students to be able to evaluate the information most effectively. Other commenters stated

[58] 15 U.S. Code section 1650(f).

that these requirements may result in account providers offering fewer services to students in order to keep costs low. One commenter asked that we exempt an institution from this requirement if it can prove that the institution receives no form of compensation under the contract. Another commenter stated that publishing fee schedules did enough to ensure transparency for students. One commenter also suggested that the Department create a disclosure template that would summarize important details of a contract for students.

Discussion: We thank the commenters who supported the release of contract data on the grounds that they would provide easily understandable information to students and families and appreciate the suggestions for additional data disclosure. However, we believe that the data we have identified would be the most useful information for students. We are also concerned that additional information may confuse students and families, diluting the effect of disclosing data at all.

We disagree with the commenter who asked us to remove these requirements because institutions do not typically track this information and who concluded that compliance with this provision would be too difficult. While we believe that the parties will be able to design their T1 or T2 arrangement to allow a third-party servicer or financial institution to perform this type of tracking, we have chosen to exempt institutions from this requirement in cases where on average less than 500 students and five percent of the total number of students enrolled at an institution with a T2 arrangement receive a credit balance for reasons discussed earlier in this preamble. In response the commenter who asked whether previously opened accounts should be counted, we note that accounts that are not opened under a T1 or T2 arrangement are not included in the contract data.

We acknowledge the concerns about how to calculate the number of accountholders and mean and median costs associated with accounts offered under T1 and qualifying T2 arrangements. However, in a T1 arrangement, the third-party servicer will know which accounts are opened under the student choice process and can communicate that information to the account provider (if the two are different entities), so that the account provider under a T1 arrangement will know which individuals and accounts to track for purposes of determining and disclosing this data. Institutions with a sufficient number of credit balance recipients and financial account providers entering into a T2 arrangement will need to include in their contracts a mechanism for meeting these requirements. For example, the terms of the contract may include requirements that the institution keep the account provider apprised of the names and addresses of its currently enrolled students, and the institution would include this sharing of directory information in the directory information policy it is required to publish under FERPA.

We agree, in part, with the commenters who stated that it would be impossible for financial institutions to know that an accountholder is a student at an institution without sharing student information. However, we disagree that the information would have to include personally identifiable information that is protected under FERPA. The final regulations do not preclude sharing of directory information, as well as, for accounts offered under T1 arrangements, the sharing of the specified information necessary to authenticate the of students. Additional information may be shared with these account providers following the student's selection of the account in the student choice process, wherein an institution will know the students who chose to open an account offered under a T1 arrangement. In the case of T2 arrangements, the institution may periodically provide to its partner financial institutions a list of currently enrolled students that includes directory information. We believe that student directory information will provide a financial institution with enough information to calculate contract data for enrolled students.

We agree with the commenter who noted that tracking parent PLUS loans that are deposited into parent accounts would be particularly difficult. In response to these concerns, we have removed the references to parents in § 668.164(e)(2)(vii)(C) and (f)(4)(iv)(C).

We disagree with the commenter who stated that tracking the costs incurred under accounts offered under T1 or T2 arrangements will be impossible without a list of costs to be included. Because of the changing nature of the marketplace, we believe that it is best for all fees incurred by accountholders to be included in the contract data. While some accountholders may incur unusually high fees, this should be offset by a higher number of more moderate users; there is no basis for presuming this factor will unfairly affect one provider's accounts more than another. We also believe that if there are a high number of students incurring large amounts of fees and charges, it may be indicative of a larger issue at the institution that should be disclosed.

We agree with the commenter who stated that inactive accounts or accounts open for a short time could skew the mean and median fees incurred. However, we believe that the changes to § 668.164(e)(3) and (f)(5) stating that the requirements of this section, including the reporting requirements, cease to apply when the accountholder is no longer a student addresses the issue of inactive accounts.

We do not agree that data from accounts opened for a short time are necessarily less relevant consumer information than those from accounts opened for a longer time period. For example, arrangements for some schools may serve otherwise unbanked students who attend an institution for a short period of time and then withdraw, closing their accounts in the process. It may be useful for such students to have data from students like them incorporated into the consumer information. There is no reason to regard that group of students as uniquely atypical.

We agree with the commenter who stated that the publication of fee information in the form of contract data raises privacy concerns. In the final regulations, we require that an average of at least 500 title IV credit balance recipients or five percent of the total number of students enrolled at an institution with a T2 arrangement have to receive a credit balance during the three most recently completed award years for these requirements to apply. However, we acknowledge that disclosing annual cost information could present privacy and data validity issues in cases where a small number of students enrolled at an institution during an award year open an account offered under a T1 or qualifying T2 arrangement. In these cases, the privacy of those students may be compromised because it may be possible to discern their identity or establish a picture of students' (or groups of students, such as low-income students) account behavior, especially if the mean and median fee figures were sufficiently divergent (suggesting a small number of students may be accruing particularly high levels of fees). In such cases, the validity of the data would also be at issue, given the small sample size.

In the unlikely event that a small number of students open an account at an institution with a T1 or qualifying T2 arrangement, we exempt institutions from disclosing contract data in cases where fewer than 30 students have the account in question. We have chosen an *n*-size of 30 to address privacy and data validity concerns consistent with other instances of a minimum *n*-size being used to ensure both the protection of students' privacy and the validity of the data presented, such as the calculation of cohort default rates. We do not believe that, with these changes, aggregated data present a threat to student privacy or data validity.

We disagree with the commenter who opined that it is not useful to consumers to know whether or not the school receives remuneration under the contract. We believe that the knowing whether or not a school receives payment from a partnership with an account provider may well impact a student's decision to open a particular account. We believe this transparency will also dissuade institutions from using T1 and T2 arrangements to profit at students' expense and shift the cost of disbursement of title IV funds to students. We note that consumer advocates and Federal negotiators emphasized the importance of these data,[59] and commenters further stressed the need for this information in absence of a ban on the practice of revenue-sharing.

While we do agree with the commenter that students at different institutions may exhibit differing financial habits, resulting in higher fees, we also believe that the fees that students are charged to access their money reflect how well a third-party servicer or financial institution serves the student population, and how well an institution has analyzed students' best interests in entering into the arrangement. As a result, we feel that these disclosures are necessary for students and institutions to make financial choices that are consistent with the goals of the title IV programs. In addition, we believe that most interested parties will be able to take into account characteristics of the student body that may impact the data, such as socio-economic status or student background. For example, a community college researching these agreements will most likely look at data pertaining to other community colleges.

We disagree with the commenter who contended that because the contract data only cover accounts offered under T1 and T2 arrangements, and not the other types of accounts a student may choose, the contract data will not be helpful consumer information. As we have stated elsewhere in this preamble, we believe that the preferential status that a third-party servicer or financial institution receives from a T1 or T2 arrangement necessitates a higher standard of disclosure.

While it is possible that these requirements could result in account providers offering fewer services to students in order to keep costs low, we do not believe that that this outcome negates the benefits of these disclosures. We continue to believe that these requirements will result in students choosing better accounts and accordingly being able to access more of their title IV funds.

We disagree with the commenter who suggested that institutions that do not receive direct compensation as a result of their arrangements with third-party servicers and financial institutions should be exempt from these requirements. Because the benefits an institution receives are not always in the form of direct payments, and because a school-sponsored account may be less than favorable to students even if the institution does not profit from it, it is important to ensure that all forms of remuneration and the effects of these arrangements on students are disclosed.

We disagree with the commenter who stated that disclosing the fee schedules is enough to inform students of account terms and conditions. We continue to believe that disclosing the nature of the relationship between an institution and third-party servicer or financial institution is essential to ensure that students are both well-informed and not subject to abusive practices. We also continue to concur with the OIG on the point that institutions should be required ''to compute the average cost incurred by students who establish an account with the servicer and at least annually disclose this fee information to students'' [60] and have kept the informative data points that we proposed in the NPRM.[61]

We agree that it is necessary for the Department to create a disclosure template for the contract data, and we will release that format at a later date. Standardizing the format of the contract data will not only improve the consistency and clarity of the disclosures, as suggested by commenters, but it will also enable third parties to more easily perform analyses on contract data. Specifically, standardizing the format will allow the contract data to be presented in a way that can be read by software and aggregated more quickly.

Finally, while we feel that the contract data provide essential consumer information, we understand that it will take institutions and their third-party servicers or financial institutions time to implement these requirements, and we have chosen to delay implementation of this requirement until September 1, 2017.

Changes: We have revised § 668.164(e)(2)(vii) and (f)(4)(iv) to state that this requirement will not go into effect until September 1, 2017. However, we note that institutions will still be expected to post the full contract to their Web sites by September 1, 2016, the effective date for the rest of the provisions of the regulations.

We have also changed these provisions to state that the contract data must be disclosed in a format established by the Secretary; and that this requirement will not apply at institutions with T2 arrangements where there are fewer than 500 title IV credit balance recipients and less than five percent of the total number of students enrolled at an institution receive a credit balance. In cases where fewer than 30 students have the account in question, an institution with either a T1 or T2 arrangement will be exempt from this requirement.

We have also added § 668.164(e)(3) and (f)(5), which state that the requirements of this section, including reporting requirements, no longer apply when the accountholder is no longer a student.

We have also clarified the regulatory language to state that institutions must comply with this requirement by September 1, 2017.

Finally, we have removed ''and parents'' from § 668.164(e)(2)(vii)(C) and (f)(4)(iv)(C).

Submission of the URL for the Contract and Summary to a Centralized Database (§ 668.164(e)(2)(viii) and (f)(4)(iii) and (v))

Comments: Some commenters expressed concerns about posting contract data in an online database, stating that the information contains confidential or proprietary information. However, many commenters expressed support for maintaining a database of contract internet addresses for the sake of transparency. One commenter suggested that account providers should be required to send contract information to the database within 30 days of the regulations becoming effective and that the contracts should also be cross-posted to institutional Web sites. However, another commenter pointed out that the CFPB recently delayed implementation on requiring financial institutions to submit credit card agreements to a centralized database due to the administrative burden involved.

[59] 80 FR 28510.

[60] OIG at 15.

[61] 80 FR 28510.

Discussion: We disagree with the commenter who stated that a centralized database of URLs of contracts and their data could compromise confidential and proprietary information for reasons explained in the *Disclosure of the Full Contract* section of this preamble.

We thank the commenters that expressed support for the database. While we do not yet have a target date for the creation of the database, we will require institutions to post to their institutional Web sites the full contracts by September 1, 2016 and the contract data by September 1, 2017. Soon after the system is created, we will require institutions to send us the URL for the contract and the contract data, and we will make this information available to the public.

Changes: We have added the phrase ''accessible to the public'' to § 668.164(e)(2)(viii) and (f)(4)(v) to clarify that the information in the database will be publically available. We have also changed the regulatory language to clarify that institutions with T2 arrangements where there are, on average, fewer than 500 title IV credit balance recipients, and less than five percent of the total number of students enrolled at an institution receive a credit balance will not be required to post account holder cost data, though they will still be required to post their full contracts and provide to the Department the URL where those contracts are posted. Similarly, an institution with either a T1 or T2 arrangement where fewer than 30 students have the account in question will be also not be required to post account holder cost data.

Best Financial Interests of Account Holders (§ 668.164(e)(2)(viii) and (f)(4)(vii))

Comments: Commenters universally supported the principle that student accountholder interests should be paramount under T1 and T2 arrangements, but there was disagreement about how to achieve this goal.

Several commenters strongly supported the proposal that accounts offered under T1 or T2 arrangements not be inconsistent with the students' best financial interests. These commenters argued that it was a key mechanism to ensure that institutions place the interests of their students first; one commenter stated that this provision was the single most important regulatory change proposed in the NPRM. Some commenters supported this provision because, they argued, additional types of fees may be introduced in the future and this provision would continue to proactively provide student protections for fees or practices that are presently unknowable.

However, many of these same commenters argued that the language proposed in the NPRM represents a weakened standard relative to the drafts discussed during negotiated rulemaking because those proposals included references to nonmonetary metrics such as customer service and because the language required that the terms offered to students be equal or superior to those offered in the general market, not simply that the terms not be worse than those offered in the general market; the commenters recommended incorporating these characteristics into the final regulation. Some commenters suggested that we expand this provision to account for considerations beyond financial ones—for example, customer service and account features. Other commenters recommended that the provision should require that contracts are established with the best interests of students as the primary consideration, not simply that the contract is not inconsistent with the best interests of students. These commenters argued that absent such a change, an institution could still select a proposal if it provided the most revenue to the institution, even if another proposal offered better rates for students. Other commenters argued that T1 and T2 arrangements should be held to a higher standard than prevailing market rates.

Many commenters asserted that the proposed provisions were unnecessary, excessively vague, and did not provide objective standards against which account terms would be compared. These commenters argued that prevailing market rates varied in different parts of the country and for different institutions. Commenters also noted that the uncommon and unreasonable fees we highlighted in the NPRM were already prohibited and therefore additional protections were unworkable and unnecessary. Commenters also argued that termination on the basis of accountholder complaints was a vague standard—they questioned whether an official complaint process would be necessary or whether institutions would be permitted to discount frivolous complaints. One commenter recommended that we require a formal mechanism for collecting and reporting complaints. Another commenter recommended that we limit this provision to ''valid'' complaints. Commenters expressed concern that the lack of an objective standard for contract termination would allow institutions to terminate contracts for inconsequential reasons and, therefore, induce financial account providers to exit the college card market. Some of these commenters argued that the best interest provision be retained for contract formation but recommended we remove the remainder of the provision specifying how an institution would determine that students' best interests were not being met. Others strongly supported the continued inclusion of termination clauses to allow sufficient flexibility to address student complaints. One commenter noted that many institutions already include such clauses in their contracts with financial institutions.

Another frequent comment regarding vagueness concerned the requirement that ''periodic'' institutional due diligence reviews be conducted. Commenters pointed out that fees were unlikely to change repeatedly or frequently and that the term periodic did not give institutions sufficient guidance regarding the timeframes of such reviews. Some commenters recommended that we specify a number of years for this period, and several noted that either two or three years would be a reasonable standard.

Some commenters argued that institutions and financial account providers do not have the information or expertise necessary to determine whether the fees charged to accountholders are not excessive in light of prevailing market rates. These commenters argued that this puts a burden on institutions to evaluate a complex banking market to determine what types of fees are reasonable. One commenter argued that this provision would require schools act as de facto financial regulators.

A commenter that served on the negotiated rulemaking committee as representative of financial institutions argued that this provision would not present an excessive burden because in many cases the financial account provider would assist the institution in securing the information necessary to enable the due diligence reviews. The commenter further noted that financial account providers produce extensive fee-related (and other) information as part of requests for proposals and institutions would therefore have extensive information about the rates and fees charged in the market. The commenter also noted the financial industry's expectation that the CFPB will release a scorecard that will further support this information gathering function.

Other commenters argued that institutions are not in a position to objectively review the contracts to which they are a party. These commenters noted that because institutions are receiving payment as a part of these contracts, the regulations should instead require that a neutral third party should review the contract to determine whether it is in the best financial interests of students.

One commenter suggested that rather than requiring annual reporting, we require institutions demonstrate at the time the contract is established, and upon its renewal, that students are being charged reasonable fees and that the institutions disclose the payment amount they are receiving for the contract.

Discussion: We appreciate the comments we received in support of this provision and agree that it is a vital element to ensure not only that students will receive sufficient protections to access their title IV aid at the time the regulations are published, but that the regulations continue to be effective in the future.

We agree with commenters who noted that this provision is necessary to provide protections to title IV recipients in instances where their institutions enter into arrangements with financial account providers to offer accounts to those aid recipients. As we explained in the NPRM, we believe that the many examples cited by government and consumer reports demonstrated that institutions were frequently entering into arrangements where the interests of their students were not a consideration. Instead, title IV recipients were often subject to substandard account offerings so that institutions could save on the costs of administering the title IV, HEA programs or receive large lump-sum payments in consideration for the group of new customers offered to the financial account provider. These recipients were often unable to access their title IV funds without incurring onerous or uncommon account fees, had difficulty having their funds deposited into a preexisting account, or were not fully informed of the terms of the account the institution was promoting. For institutions that have a fiduciary duty to ensure the integrity of the student aid programs, we believe this outcome is unacceptable. This provision, along with the other regulatory changes we are making, will mitigate such practices.

Equally important, however, is the point made by several commenters that this provision will provide student protections into the future. As was repeatedly noted during the negotiated rulemaking process, the financial products marketplace is a rapidly changing sector. In promulgating regulations that cover institutions choosing to enter into arrangements with financial account providers, we are aware that parts of these regulations could be rendered obsolete by virtue of these changes. For this reason rather than trying to predict future developments, we identified the most problematic practices identified by consumer groups and government entities. For future practices, which are difficult if not impossible to predict, this provision will provide assurance that institutions are still entering into and evaluating agreements with the best interests of their student accountholders.

We disagree with commenters who argued that the provision as proposed represented a weaker standard than what was proposed at the close of negotiated rulemaking because it omitted from consideration nonfinancial factors such as customer service and account features. On the contrary, we believe that this change strengthens the rule. By narrowing the scope of what is actively considered to be an objective metric, we believe it will be more difficult to circumvent these requirements using difficult to measure alternatives as justification for charging students higher account fees. However, we agree that the proposed standard of ''not excessive'' in light of prevailing market rates is too weak. Instead, we agree that such fees should be ''consistent with or below'' market rates—that is, roughly in line with rates charged in the general marketplace or below such rates.

Furthermore, we believe that the fees charged in the general market, for the most part, represent a level of revenue that can support the offering of such products while providing a product that the public is willing to purchase. While some institutions may be able to negotiate better terms for their students—and the regulations permit them to do so—we decline to force institutions to secure such terms when it may not be within their power to do so. Some institutional characteristics may drive certain financial account providers to offer below-market rates to serve a loss-leader function and secure a lucrative future customer cohort, but we believe that not all institutions will be able to accomplish such terms. By setting a minimum permissible threshold for arrangements impacting title IV recipients and taxpayer funds under the regulations, we believe we have provided protections that represent a significant improvement over current practices at many institutions, where market pressures are not brought to bear because students often believe they have no alternative method for receiving title IV funds. If we amended the regulations to go beyond such protections, we are concerned that we would simply drive good actors from the market and deprive many students of account options.

We disagree with commenters who argued that this provision must require that the best interests of students be the ''primary'' consideration in formalizing the arrangement. By enumerating a set of objective, measurable metrics by which the institution has to ensure that the best interests of students are being met, we believe the commenters' arguments will be addressed. Put simply, if the institution's sole consideration in entering into an arrangement is the fee revenue that will be generated by the contract, and such an arrangement results in fees that are not at or below market rates or that results in numerous student complaints, the institution will be in violation of this provision of the regulations. We believe this has the benefit of clarity for institutions and protections for title IV recipients.

We disagree with commenters that the other fee limitations for T1 arrangements render this provision redundant. Not only does the provision help protect students against similarly onerous, confusing, or usual fees that financial account providers could develop at some future point, it also protects students from being charged overly onerous and excessive fees that are not expressly prohibited under the regulations (*e.g.,* a $100 monthly fee, which is plainly excessive, and an account feature clearly not in the best interests of students, in light of prevailing market rates).

We also disagree with commenters who argued that the proposed standards are impracticable as a general matter. While commenters are correct to note that often prices and practices can vary from market to market, such differences are usually marginal. In contrast, the various consumer groups, government agencies, and numerous lawsuits were able to clearly delineate the types of practices and fees that were outside the mainstream of typical account providers. The regulations do not require institutions to conduct a market-by-market comparison of all the various fees that are charged. Rather, institutions are required to recognize, based on student complaints and the general practices of the market at large, whether the account provider is charging fees of a type or in an amount that is consistent with or lower than rates charged in the general market. As commenters noted, this responsibility will be aided significantly by the financial institutions through the proposals they submit and by the upcoming release of the CFPB scorecard. While it was not explicitly mentioned by commenters, we also believe that the full contract disclosure and contract data, including mean and median annual costs to accountholders, will similarly aid in this function. As we noted in the preamble to the NPRM, when an institution discovered that the fees that were being charged to students exceeded prevailing market rates, it was able to successfully negotiate that provision out of its existing contract. As noted in a prior section, we have made the ''best interest'' provisions binding on institutions that have made T2 arrangements only if there are on average 500 or more credit balance recipients or credit balance recipients on average comprise five percent or more of total enrollment.

We also disagree with commenters that argued institutions do not have the expertise to make the best interest and market rate determinations. Institutions enter into many contracts as a part of their operations. We trust that institutions that choose to voluntarily enter into these contracts have the expertise necessary to understand and evaluate the associated costs and benefits.

We also believe that institutions with sufficient knowledge to contract with financial account providers for accounts to be offered to their title IV recipients have the ability to reasonably discern which complaints have merit and which are frivolous. The volume, nature, and severity of these complaints should inform institutions of whether renegotiation or termination of the contract is warranted under this provision. We also believe several avenues already exist to handle student complaints to their institutions and regulating a separate process would be duplicative. Again, we point to the example laid out in the preamble to the NPRM demonstrating that student complaints led to awareness at an institutional level that certain fees were excessive, and the institution was able to successfully renegotiate the contract to benefit of students. We reject the notion that an institution's contractual right to cancel a marketing arrangement for accounts that generate undue student complaints will dissuade responsible financial institutions from entering into the arrangement.

We are persuaded that the requirement to conduct ''periodic'' reviews would benefit from additional specificity. While we used this term in our proposed rule to provide flexibility to institutions, the comments we received convinced us that institutions would prefer a concrete timeframe. For that reason, and because we agree with commenters who argued that fees are unlikely to change on an annual basis, we are accepted in the recommendation of several commenters to specify that due diligence reviews must occur at least every two years.

We disagree with the commenter who suggested that we only require review of the contract at the time of contractual formation and upon its renewal. For contracts that are several years in length, this would not provide sufficient protection to title IV recipients in the event that fee structures change significantly or in situations where many student complaints have been received.

Finally, we do not believe that independent oversight of each contract at its formation is either necessary or practicable. We trust that institutions will comply with the new regulations and ensure that the contracts in question are made with the best financial interests of accountholders in mind. In addition, as a reminder, the contracts that are governed by this provision will be posted on institutions' Web sites and will be available publicly in a Department database. To the extent that our program reviews find that the fees being charged to students are not consistent with or are higher than market rates or that institutions are not responsive to complaints, institutions will be subject to the enforcement actions associated with regulatory noncompliance.

Changes: We have revised § 668.164(e)(2)(viii) and (f)(4)(vii) to specify that due diligence reviews must be conducted at least every two years, rather than ''periodically,'' and that institutions conducting the reviews must consider whether fees imposed under the arrangement are, as a whole, consistent with or below prevailing market rates.

Miscellaneous Comments on Financial Account Provisions

Comments: Several commenters asked the Department to restrict other common practices. For example, multiple commenters asked the Department to ban ''binding arbitration'' provisions on the grounds that they limit student access to the judicial system. Several commenters also asked that the Department ban revenue sharing, arguing that this practice presents a conflict of interest for institutions. One commenter requested that the Department ban T1 and T2 arrangements entirely.

A number of commenters focused on the role of students in the financial aid disbursement process. Some commenters stated that students should be required to undergo more financial literacy education so they can better understand their options regarding financial accounts, and another stated that many students come to campus with little financial experience. One commenter noted that financial account providers often provide financial literacy training. One commenter noted that students often demand quick access to their title IV funds. Other commenters stated that some students may not have access to bank accounts due to minimum balance requirements, and that third-party servicers alleviate this concern. One commenter noted that because they offer their products to all students regardless of past banking behavior, they take on a higher risk than other financial institutions.

Another commenter noted that these accounts exist to provide access to banking services to students, not to attract title IV funds. One commenter stated that the creation of a disbursement selection process and the fee restrictions for in-network ATMs, opening accounts, and point-of-sale fees alone would provide enough protection for students.

One commenter stated that no student or parent should be charged a fee for the processing or delivery of title IV credit balances. Another suggested that the Department mandate a specific financial institution review process.

Finally, one commenter asked that foreign institutions be completely exempt from the proposed regulations on the grounds that many foreign institutions have a small number of Americans in their student body and that overly proscriptive regulations could limit access to programs overseas.

Discussion: We are not addressing the issues of binding arbitration, revenue-sharing, or outright banning T1 and T2 arrangements in this rulemaking. We declined to add these issues to the agenda during negotiated rulemaking, because we concluded these topics would be best addressed in another context. Accordingly, we believe it is inappropriate to take up these issues at this stage in the rulemaking.

While we agree with the commenters who stressed the importance of financial literacy education, this topic is outside the scope of this rulemaking effort. We note that nothing in the regulations limits the ability of institutions to offer financial counseling to students.

We also believe that, as one commenter stated, because some new students have little financial experience, clear disclosures are all the more important to help them avoid unnecessary charges. While students may demand quick access to their funds, that does not negate the role that institutions must play in ensuring that students receive their money safely and are not coerced into any particular option. To the commenter who noted that some students do not have access to banks because of minimum balance requirements, we note that the regulations do not ban T1 and T2 arrangements, and the range of financial options for students without access to the banking system should remain unchanged by these regulations.

We acknowledge that third-party servicers often take on more risk because they do not prescreen their customers. However, our regulations do not ban all fees outright, but rather limit abusive practices, certain fees that can cost students access to excessive amounts of their title IV dollars, and, indirectly, certain cost shifting.

To the commenter who stated that these accounts do not exist to attract title IV funds, we disagree that these accounts can be fairly characterized as existing primarily to provide students with banking services generally, based on the proliferation of the accounts subject to these regulations among institutions having the highest percentage of credit balance recipients. Even if this were not the case, the fact is that these accounts *do* attract title IV funds as a result of their close affiliation with institutions. As stated in the NPRM, ''for many card providers, adoption rates were close to 50 percent of students; some providers' rates exceeded 80 percent.'' [62] As a result, we believe that Departmental intervention is required to protect both students and their title IV funds from excessive charges. We also believe that, while the fee restrictions and establishment of a disbursement selection process are important, the required fee disclosures, posting of contracts and summaries, and provisions regarding the best interests of the students are equally important consumer protections for the reasons described in the NPRM and in the respective preamble sections of this document.

We thank the commenter who suggested that the Department ban fees for the processing and delivery of financial aid. However, we believe that the ban on fees for opening an account addresses this concern. We also do not believe that mandating a specific institutional review process would be helpful for institutions as they work to comply with the new regulations. Instead, we believe that institutional flexibility will be most helpful as institutions decide how to comply moving forward.

We agree that the requirements for these arrangements may be impractical for many foreign educational institutions wishing to provide timely processing of student loan funds. We recognize that both the foreign educational institutions and the students attending them often face problems that domestic institutions and their students do not—including potential visa problems. Thus, we agree that the provisions of § 668.164(e) and (f) should apply only to domestic institutions.

Changes: We have revised § 668.164(e)(1) and (f)(1) to apply only to institutions located in a State.

Credit balances (§ 668.164(h))

Comments: A commenter noted that proposed § 668.164(h) refers to ''funds credited to a student's account,'' and suggested for clarity and consistency with proposed § 668.161 that we change this reference to ''funds credited to a student's ledger account.''

Discussion: We agree.

Changes: We have revised § 668.164(h) to include the phrase ''student ledger account.''

Retroactive Payments (§ 668.164(k))

Comment: Under proposed § 668.164(k) an institution may make retroactive payments to students. One commenter noted that if the provisions in this section are subject to the requirements of 34 CFR 690.76(b) of the Federal Pell Grant regulations, then a reference to the Pell regulations would be useful.

Discussion: Yes, retroactive payments of Pell Grant funds under § 668.164(k) would be subject to § 690.76(b). Under § 690.76(b), when an institution pays Pell Grant funds in a lump sum for prior payment periods within the award year for which the student was eligible, but for which the student had not received payment, the student's enrollment status for those prior payment periods is determined according to work already completed. For example, if the student started such a prior payment period as a full-time student, but only completed work within that payment period as a half-time student, eligibility for that payment period would be based on the student's half-time status. Thus, we agree with the commenter that there should be a reference to § 690.76(b) in § 668.164(k).

Changes: We have revised § 668.164(k) to state that a student's enrollment status for a retroactive payment of a Pell Grant must be determined according to work already completed, as required by 34 CFR 690.76(b).

Presumptive Credit Balances, Books and Supplies (§ 668.164(m))

Comments: Several commenters were concerned that the Department did not explain in the NPRM why it was expanding the books and supplies provision in § 668.164(m) to include not just Federal Pell Grant recipients but all title IV, HEA program recipients. Some of the commenters noted the Department's original stated intent in 2010 was to enable very needy students to purchase books and supplies at the beginning of the term or enrollment period and to prevent disbursement delays at some institutions from forcing very needy students to take out private loans to pay for books and supplies that would otherwise be paid for by Federal Pell Grant funds. Further, in response to public comment in 2010, the Department declined to expand the scope of the requirement to apply to students who are eligible for other title IV funds.

One commenter explained that if an institution is required to advance funds to students during the first seven days of a payment period, but then cannot later show that the students began attendance during the payment period, under § 668.21(a)(1) the institution would have to return those funds. The commenter opined that when the number of students for whom an institution must make provisions for books and supplies increases dramatically under the proposed regulation, the potential institutional liability increases accordingly.

Another commenter stated that due to the lack of explanation of this change in the preamble to the proposed regulation, many interested parties may not have noticed the proposed expansion and therefore did not submit comments. Although the commenter noted the expansion was a significant change, the commenter did not object because the commenter stated that many institutions have already expanded the current requirement to most students. In addition, the commenter requested that the Department clarify in the final regulations whether first-time students who are subject to the 30-day delayed disbursement provisions for Direct Loans would be included or excluded from this provision.

Another commenter agreed that because it is reasonable to assume that students who receive forms of need-based aid other than Pell Grant recipients have limited resources to buy books, students whose only title IV aid

[62] CFPB RFI.

is unsubsidized, or who only benefit from parent PLUS loans, should not be included in the provision. In addition, the commenter noted that many institutions make accommodations for students regardless of type of aid received, but that should be an institutional choice based on the best use of limited resources.

One commenter stated that the institution pays credit balances to students beginning ten days before the start of a semester, thus providing students with access to funds for books and supplies purchases. In addition, the commenter stated that the proposed books and supplies provision would be limited to the on-campus bookstore for both legal and practical reasons, even though many students choose to purchase their books online or off-campus. The commenter concluded that this provision would be administratively burdensome, particularly when weighed against the limited benefit to students at that institution, and urged the Department to withdraw the proposal.

Other commenters supported the proposed expansion, noting that that while Pell Grant eligible students are likely to need assistance for purchasing books and supplies, they are not the only students who need assistance. The commenters believed the proposed provision will ensure that title IV funding is made available to students to purchase required books and supplies to prepare them for academic success.

Discussion: Although this provision was included in the regulations section of the NPRM, we inadvertently omitted discussing it in the preamble to the NPRM and apologize to the community for this oversight. We note that this provision was discussed during the negotiated rulemaking sessions preceding publication of the NPRM. The reason for expanding the provision to include all students who are eligible for title IV, HEA program funds is simple—we no longer hold the view that only the neediest students should benefit from having required books and supplies at the beginning of a term or payment period. As noted by some of the commenters, students who qualify for loans and other title IV aid also need assistance and we see no reason to deny assistance to those students.

With regard to the comment that expanding the current books and supplies provision will dramatically increase the potential liability of an institution, we note that under § 668.21(a)(1) and (2), an institution would have to return any title IV grant or loans funds that were credited to the student's ledger account or disbursed directly to the student if the student did not begin attendance during the payment period or period of enrollment. Under § 668.164(m), an institution has until the seventh day of a payment period to provide a way for a student to obtain or purchase books and supplies, and if it does so, may wait that long to document that a student began attendance to mitigate liability concerns. Or, the institution may mitigate liability concerns stemming from providing title IV funds directly to a student to purchase books and supplies, by issuing a voucher to the student redeemable at a book store or establishing another way for the student to obtain books and supplies.

With regard to students who are subject to the 30-day delayed disbursement provision under the Direct Loan Program, because an institution may not disburse those funds 10 days before the beginning of a payment period, those loan funds are not included in determining whether the student has a presumptive credit balance.

In response to the commenter whose institution generally pays credit balances 10 days before the beginning a payment period, we note that the institution satisfies the books and supplies provision for students who receive those credit balances. This institution will still need to provide a way for the remaining students to obtain or purchase books and supplies, but the burden for doing so should be minimal in view of the institution's general credit balance practice.

Changes: None.

Holding Credit Balances (§ 668.165(b)(1))

Comments: A commenter stated that it was inappropriate for the Department to assert in the preamble for proposed § 668.165(b)(1)(ii) that when an institution obtains written authorization from a student or parent to hold title IV, HEA program funds on his or her behalf, the institution would be acting ''to circumvent the proposed requirement that it directly pay credit balances to students and parents.'' The commenter stated that any institution participating in the title IV, HEA programs—including an institution participating under the reimbursement payment method or the HCM payment method—must hold all title IV funds in trust for the intended student beneficiaries or the Secretary. The commenter argued that while the Department may justifiably prohibit an institution on HCM or reimbursement from holding credit balances under the current regulations where there is a demonstrated weakness in the institution's administrative capability that could put in jeopardy the institution's ability to act as a trustee of Federal funds, in other circumstances removing the ability of students to authorize institutions to hold a portion of their credit balance is an ill-targeted reform with negative consequences for students. Many students who affirmatively authorize institutions to hold a portion of their title IV credit balance do so as a means of managing those funds during an award year, consistent with the Department's original stated intent for permitting such authorizations. The commenter opined that restricting a student's ability to partner with an institution in this way unnecessarily limits the student's attempt to act as an informed, responsible consumer and undercuts the Department's ongoing efforts to encourage institutions to counsel and empower students to be responsible borrowers. Furthermore, the commenter stated that any concerns that the Department may have about an institution's administrative capability or financial responsibility that result in the institution being placed on an alternate payment method should not prevent students from reaping the full benefit of the title IV programs available to students enrolled at other title IV-participating institutions. As an alternative, the commenter suggested that the Department allow an institution placed on the reimbursement or HCM payment method to hold credit balance funds on behalf of students or parents if the institution holds those funds in escrow. Doing so would provide students the benefit currently available to budget their funds over the course of a payment period while ensuring that the institution acts as a responsible trustee of Federal funds.

Another commenter objected to proposed requirement arguing that it would essentially remove an institutional authority to ''carry'' credit balances from one term to the next. For example, a student may receive a credit balance in his or her first payment period but owe a payment back to the institution in the second payment period when tuition is charged. The commenter stated that, as proposed, this requirement would remove the choice from students and parents who request to have their credit balances applied toward future educationally related charges instead of pocketing the overage, impacting students who potentially are the most fiscally responsible. With such a heightened focus on financial literacy and rising default rates in recent years, the commenter believed the proposed rule would remove an important choice from responsible borrowers, thus restricting an institution from helping students and parents borrow responsibly to reduce indebtedness. For these reasons, the commenter suggested removing the proposed restriction and amending the regulations to provide that if a student or parent does not authorize an institution to hold Direct Loan funds, then the current provisions under § 668.164(e)(1) and (2) would apply.

Discussion: As we noted in the NPRM, and described more fully under the heading ''Paying credit balances under the reimbursement and heightened cash monitoring payment methods,'' the impetus for placing institutions on HCM or reimbursement payment methods, generally speaking, is material compliance or financial issues. We believe that institutions who have jeopardized or compromised their fiduciary duties under the title IV, HEA programs should not be allowed to handle or maintain title IV program funds any longer than needed and for no purpose other than making timely disbursements to students and parents. Although we do not discount the value of helping students properly budget their funds, that reason alone does not outweigh the risk that affected institutions will use Federal funds for other purposes or cease to be going concerns.

With respect to the comment that an institution placed on an alternate payment method maintain credit balance funds in an escrow account, the commenter did not specify the controls that would need to be in place to ensure that the institution immediately transferred the funds to the escrow account or how an escrow agent or trusted third party would make those funds available to students. We believe the complexity in administering, monitoring, and later auditing an escrow arrangement, and the costs associated with these activities, is not warranted for this purpose.

With regard to the comment that the prohibition on holding credit balances will remove the ability of an affected institution to carry credit balances from one term to the next, while we agree that is a consequence of this provision, we do not believe it will have the impact envisioned by the commenter because the institution will still be able to carry forward charges from one term to another term within the current year, as defined under § 668.164(c)(3)(ii)(A)—the charges carried forward may be paid by the title IV.

Finally, in the NPRM under § 668.165(b)(1)(ii) we erroneously cross referenced ''§ 668.162(c)(2) or (d)(2).'' These cross references should have referred to ''§ 668.162(c) or (d).''

Changes: We have revised § 668.165(b)(1)(ii) to cross reference § 668.162(c) or (d).

Retaking Coursework (§ 668.2)

Comments: Many commenters supported our proposal to eliminate the provision in the current regulations that prohibits an institution from counting for enrollment purposes any course passed in a previous term of the program that the student is retaking due to having failed other coursework.

One of the commenters specifically supported the applicability of the amended regulations to undergraduates, graduates, and professional students, because this change will be a benefit to students. The commenter asked the Department to clarify in the Federal Student Aid Handbook that the amended regulation applies to these groups of students because this is a change in policy that is not reflected in the regulations.

Discussion: We thank the commenters for their support, and agree that amending the definition of full-time student in § 668.2(b) will be beneficial for students who retake coursework.

In regard to the commenter's recommendation that we clarify the applicability of the amended regulations to undergraduates, graduates, and professional students, we plan to update the Federal Student Aid Handbook, as well as all other applicable Departmental publications and Web sites, to reflect the changes to the retaking coursework provision after the final regulations become effective.

Changes: None.

Comments: One commenter disagreed with the Secretary's proposal to allow a student to receive title IV aid to retake a previously passed course. This commenter expressed concern about the availability of funding, and stated that a more reasonable approach would be for an institution to not charge students for courses that a student could bypass through a challenge process such as an exam.

Discussion: In general, the regulations do not dictate whether a student may retake coursework in term-based programs, including repeating courses to achieve a higher grade. The regulations only apply to determining enrollment status for title IV, HEA program purposes. We allow an institution this flexibility as long as it does not use title IV program funds for repeated coursework where prohibited by the regulation.

Moreover, the regulations do not limit an institution's ability to establish policies for title IV, HEA program purposes so long as those policies are not in conflict with title IV, HEA program requirements. An institution may, for example, allow a student to challenge, or ''test out of,'' a course or courses. Title IV funds cannot be used to pay for any courses that a student ''tests out of''; and an institution may establish its own policies for these situations, including passing the costs of the tests on to the student. However, with respect to repeating coursework previously passed by a student in a term-based program, under the final regulations, a student may use title IV, HEA funds for retaking previously passed coursework, but only one time per course. For example, the student may need to retake a course to meet an academic standard for that particular course, such as a minimum grade. Additionally, a student may use title IV, HEA funds for retaking coursework if the student is required to retake the course because the student failed the course in a prior term.

We believe the rule serves to prevent potential abuse from courses being retaken multiple times, while providing institutions sufficient flexibility to meet the needs of most students.

Changes: None.

Clock-to-Credit-Hour Conversion (§ 668.8(k))

Comments: The majority of commenters expressed strong support for the proposal to streamline the requirements governing clock-to-credit-hour conversion, with one commenter thanking the Department for responding to the concerns that institutions have expressed since publication of the previous rules. Generally, the commenters stated that the simplification of the regulations proposed in the NPRM will reduce burden and be a positive change. One commenter also noted that since accrediting agencies are already required to review the assignment of credit hours under 34 CFR 600.2 and 602.24, the requirements outlined in § 668.8(k)(2) of the final regulations published on October 29, 2010 were unnecessary. Another commenter noted that the provisions previously in § 668.8(k)(2), which required some programs to be treated like clock hour programs for title IV purposes even after they were converted to credit hour programs, were confusing. This commenter further noted that those provisions interfered with State requirements relating to program delivery and that the current conversion formulas contained in § 668.8(l) are sufficient to ensure that clock hours are appropriately converted to credit hours.

One commenter who supported the proposal stated that the Department should not remove the part of the current and familiar definition of a credit hour that is contained in 34 CFR 600.2, which equates one hour of classroom instruction and at least two hours of out-of-class student work per week (for 15 weeks, for example, for a semester credit).

Discussion: We appreciate the overall support offered in the comments. With regard to the comment requesting that we keep the part of the current and familiar definition of a credit hour that is contained in 34 CFR 600.2, which equates one hour of classroom instruction and at least two hours of out-of-class student work per week (for 15 weeks, for example, for a semester credit), we note that we are not changing the definition of a credit hour in 34 CFR 600.2. However, in that definition of a credit hour, there is a reference to § 668.8(k) and (l), which together contain the requirements that must be met when certain programs are offered in credit hours. In particular, § 668.8(l) provides the formulas that must be used to determine how many clock hours of instruction each semester, trimester, and quarter credit hour must have for certain credit hour programs. The formulas in § 668.8(l), for the educational programs covered by that section of the regulations, are used in lieu of the general definition of a credit hour found in 34 CFR 600.2. Those formulas are based on a comparison of the definitions of an academic year for credit hour and clock hour programs: A clock hour program requires 900 clock hours; and credit hour program requires either 24 semester or trimester credit hours or 36 quarter credit hours. Thus, 900 divided by 24 equals the 37.5 clock hours that are generally needed for a semester or trimester hour; and 900 divided by 36 equals the 25 clock hours that are generally needed for a quarter credit hour.

This approach to the determination of what a credit hour consists of is somewhat different than the approach used in the definition of a credit hour in 34 CFR 600.2, and, thus, appears to result in a different number of clock hours associated with each credit hour than what would be the case if the definition of a credit hour in 34 CFR 600.2 were used. However, with respect to programs covered by § 668.8(l)(1), the formula assumes that there is some outside of class work; and with respect to programs covered by § 668.8(l)(2), the formula specifies a minimum amount of outside of class work required. When these aspects of the formulas in § 668.8(l) are considered, it is assumed that the amount of work required for a student to earn a credit hour is roughly equal in all cases. Nevertheless, as stated above, the appropriate formula in § 668.8(l) is what is used to determine the number of credit hours in a program covered by that section of the regulations in lieu of that part of the definition of a credit hour in 34 CFR 600.2 that specifies that each credit hour includes 1 hour of classroom work plus at least two hours of out of class work.

Changes: None.

Implementation

Comments: Several commenters requested a longer implementation period to give institutions time to comply with the new requirements.

Commenters stated that certain requirements of the proposed regulations include many different components that present major obstacles for institutions and their partner financial institutions. For example, some of the key portions of the proposed regulations that commenters stated may be particularly difficult to implement by July 1, 2016 include updating disclosure materials and network systems; identifying the major features and commonly assessed fees associated with all financial accounts described in paragraphs; posting contract data to the institution's Web site; revising agreements between institutions and financial institutions; ensuring convenient access to ATMs for students; reviewing agreements to make sure that they are in the best interests of the students, as defined in the regulations; updating the physical debit and campus cards to comply with requirements; and adopting new policies and procedures to ensure that title IV funds are delivered to students in compliance with the new requirements. Another commenter noted that other agencies frequently allow a longer implementation period, and suggested 24 months as a reasonable timeframe.

Several commenters asked the Department to address how existing products and services will be affected by the regulations, and some commenters suggested that the regulations should only be applied prospectively to new T1 and T2 arrangements.

Discussion: While we will not delay implementation of all of the final regulations, we agree that it may be difficult for institutions to implement certain components of the regulations by July 1, 2016. Consequently, we have chosen to delay implementation of the required disclosures identifying the major features and commonly assessed fees associated with all T1 and T2 financial accounts until July 1, 2017, to delay the posting of the contract until September 1, 2016, and to delay the posting of the contract data until September 1, 2017. We believe that institutions will be able to comply with the other requirements in the regulations by July 1, 2016.

We disagree with the commenter that suggested that the regulations should apply only to T1 and T2 arrangements entered into after the effective date. T1 and T2 agreements are already a common practice at institutions, and we believe that enforcing these regulations uniformly across all institutions is the best way to protect title IV funds. Institutions will have the time required under the HEA's Master Calendar provision—until July 1, 2016—to take all necessary steps to conform their arrangements to the final regulations.

Changes: We have revised § 668.164(d)(4)(i)(B)(*2*) to specify that implementation of the required consumer disclosures will not be required until July 1, 2017. We have also revised § 668.164(e)(2)(vii) and (f)(4)(iv) to state that the posting of the contract data will not be required until September 1, 2017. We have revised § 668.164(e)(2)(vi) and (f)(4)(iii) to state that the posting of the contract will not be required until September 1, 2016.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Introduction

As described in the NPRM, the Department is issuing the regulations in order to address a changing marketplace as it relates to financial aid disbursement by third-party servicers. In doing so, the Department believes that these current arrangements, along with future arrangements, will be more beneficial and transparent to students and other parties.

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

This Regulatory Impact Analysis is divided into six sections. The ''Need for Regulatory Action'' section discusses why amending the current regulations is necessary. Reports from GAO, USPIRG, and OIG, among others, document the troubling practices that necessitated this regulatory action and affect a potentially large number of students.

The ''Summary of Changes and Final Regulations'' briefly describes the changes the Department is making in the regulations. The regulations amend the cash management regulations, as well as address two issues unrelated to cash management: Retaking coursework and clock-to-credit-hour conversion.

The ''Discussion of Costs, Benefits, and Transfers'' section considers the cost and benefit implications of the regulations for students, financial institutions, and postsecondary institutions. Specifically, the Department considered the costs and benefits of interest-bearing bank accounts, accounts offered under T1 and T2 arrangements, retaking coursework, and clock-to-credit-hour conversion.

Under ''Net Budget Impacts,'' the Department presents its estimate that the final regulations would not have a significant net budget impact on the Federal government.

Under ''Alternatives Considered'' the Department discusses other regulatory approaches we considered for key provisions of the regulations.

Finally, the ''Final Regulatory Flexibility Analysis'' considers the effect of the regulations on small entities.

Need for Regulatory Action

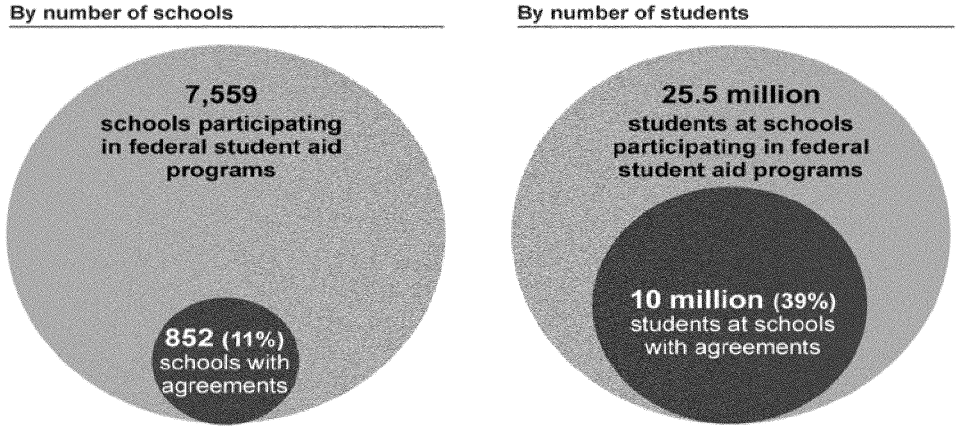
The Department's main goal in promulgating the regulations is to address major concerns regarding the rapidly changing financial aid marketplace wherein products are offered by financial institutions under agreements with institutions to students who receive title IV, HEA credit balances.

Changes in the student financial aid marketplace make the final regulations necessary. As discussed in the NPRM, the number of institutions entering into these agreements continues to increase as these agreements help institutions save money on administrative costs that they would otherwise incur in disbursing title IV credit balances to students. These agreements have raised concerns over the practices employed by financial institutions and third-party servicers. Some of these troubling practices include an insistence on using college card accounts over preexisting accounts, implying that the only way to receive Federal student aid is through college card accounts, allowing private student information to be made available to card providers without student consent, and encouraging a proliferation of uncommon and confusing fees that are charged to aid recipients for accessing their funds. These practices, along with others discussed in the NPRM, reduce the amount of title IV aid available for educational expenses.

As detailed in the NPRM, these practices are concerning because of the number of students impacted. While data on credit card agreements and credit balances are scarce, a GAO report from July 2013 identified 852 postsecondary institutions (11 percent of all schools that participate in the title IV programs) that had college card agreements in place. While 11 percent is a small percentage of total title IV participating schools, these schools had large enrollments, making up about 39 percent of all students at schools participating in title IV programs.[63]

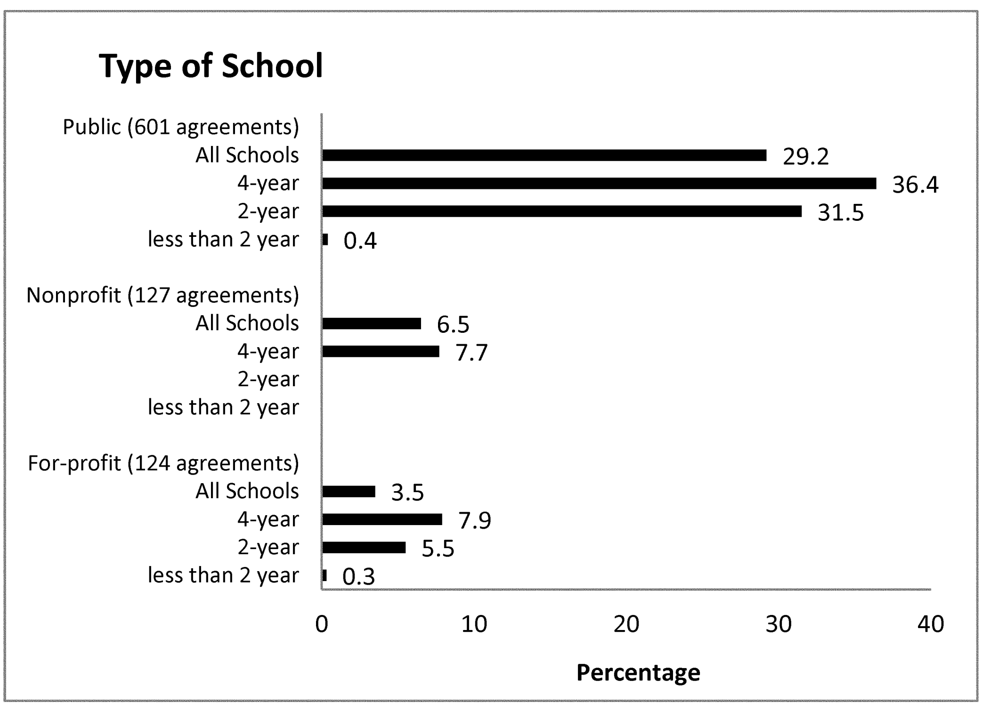
Chart 1: College Card Agreements by Number of Schools and Number of Students that Participate in Federal Student Aid Programs.

[63] GAO at 9.



The GAO report also found that college card agreements were most common at public postsecondary institutions, where 29 percent of public schools had card agreements, compared with 6.5 percent at not-for-profit schools and 3.5 percent at for-profit schools (see table [1]). Comprehensive data do not currently exist for the number of students who use accounts falling under these college card agreements. However, the GAO report found that public two-year institutions represented almost half of all schools that used college cards to make financial aid payments.[64] Students at public two-year institutions are most likely to receive a financial aid payment (credit balance) due to the low tuition and fees deducted from total aid received.

Table 1: Percentage of Schools with College Card Agreements by Sector and Program Length, as of July 2013.



Based on the data available on the number of students affected by these college card agreements, the questionable practices of the providers, and the amount of Federal funds at stake, we believe that amending the regulations governing title IV student aid disbursement is warranted.

Summary of Changes and Final Regulations

The final regulations are intended to ensure students have convenient access to their title IV, HEA program funds without charge, and are not led to believe they must open a particular financial account to receive their Federal student aid. As discussed in the *Analysis of Comments and Changes* section of this document, the Department considered over 200 comments on a variety of topics related to the proposed regulations. Significant changes made in response to the comments include:

(1) Replacing the 30-day fee restriction with a provision requiring that students are provided at least one free mechanism to conveniently access their title IV, HEA program funds in full

[64] GAO at 9.

or in part once the funds have been deposited or transferred to the financial account, up to the account balance;

(2) Establishing a threshold for the 3 most recently completed award years, that students with a title IV credit balance represent an average of five percent or more of the students enrolled at the institution; or an average of 500 students enrolled at the institution have title IV, credit balances at an institution for several of the requirements relating to T2 arrangements to apply;

(3) Exempting foreign locations from the requirement from the requirement of convenient ATM access; and

(4) Eliminating the requirement that checks be listed on the student choice menu while still allowing students to affirmatively request a refund by check and allowing institutions to list a check as an option.

We also clarify how previously passed coursework is treated for title IV eligibility purposes and streamline the requirements for converting clock hours to credit hours.

The table below briefly summarizes the major provisions of the regulations.

TABLE 2—SUMMARY OF THE MAJOR PROVISIONS OF THE REGULATIONS

Provision	Reg section	Description of provision	
		T1	T2
Defines T1 and T2 arrangements between institutions and financial account providers.	§ 668.164	Arrangement between an institution and a third-party servicer that performs the functions of processing direct payments of title IV funds on behalf of the institution and that offers one or more financial accounts to students.	Arrangement between an institution and a financial institution under which financial accounts are offered and marketed directly to students. Provisions related to disclosure of contract data, ATM requirements, and the best interest provisions apply only to those institutions with at least 5 percent of the average enrollment for the 3 most recently completed award years or an average of 500 students with a credit balance for the 3 most recently completed award years. For the calculation of the 5 percent threshold, enrollment means students enrolled at the institution at any time during the three most recently completed award years.
Fee mitigation	§ 668.164	• Prohibits point-of-sale and overdraft fees. • Requires at least 1 convenient mechanism for students to access title IV, HEA funds in full and in part without charge.	Not Applicable.
		Applicable to Entities with T1 and T2 Arrangements	
Reasonable access to funds	§ 668.164	Requires reasonable access to fee-free ATMs or a surcharge-free ATM network. Applies only to institutions located in a State. For T2 arrangements, the threshold of 5 percent of the average enrollment over the most recent 3 award years or an average of 500 credit balance recipients for the 3 most recent award years applies.	
Student choice process	§ 668.164	Requires institutions to establish a student choice process that: • Prohibits institutions from requiring students to open a specific financial account to receive credit balances • Provides students a list of options for receiving credit balance funds with each option presented in a neutral manner • Lists pre-existing accounts as the first, and most prominent, option, with no option preselected • Establishes that aid recipients have the right to receive funds to existing accounts • Ensures that electronic payments made to pre-existing accounts are initiated as timely as and are no more onerous than payments made to an account on the list of options	
Consent to open account	§ 668.164	Student choice of the account or consent required to open account before: • Providing information about student to financial account provider • Sending access device to student • Associating student ID with a financial account	
Contract disclosure	§ 668.164	Public disclosure of contracts governing arrangements and related cost information	
Contract evaluation	§ 668.164	Requires institutions to establish and evaluate T1 and T2 arrangements in light of the best interests of students	
		Additional Provisions	
Secretary's reservation of right	§ 668.164	Confirms that the Secretary reserves the right to establish a method for directly paying credit balances to student aid recipients.	
Retention of interest on accounts holding title IV funds.	§ 668.163	Increases the amount of interest accrued in accounts holding title IV funds that non-Federal entities are allowed to retain from $250 to $500 annually.	
Retaking coursework	§ 668.2	Eliminates, for all program levels, the prohibition on counting towards enrollment repeated courses taken in the same term in which the student repeats a failed course. The current prohibition against counting more than one repetition of a previously passed course would remain.	

TABLE 2—SUMMARY OF THE MAJOR PROVISIONS OF THE REGULATIONS—Continued

Provision	Reg section	Description of provision	
		T1	T2
Clock-to-credit hour conversion	§ 668.8(k) and (l).	Eliminate § 668.8(k)(2) and (3), and make a conforming change in § 668.8(l), to streamline the requirements governing clock-to-credit-hour conversions, mitigate confusion about whether a program is a clock- or credit-hour program for title IV, HEA program purposes, and remove the provisions under which a State or Federal approval or licensure action could cause the program to be measured in clock hours.	

Discussion of Costs, Benefits, and Transfers

As discussed in the NPRM, the expected effects of the final regulations include improved information and transparency to facilitate consumer choice of financial accounts for receiving title IV credit balance funds; reasonable access to title IV funds without fees; a redistribution of some costs among students, institutions, and financial institutions; updated cash management rules to reflect current practices; streamlined rules for clock-to-credit-hour conversion; and the ability of students to receive title IV funds for repeat coursework in certain term programs. The parties that will experience the largest impacts are students, institutions, and the third-party servicers and financial institutions that have contractual relationships described as T1 and T2 arrangements in the final regulations.

Data and Methodology

In an attempt to quantify some of the costs and to reduce the burden associated with the regulations, the Department analyzed its own data to estimate the prevalence of credit balances. While there may be instances where financial institutions have an agreement with a postsecondary institution to offer college card accounts to students who do not receive credit balances, the regulations focus on accounts offered under T1 or T2 arrangements where students have a credit balance.

While comprehensive data on the number of students who receive credit balances on a college card does not currently exist, we attempted to calculate the incidence and distribution of credit balance recipients. We analyzed the data maintained by the Department to estimate the number of students who would potentially be affected by the regulations and to evaluate whether we could establish a de minimis threshold below which an institution would not be subject to the T2 requirements by analyzing the percentage of students with a credit balance at various institutions.

The numbers of students who received title IV aid in the 2013–2014 school year (from the Department's office of Federal Student Aid's National Student Loan Data System (NSLDS)) were matched by institution to data from the Integrated Postsecondary Education Data System (IPEDS) for tuition, fees, and room and board. The credit balance calculation established an institutional cost that included an estimated average tuition, fees, and room and board amount (which took into account the percentage of students who lived in-district, in-State, and out of state for tuition and fees expense, and the percentage of students who lived on-campus for room and board charges). Aid recipients were grouped by the amount of aid received (rounded into $500 ranges). For each institution, the students in the aid ranges above the estimated institutional cost were considered to have a credit balance. We used those students to obtain a percentage of students who received a credit balance at each institution. For example, if the institutional cost was determined to be $12,456 and 50 of 150 title IV aid recipients were in the buckets from $12,500 and above, approximately 33 percent of aid recipients at that institution were considered to have a credit balance.

We looked only at title IV participating institutions and aid recipients. From the data obtained, 3,400 institutions had both tuition estimates and aid recipient information. Unsurprisingly, there is an inverse relationship between an institution's tuition and fees and the percentage of students receiving a title IV credit balance. Our findings were consistent with findings from GAO and USPIRG. The data estimated a total 2,816,104 students at these 3,400 institutions were receiving a credit balance. The Department's data showed 70 percent of total students receiving a credit balance were at public two-year institutions (1,972,035 students). While all of the four-year institutions had significant estimated numbers of students who received a credit balance, the students at four-year institutions combined (819,062) still did not equal half the total number of students who received a credit balance at public two-year institutions (Table [3]). The numbers of institutions and students who received a credit balance were lowest at the less-than-two-year institutions, which represented approximately 1.8 percent of institutions and under one percent of students who received a credit balance from the 3,400 institutions with both tuition and fee and financial aid data.

Table 3: Number of Institutions and Students who Received a Credit Balance.

NUMBER OF INSTITUTIONS AND STUDENTS WHO RECEIVED A CREDIT BALANCE

Sector	Number of institutions	Students with a credit balance
Public, 2-year	912	1,972,035
Public, 4-year or above	625	540,461
Private for-profit, 4-year or above	195	181,530
Private not-for-profit, 4-year or above	1,297	97,071
Private for-profit, 2-year	212	19,436
Private not-for-profit, 2-year	97	3,699
Public, less-than 2-year	20	877
Private for-profit, less-than 2-year	32	863

NUMBER OF INSTITUTIONS AND STUDENTS WHO RECEIVED A CREDIT BALANCE—Continued

Sector	Number of institutions	Students with a credit balance
Private not-for-profit, less-than 2-year	10	132
Total	3,400	2,816,104

As several provisions of the regulations apply to institutions with T1 or T2 arrangements, we obtained from the CFPB a listing of 914 institutions that were known to have card agreements with financial institutions and applied the same methodology described above to this subset of institutions. Of these 914 institutions with card agreements, 672 institutions had both tuition and fees and aid recipient data in the Department's dataset. A total of 1,322,615 students at the 672 institutions from this dataset were estimated to have a credit balance. The results from this subset were similar to the larger dataset. The public two-year institutions had the largest numbers of students with a credit balance with the four-year institutions also having significant numbers (See Table [4]). The less-than-two-year institutions had inconclusive data. Again, this subset provided no additional information on a clear de minimis amount.

Table 4: Students with a Credit Balance at Known Institutions that Have Card Agreements.

STUDENTS WITH A CREDIT BALANCE AT KNOWN INSTITUTIONS THAT HAVE CARD AGREEMENTS

Sector	Number of institutions	Students with a credit balance
Public, 2-year	304	996,107
Public, 4-year or above	200	280,467
Private for-profit, 4-year or above	38	29,593
Private not-for-profit, 4-year or above	113	10,001
Private for-profit, 2-year	17	6,447
Private not-for-profit, 2-year	N/A	N/A
Public, less-than 2-year	N/A	N/A
Private for-profit, less-than 2-year	N/A	N/A
Private not-for-profit, less-than 2-year	N/A	N/A
Total	672	1,322,615

In a final analysis of the data, we took the subset and identified only those institutions that had what would be considered a T2 arrangement under the final regulations. This narrowed down the data to 191,242 students at 160 institutions. The identified institutional data was further analyzed by sector with data available for public two-year, public four-year or above, and private not-for-profit, four-year or above institutions. The data was similar to the larger datasets (see Table [5]) and produced inconclusive results.

Table 5: Students with a Credit Balance at Known Institutions that Have T2 Arrangements.

STUDENTS WITH A CREDIT BALANCE AT KNOWN INSTITUTIONS THAT HAVE T2 ARRANGEMENTS

Sector	Number of institutions	Students with a credit balance
Public, 2-year	36	135,108
Public, 4-year or above	70	56,066
Private not-for-profit, 4-year or above	54	68
Total	160	191,242

Costs

As discussed in the Costs, Benefits, and Transfers section of the NPRM, the provisions related to T1 arrangements would require a servicer in a T1 arrangement to provide student accountholders with convenient access to a surcharge-free regional or national ATM network. This requirement has potential cost implications for third-party servicers who currently do not meet this requirement. A few commenters contended that we had failed to quantify such costs and stated that this could have a substantial financial burden on some banks.

Some commenters suggested that the cost of installing and operating an ATM for one year could range from $20,000 to $40,000, and our market research found wide variations in cost based on the type, capacity, and condition of the ATMs. Used ATMs can be bought from wholesalers or on discount Web sites for less than $600 while many of the newer technologies cost between $4,000 and $10,000 per unit, not including the cost of installation. Furthermore, ATMs often cost upwards of $1000 a month to maintain. As some commenters noted, there are also additional costs to operating ATMs, such as providing electricity to power the machines, as well as ensuring that the machines are in secure locations.

If we assume a $25,000 cost to install and operate an ATM and apply that to the estimated 914 institutions with T1 or T2 arrangements, the estimated cost for one year of operation would be $22.9 million, with costs in subsequent years reduced to operating and maintenance costs of $12,000 annually for a total of approximately $11.0 million. However, this cost is a rough approximation as some institutions may have more than one location and several factors will mitigate those costs.

First, as several commenters have noted, many financial institutions already have ATMs in place on campus and will not have to make any changes to comply with the reasonable access provision.

Additionally, under the final regulations, institutions will be in compliance with the reasonable access provision applies if they provide sufficient access to an ATM given the student population at a given location. In the course of developing the final regulations, we examined the available data to see if a de minimis threshold could be determined and asked for feedback about such a threshold. Many commenters agreed that a threshold should be established, but there were no suggestions on a specific number. Based on this feedback, the Department established the sufficient access standard described above. We believe this approach strikes a reasonable balance between concerns regarding the cost of providing ATM access and the interests of students who need to access their funds through this mechanism. As this approach does not specify a threshold that applies across all institutional circumstances, the Department cannot specify the exact burden the reasonable access provision will place on institutions. For example, if institutions decided a threshold of 30 students with a credit balance merited the provision of an ATM at a location, the Department estimates that, for institutions in T1 or T2 arrangements, over 70 percent of locations representing over 95 percent of students with credit balances would be over that number when using an eight-digit NSLDS school code as a proxy for location and the estimates of students with credit balances as described in the Data and Methodology section of this RIA. The revised provision relies on institutional knowledge of enrollment and location in determining the number of additional ATMS needed to satisfy the standard of convenient access, and, along with the preexisting access, will likely reduce the $22.9 million in initial costs and $11.0 million in annual costs estimated above.

T2 Arrangements

The direct marketing methods employed by financial institutions, third-party servicers, and postsecondary institutions have proven to be fairly effective. As mentioned earlier in the Need for Regulatory Action of this RIA, 10 million students (Chart 1) are at title IV-participating schools where card agreements are prevalent. As described in the NPRM, data limitations and uncertainty about the student reaction to the information and options that will be part of the student choice menu under the final regulations present challenges in estimating the costs of the T2 arrangements. If students move away from products offered under T2 arrangements, providers may incur additional marketing expense or other costs to administer the accounts.

Based on this feedback, the Department decided that institutions must meet a certain threshold to be subject to certain requirements relating to T2 arrangements including disclosure of the contract data, the ATM requirements, and the best interests sections. Institutions are subject to those requirements if five percent or more of the total number of students enrolled at the institution received at title IV credit balance, or the average number of credit balance recipients for the three most recently completed award years is 500 or more. For institutions that do not have significant percentage or numbers of students with a credit balance, the threshold for classification as a T2 arrangement will potentially provide some mitigation of the costs associated with T2 arrangements.

Additional discussion of the costs of implementing and complying with these final regulations can be found in the *Paperwork Reduction Act* section of this document.

Transfers: Fee-Related Provisions Applicable to Institutions With T1 Arrangements

Institutions with T1 arrangements are required to mitigate fees that could be incurred by student aid recipients by prohibiting point-of-sale fees and overdraft fees charged to students. Additionally, these institutions must ensure that students have convenient access through surcharge-free ATMs that are part of a national or regional ATM network. Little information is currently available on the total amount of college card fees paid by students. Most financial account providers are unwilling or unable to provide information on fees to the Department. The GAO report reviewed fee schedules from eight financial institutions and found that while college cards do not have monthly maintenance fees, fees for out-of-network ATM use, wire transfers, and overdraft fees were similar to the financial products marketed to non-students. Credit unions' fees were typically lower than those charged by college cards (see Table [6]). However, college card fees were lower than alternative financial products, such as check-cashing services.[65]

Table 6: Account Fees by Provider Type

ACCOUNT FEES BY PROVIDER TYPE

Fee	College cards	Large banks, general checking accounts	Credit unions
Monthly Maintenance	$0	standard account: $6–$12 student account: $0–$5.	$0
Out-of-network ATM Transaction	$2–$3	$2–$2.50	$1
PIN	$0–$0.50	$0	$0
Overdraft	$29–$36	$34–$36	$25
Outgoing Wire Transfer	$25-–$30	$24–$30	$15

While we do not know the total amount of college card fees paid by students annually, we do know the amounts are substantial. A review of the annual SEC filings by one market participant, Higher One, indicates that account revenue from a variety of fees totaled $135.8 million in FY 2013, which represented 64.3 percent of total

[65] GAO at 18.

revenues for FY 2013.[66] Not all of those fees are subject to the provisions of the final regulations, but the amount of student account revenue affected by the changes across the industry will be significant.

Along with being unable to determine the total amount of college card fees paid by students, student behavior is also unpredictable, and student response to the information about account options and costs will significantly contribute to the effect of the regulations. While it is assumed that consumers with appropriate information would make rational decisions, such as avoiding withdrawals from out-of-network ATMs or choosing debit transactions that require signatures rather than a PIN, some students may not make the optimal choices in managing their accounts. The Department does not have the distribution of students in accounts with specific fee arrangements, data on student usage patterns, or data on the responsiveness of students to the information that will be provided under the regulations, and therefore it is difficult for us to estimate the exact transfers that will occur when certain fees on student accounts are prohibited. Some analysis has been done on account usage that can be used to establish a range of possible effects of the regulations. In its August 2014 report, Consumers Union developed minimal, moderate, and heavy usage profiles and determined that the accounts it analyzed would cost minimal users from $0 to $59.40, moderate users from $10.20 to $95.00, and heavy users from $59.40 to $520.00 on an annual basis.[67] This range of outcomes indicates how the distribution of students in accounts and the student response to account information disclosed under the regulations will help determine the fee revenue affected by the regulations.

An additional analysis by U.S. PIRG included data on overdraft behavior by age range, with adults in the 18 to 25 age range having the highest incidence of paying overdraft fees—53.6 percent paying zero, 21.5 percent paying $1 to $4, 10.3 percent paying $5 to $9, 7.9 percent paying $10 to $19, and 6.8 percent paying $20 or more for each overdrafts.[68] While not all students will fall within this age range, given the high percentage that pays at least one overdraft fee and the amount of overdraft fees ranging from $25 to $38 when applied, the amount of money affected by the overdraft fee prohibition is significant. Further analysis recently released by the Center for Responsible Lending analyzed similar data on overdrafts for adults in three categories and found average annual costs in overdraft fees of $67 for the 15 percent of young adults with two overdrafts per year, $264 for the 13 percent of adults with seven overdrafts per year, and $710 for the 11 percent of adults that overdraw about 19 times per year.[69]

Another element that complicates the analysis of the effects of the regulations is the response of financial institutions and institutions. The fee provisions imposed on accounts offered pursuant to T1 arrangements will have cost implications for affected servicers. One intent of the regulations is to allow students to access financial aid funds without burden from fees or other costs; however, the Department acknowledges that many of these servicers could restructure their accounts to earn some of those funds through fees not affected by the regulations. Over time, as contracts are renewed or entered into, financial institutions could also increase the revenue they receive from institutions, but the split between the revenue that can be recaptured and that which might be lost to financial institutions is not estimated in this analysis.

Benefits: Disclosure Provisions, Student Choice, and Access to Funds

As noted in the Summary of Changes and Final Regulations, institutions with T1 and T2 arrangements are subject to several provisions focused on increasing disclosure of information related to student accounts and emphasizing the availability of options for students to receive credit balances. Students have a variety of choices on how to receive their aid. Based on data from the National Postsecondary Student Aid Study (NPSAS) conducted by the National Center for Education Statistics (NCES), we know that a majority of students receive a refund by depositing a refund directly to a bank account (37.2 percent) or by cashing or depositing a refund at a bank themselves (38.5 percent). The remaining 24.3 percent of students receive refunds by cashing refunds somewhere other than a bank, receive refunds on a prepaid debit card, receive a refund through student ID cards, or do something else not listed.[70]

One of the largest benefits for students from the regulations is that students will have access to account disclosures and critical information to allow them to make informed decisions regarding the handling and distribution of their title IV funds. The fee and contract disclosures will help students and regulators determine whether the financial products marketed by financial institutions with relationships to their school are the best option for them. These disclosures will also help prevent students from being misled into believing that they must use those financial products.

With respect to including the costs of books and supplies in tuition and fees, the Department has changed the ‘‘best financial interest’’ standard in the NPRM to allowing the inclusion under three circumstances. As described in the *Analysis of Comments and Changes,* those three circumstances are: (1) The institution has an arrangement with a book publisher or other entity that enables it to make those books or supplies available to students at or below competitive market rates (with an opt out provision for the student); (2) the books or supplies, including digital or electronic course materials, are not available elsewhere or accessible by students enrolled in that program from sources other than those provided or authorized by the institution; or (3) the institution demonstrates there is a compelling health or safety reason. These final regulations allow, but do not require, institutions to disclose the prices of books and other materials that they include as part of tuition and fees. We believe this revised treatment benefits students through the buying power of the school in cases where the school can source the materials for lower than market costs and the ability of the institution to provide digital and other materials that cannot be sourced elsewhere. If these three circumstances are not met, institutions would need authorization from the student to use title IV, HEA funds on books and supplies, and the student would have the ability to look at alternate providers for better value before providing such authorization.

The regulations also help protect students from deceptive marketing practices aimed at encouraging them to do business with a particular financial institution. When students are not presented with clear choices or

[66] Higher One Holdings, Inc. ‘‘SEC Form 10–K,’’ pages 41–42 (2014), available at *www.sec.gov/Archives/edgar/data/1486800/000148680014000018/one10k.htm.*

[67] Consumers Union at 16.

[68] USPIRG at 32.

[69] Center for Responsible Lending, ‘‘Overdraft U.: Student Bank Accounts Often Loaded with High Overdraft Fees,’’ March 30, 2015.

[70] U.S. Department of Education, National Center for Education Statistics, 2011–12 National Postsecondary Student Aid Study (NPSAS:12).

information, they may be pushed into using financial accounts with higher fees and/or less access than other available options. The student choice provisions aid in the decision making process by allowing students who may have otherwise chosen a higher fee option to identify and choose accounts with lower fees. These students will save money and be able to use all or more of their title IV aid for expenses critical to their educational needs.

Other Benefits

As discussed in the NPRM, the regulations provide other benefits for students and institutions. Institutions will benefit from being able to keep the first $500 in interest accrued on accounts holding title IV funds. Institutions and students will benefit from the retaking coursework regulations as students will be able to continue paying for educational costs with title IV aid. The clock-to-credit-hour conversion regulations also will benefit institutions through simplification of regulations affecting institutional determinations relating to title IV eligibility.

Net Budget Impacts

The final regulations are not estimated to have a significant net budget impact. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. A cohort reflects all loans originated in a given fiscal year.

The regulations require disclosures of institutional agreements with financial services providers through which students may opt to receive title IV credit balances, and restrict the fees students can be charged for accounts offered pursuant to T1 arrangements. Additionally, the proposed regulations make technical changes to subpart K cash management rules to reflect technological advances and improved disbursement practices. The regulations also simplify the clock-to-credit-hour conversion for title IV purposes by eliminating the reference to any State requirement or role in approving or licensing a program. Finally, the regulations eliminate the provision that prevents institutions from counting previously passed courses towards enrollment where the repetition is due to the student failing other coursework.

The regulations affect the arrangements among institutions, students, and financial service providers, but are not expected to affect the volume of title IV aid disbursed or the repayment patterns of students, and therefore, we estimate no significant budget impact on title IV programs.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in Table [7], we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations.

TABLE 7—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

	7%	3%
Category	**Benefits**	
Greater disclosure of arrangements between institutions and financial service providers and clearer disclosure of fees and conditions of student accounts	Not Quantified.	
Category	**Costs**	
Costs of compliance with paperwork requirements.		
Category	**Transfers**	
	$21.0	$21.2

Final Regulatory Flexibility Act Analysis

The final regulations will affect institutions that participate in the title IV, HEA programs, financial institutions, and individual borrowers. The U.S. Small Business Administration (SBA) Size Standards define for-profit institutions as ''small businesses'' if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000. The SBA Size Standards define not-for-profit institutions as ''small organizations'' if they are independently owned and operated and not dominant in their field of operation, or as ''small entities'' if they are institutions controlled by governmental entities with populations below 50,000. The revenues involved in the sector that would be affected by the regulations, and the concentration of ownership of institutions by private owners or public systems, means that the number of title IV, HEA eligible institutions that are small entities would be limited but for the fact that the not-for-profit entities fit within the definition of a ''small organization'' regardless of revenue. Given the definitions above, several of the entities subject to the regulations are small, leading to the preparation of the following Final Regulatory Flexibility Act Analysis.

Description of the Reasons That Action by the Agency Is Being Considered

Over the past several years, a number of changes have occurred in the student financial products marketplace and in budgets of postsecondary institutions that have led to a proliferation of agreements between postsecondary institutions and ''college card'' providers. These cards, usually in the form of debit or prepaid cards and sometimes cobranded with the institution's logo or combined with student IDs, are marketed to students as a way to receive their title IV credit balances via more convenient electronic means. However, a number of government and consumer group reports have also documented troubling practices employed by some of the providers of these college cards. Legal actions against the sector's largest provider further substantiate these reports' findings.

The Secretary is amending the cash management regulations under subpart K issued under the HEA to address a number of disturbing practices identified by multiple government and consumer group reports. These reports indicate that students are not able to conveniently access their title IV, HEA program funds without onerous paper submissions and unnecessary waiting periods, unreasonable and uncommon financial account fees, or receiving misleading information suggesting that a particular financial account is required to receive student aid. The regulations also make changes to update subpart K consistent with contemporary disbursement practices. Finally, the final regulations update two additional, unrelated provisions of interest to students and institutions: revising the way previously passed coursework is treated for title IV eligibility purposes so that students remain in programs and do not have to find alternatives to title IV funding, and streamlining the requirements for converting clock hours to credit hours.

Succinct Statement of the Objectives of, and Legal Basis for, the Regulations

Given the number of students affected by these agreements, the amount of taxpayer-funded title IV aid at stake, and the concerning practices and expanding breadth of the college card market, we believe regulatory action governing the manner in which title IV, student aid is disbursed is warranted.

In addition, it has been 20 years since subpart K was comprehensively updated, and in that time a number of technological improvements and changes in authorized title IV programs have occurred. We have therefore made a number of more minor changes throughout subpart K in the final regulations.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Regulations Will Apply

These final regulations would affect institutions, financial services providers that enter into certain arrangements with institutions, and students. Students are not considered ''small entities'' for the purpose of this analysis and the Department does not expect the financial institutions to meet the applicable definition of a ''small entity.'' However, a significant number of institutions of higher education are considered to meet the applicable definition of a ''small entity,'' and therefore, this analysis focuses on those institutions. As discussed above, private not-for-profit institutions that do not dominate in their field are defined as ''small entities'' and some other institutions that participate in title IV, HEA programs do not have revenues above $7 million and are also categorized as ''small entities.'' Table [8] summarizes the distribution of small entities affected by the regulations by sector.

TABLE 8—DISTRIBUTION OF SMALL ENTITIES BY SECTOR

	Small entity	Total	%
Public 4-year	0	749	0
Private NFP 4-year	1,648	1,648	100
Private For-Profit 4-year	278	827	34
Public 2-year	0	1,074	0
Private NFP 2-year	162	162	100
Private For-Profit 2-year	667	1,035	64
Public less than 2-year	0	262	0
Private NFP less than 2-year	87	87	100
Private For-Profit less than 2-year	1,411	1,695	83
Total	4,253	7,539	56

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Regulations, Including an Estimate of the Classes of Small Entities that Will Be Subject to the Requirements and the Type of Professional Skills Necessary for Preparation of the Report or Record

The various provisions in the regulations require disclosures by institutions as discussed in the *Paperwork Reduction Act* section of this preamble. Table [9] summarizes the estimated burden on small entities from the paperwork requirements associated with the final regulations.

TABLE 9—SUMMARY OF PAPERWORK REQUIREMENTS FOR SMALL ENTITIES

Provision	Reg Section	OMB control No.	Hours	Costs
Require institutions to establish an account selection process	668.164(d)(4)	OMB 1845–0106	3,920	143,276
Compliance with T1 requirements: provide the terms and conditions of the financial accounts; provide convenient access to ATMs; ensure accounts cannot be converted to a credit instrument; and disclose the contract, the mean and median costs incurred over the prior year, and the number of students with these financial accounts	668.164e	OMB 1845–0106	6,710	245,251
Compliance with T2 requirements: obtain consent to open an account; provide terms and conditions; and disclose the contract, the number of students participating, and the mean and median actual costs for the prior year	668.164(f)	OMB 1845–0106	3,285	120,067

TABLE 9—SUMMARY OF PAPERWORK REQUIREMENTS FOR SMALL ENTITIES—Continued

Provision	Reg Section	OMB control No.	Hours	Costs
Total			13,915	508,593

Identification, to the Extent Practicable, of All Relevant Federal Regulations that May Duplicate, Overlap, or Conflict With the Regulations

The final regulations are unlikely to conflict with or duplicate existing Federal regulations. We consulted Federal banking regulators at FDIC, OCC and the Bureau of the Fiscal Service at the Treasury Department, and the CFPB, for help in understanding Federal banking regulations and the Federal bank regulatory framework. We have crafted these regulations in a way that will complement, rather than conflict with, existing banking regulations. The most significant risk of potential conflict is with respect to account disclosure requirements, described in more detail in the ''*Disclosure of account information''* section of this preamble.

Alternatives Considered

As described above, the Department participated in negotiated rulemaking when developing the proposed regulations, and considered a number of options for some of the provisions. No alternatives were aimed specifically at small entities, although the threshold of 500 students with a credit balance for classification as a T2 arrangement and the sufficient access standard for ATMs at campus locations may have a greater effect on small entities.

Collection of Information

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review and further consideration of the regulations, we have determined that the final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3507(d)) does not require a response to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to this collection of information in the final regulations at the end of the affected sections of the regulations.

Section 668.164 contains information collection requirements. Under the PRA, the Department has submitted a copy of this section, related forms, and the Information Collections Request (ICR) to the Office of Management and Budget (OMB) for its review.

The OMB Control number associated with the final regulation is 1845–0106.

Section 668.164 Disbursing Funds

Requirements: Student choice.

Under § 668.164(d)(4)(i), an institution in a State that makes direct payments to a student by EFT and that chooses to enter into an arrangement described in § 668.164(e) or (f), including an institution that uses a third-party servicer to make those payments, must establish a selection process under which the student chooses one of several options for receiving those payments. The institution must inform the student in writing that he or she is not required to open or obtain a financial account or access device offered by or through a specific financial institution. The institution must ensure that the student's options for receiving direct payments are described and presented in a clear, fact-based, and neutral manner, and with no option preselected, except that the institution must prominently present as the first option, the financial account or access device associated with an existing account belonging to the student.

The institution must ensure that initiating the EFT to a financial account or access device associated with an existing student financial account is as timely and no more onerous to the student as initiating the electronic transfer process to an account offered under a T1 or T2 arrangement. The institution must allow the student to change his or her choice as to how direct payments are made, as long as the student provides the institution with written notice of the change within a reasonable amount of time. The institution must ensure that a student who does not make an affirmative selection of how direct payments are to be made is paid the full amount of the credit balance due consistent with the regulations. In describing the options, the institution must list and identify the major features and commonly assessed fees associated with all accounts offered under a T1 or T2 arrangement, as well as a URL for the terms and conditions of those accounts. For each account, if an institution by July 1, 2017 follows the format and content requirements specified by the Secretary in a notice published in the **Federal Register**, it will be in compliance with these requirements.

Alternatively, an institution that does not offer accounts under a T1 or T2 arrangement is not required to establish a student choice process and, instead, may make direct payments to an existing account designated by the student, issue a check, or disburse cash to the student.

Burden Calculation: The Department calculated the incidence and distribution of credit balance recipients. The numbers of students who received title IV aid in the 2013–2014 cohort (according to FSA data) were matched by institution to the IPEDS tuition, fees, and room and board data. The credit balance calculation established an institutional cost that included an estimated average tuition, fees, and room and board amount (which took into account the percentage of students who lived in-district, in-state, and out of state for tuition and fees expense, and the percentage of students who lived on-campus for room and board charges). Aid recipients were grouped by the amount of aid received (rounded into $500 ranges). To determine the number of students at each institution who received a credit balance, we looked at the number of students who fell within the aid ranges above the estimated institutional cost.

We looked only at title IV participating institutions and aid recipients. From the data obtained, 3,400 institutions (out of the total 7,539 participating in title IV, HEA programs) had both tuition estimates and aid recipient information. Unsurprisingly, there was an inverse relationship between an institution's tuition and fees and the percentage of students receiving a title IV credit balance. The Department's findings were consistent with findings from GAO and USPIRG. In an effort to thoroughly analyze all of the available data, we also applied the same methodology described above to a subset of institutions. Utilizing publically available sources and working with the CFPB, we identified 914 institutions that were known to have card agreements with financial institutions. The Department also had available through NSLDS and IPEDS tuition and fees and aid recipient data for 672 of these institutions. From the data for these 672 institutions, we projected the number of students with a title IV credit balance at the 914 institutions proportionately. As a result, there were a total of 1,798,756 students at the 914 institutions from this dataset who received a credit balance.

Of the 914 institutions with card agreements, the NSLDS–IPEDS–CFPB data show that 685 institutions are public institutions. On average, we estimate the burden associated with developing and implementing the student choice options will increase by 20 hours per institution and therefore we estimate a total burden of 13,700 hours (685 institutions times 20 hours per institution) under OMB Control Number 1845–0106.

Of the 914 institutions with card agreements, the NSLDS–IPEDS–CFPB data show that 154 institutions are private not-for-profit institutions. On average, we estimate the burden associated with developing and implementing the student choice options will increase by 20 hours per institution and therefore we estimate a total burden of 3,080 hours (154 institutions times 20 hours per institution) under OMB Control Number 1845–0106.

Of the 914 institutions with card agreements, the NSLDS–IPEDS–CFPB data show that 75 are private for-profit institutions. On average, we estimate the burden associated with developing and implementing the student choice options will increase by 20 hours per institution and therefore we estimate a total burden of 1,500 hours (75 institutions times 20 hours per institution) under OMB Control Number 1845–0106.

Overall, burden to institutions will increase by 18,280 hours (the sum of 13,700 hours, 3,080 hours, and 1,500 hours).

The NSLDS–IPEDS–CFPB data indicate that 1,798,756 title IV recipients with credit balances for the 2013–14 award year will be impacted by this regulation. We estimate that each of the affected title IV recipients will take, on average, 20 minutes (.33 hours) to review the options presented by the institution or their third-party servicer and to make their selection.

Of the total number of title IV recipients with a credit balance, the data show that 1,736,141 recipients were enrolled in public institutions. On average, each recipient will take 20 minutes (.33 hours) to read the materials and make their selection, increasing burden by 572,927 hours (1,736,141 times .33 hours) under OMB Control Number 1845–0106.

Of the total number of title IV recipients with a credit balance, the data show that 13,601 recipients were enrolled in private not-for-profit institutions. On average each recipient will take 20 minutes (.33 hours) to read the materials and make their selection, increasing burden by 4,488 hours (13,601 recipients times .33 hours) under OMB Control Number 1845–0106.

Of the total number of title IV recipients with a credit balance, the data show that 49,014 recipients were enrolled in private for-profit institutions. On average each recipient will take 20 minutes (.33 hours) to read the materials and make their selection, increasing burden by 16,175 hours (49,014 recipients times .33 hours) under OMB Control Number 1845–0106.

Overall, burden to title IV recipients will increase by 593,590 hours (the sum of 572,927 hours, 4,488 hours, and 16,175 hours).

Requirements: T1 arrangements

Under § 668.164(e), a T1 arrangement exists when an institution in a State enters into 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 the institution or third party servicer makes payments to one or more financial accounts that are offered to students under the contract, or to a financial account where information about the account is communicated directly to students by the third-party servicer or by the institution on behalf of or in conjunction with the third party servicer.

An institution with a T1 arrangement must comply with the following requirements:

1. The institution must ensure that the student's consent to open the financial account has been obtained before an access device, or any representation of an access device is sent to the student, or an access device 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. Before a student makes a selection of the financial account, the institution must not share with the third-party servicer under a T1 arrangement any 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 a unique student identifier generated by the institution that does not include a Social Security number, in whole or in part; the disbursement amount; a password, PIN code, or other shared secret provided by the institution that is used to identify the student; or any additional items specified by the Secretary in a notice published in the **Federal Register**. Such information may be used solely for activities that support making direct payments of title IV, HEA program funds and not for any other purpose and cannot be shared with any other affiliate or entity for any other purpose.

2. The institution must inform the student of the terms and conditions of the financial account, in a manner consistent with disclosure requirements specified by the Secretary in a notice published in the **Federal Register** following consultation with the CFPB, before the financial account is opened.

3. The institution must ensure that the student has convenient access to the financial account through a surcharge-free national or regional ATM network. Those ATMs must be 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. The institution must also ensure that students do not incur any cost: for opening the financial account or initially receiving an access device; assessed by the institution, third-party servicer, or associated financial institution on behalf of the third-party servicer, when the student conducts point-of-sale transactions in a State; or for conducting any transaction on an ATM that belongs to the surcharge-free regional or national network.

4. The institution must ensure that: The financial account or access device is not marketed or portrayed as, or converted into a credit card; no credit may be extended or associated with the financial account; and no fee is charged to the student for any transaction or withdrawal exceeding the balance on the card, except that a transaction that exceeds the balance on the card may be permitted only for inadvertently approved overdrafts as long as no fee is charged to the student for such overdraft.

5. The institution, third-party servicer, or third-party servicer's associated financial institution must provide domestic withdrawals for a student accountholder to conveniently access title IV, HEA program funds in

part and in full, without charge, up to the account balance, following the date that such title IV, HEA program funds are deposited or transferred to the financial account.

6. No later than September 1, 2016, the institution must disclose conspicuously on its Web site, and thereafter timely update, the contract 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. No later than September 1, 2017, and then 60 days following the most recently completed award year thereafter, disclose conspicuously on its Web site in a format to be published by the Department: The total consideration, monetary and non-monetary, paid or received by the parties under the terms of the contract; the number of students who had active 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 active account holders. The institution must also annually provide to the Secretary a URL link to the agreement and the foregoing contract data for publication in a centralized database accessible to the public.

7. The institution must ensure that the terms of the accounts offered under 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 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 lower than prevailing market rates; and all contracts for the marketing or offering of accounts under a T1 arrangement to the institution's students provide for termination of the arrangement at the discretion of the institution based on complaints received from students or a determination by the institution that the fees assessed under the account are not consistent with or are above prevailing market rates.

8. The institution must take affirmative steps, by way of contractual arrangements with the third-party servicer as necessary, to ensure that these requirements are met with respect to all accounts offered pursuant to T1 arrangements.

9. The requirements of paragraph (e)(2) do not apply to a student no longer enrolled if there are no pending title IV disbursements pending for that students, except that the institution remains responsible for including in the disclosures required of it any data regarding a T1 account maintained by a student during the preceding award year and the fees the student incurred, regardless of whether the student is no longer enrolled at the time institution discloses the data.

Burden Calculation: We expect that institutions with T1 or T2 arrangements will have to modify their systems or procedures to ensure compliance with these regulations including to establish a consent process; provide account terms and conditions disclosures; and provide the disclosures, contract disclosures, and use and cost data after the end of the award year. In addition, it is likely that institutions will make other changes in order to conduct their periodic due diligence and updating of third-party servicer contracts to allow for termination of the contract based upon student complaints or the institution's assessment that third-party servicer fees are not consistent with or lower than prevailing market rates.

Based upon our examination of the 2013–14 NSLDS and IPEDS data that was further refined by examining the CFPB listing of 914 institutions known to have arrangements that constitute T1 or T2 arrangements under the regulations, we determined that there are 541 public institutions with a T1 arrangement. We estimate that the changes necessitated by the requirements relating to T1 arrangements will add an additional 55 hours of burden per institution, increasing burden by 29,755 hours (541 institutions times 55 hours per institution) under OMB Control Number 1845–0106.

Based upon our examination of the 2013–14 NSLDS and IPEDS data that was further refined by examining the CFPB listing of 914 institutions known to have arrangements that constitute T1 or T2 arrangements under the regulations, we determined that there are 80 private not-for-profit institutions with a T1 arrangement. We estimate that the changes necessitated by the requirements relating to T1 arrangements will add an additional 55 hours of burden per institution, increasing burden by 4,400 hours (80 institutions times 55 hours per institution) under OMB Control Number 1845–0106.

Based upon our examination of the 2013–14 NSLDS and IPEDS data that was further refined by examining the CFPB listing of 914 institutions known to have arrangements that constitute T1 or T2 arrangements under the regulations, we determined that there are 75 private for-profit institutions with a T1 arrangement. We estimate that the changes necessitated by the requirements relating to T1 arrangements will add an additional 55 hours of burden per institution, increasing burden by 4,125 hours (75 institutions times 55 hours per institution) under OMB Control Number 1845–0106.

Overall, burden to title IV institutions will increase by 38,280 hours (the sum of 29,755 hours, 4,400 hours, and 4,125 hours).

The NSLDS–IPEDS–CFPB data showed that there were 1,538,667 title IV recipients with credit balances at institutions with a T1 arrangement in the 2013–14 award year. Of that number of recipients, the data showed that 1,476,144 were enrolled at public institutions. We estimate that, on average, each recipient will take 15 minutes (.25 hours) to read about the major features and fees associated with the financial account, information about the monetary and non-monetary remuneration received by the institution for entering into the T1 arrangement, the number of students who had financial accounts under the T1 arrangement for the most recently completed year, the mean and median costs incurred by account holders, and determine whether to provide their consent to the institution. Therefore, the additional burden on title IV recipients will increase by 369,036 hours (1,476,144 times .25 hours) under OMB Control Number 1845–0106.

The data showed that 13,509 title IV recipients with credit balances were enrolled at private not-for-profit institutions. We estimate that, on average, each recipient will take 15 minutes (.25 hours) to read about the major features and fees associated with the financial account, information about the monetary and non-monetary remuneration received by the institution for entering into the T1 arrangement, the number of students who had financial accounts under the T1 arrangement for the most recently completed year, the mean and median costs incurred by account holders, and determine whether to provide their consent to the institution. Therefore, the additional burden on title IV recipients will increase by 3,377 hours (13,509 times .25 hours) under OMB Control Number 1845–0106.

The data showed that 49,014 title IV recipients with credit balances were enrolled at private for-profit institutions. We estimate that, on average, each recipient will take 15 minutes (.25 hours) to read about the major features and fees associated with the financial account, information about the monetary and non-monetary remuneration received by the institution for entering into the T1 arrangement, the number of students who had financial accounts under the T1 arrangement for the most recently completed year, the mean and median costs incurred by account holders, and determine whether to provide their consent to the institution. Therefore, the additional burden on title IV recipients will increase by 12,254 hours under OMB Control Number 1845–0106.

Overall, burden to recipients will increase by 384,667 hours (the sum of 369,036 hours, 3,377 hours, and 12,254 hours).

Requirements: T2 arrangements.

Under § 668.164(f), a T2 arrangement exists when an institution enters into 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. However, the institution does not have to comply with paragraphs(d)(1)(4) or (f)(4) and (5) if it had no credit balance recipients in one or more of the preceding three award years, nor with certain requirements in § 668.164(f)(4) if it documents that, on average over the preceding three years, fewer than 500 students received a credit balance and credit balance recipients comprised less than five percent of enrollment. The Secretary considers that a financial account is marketed directly if the institution communicates information directly to its students about the financial account and how it may be opened; the financial account or access device is cobranded with the institution's name, logo, mascot, or other affiliation and marketed principally to students; or an access device 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.

Under a T2 arrangement, the institution must comply with the following requirements:

1. The institution must ensure that the student's consent to open the financial account is obtained before: The institution provides, or permits a third-party servicer to provide, any personally identifiable 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; or 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).

2. The institution must inform the student of the terms and conditions of the financial account, in a manner consistent with the disclosure requirements specified by the Secretary in a notice published in the **Federal Register** following consultation with the CFPB, before the financial account is opened.

3. No later than September 1, 2016, the institution must disclose conspicuously on the institution's Web site, the contract between the institution and financial institution in its entirety, except for any portions that, if disclosed, will compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities, and must also provide to the Secretary the URL for the contract for publication in a centralized database accessible to the public, and must thereafter update the contract posted with any changes. No later than September 1, 2017, and thereafter no later than 60 days following the most recently completed award year thereafter, the institution must disclose conspicuously on its Web site in a format to be published by the Department the total consideration, monetary and non-monetary, paid or received by the parties under the terms of the contract; and, for any year in which the institution's enrolled students had 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 active account holders. The institution must ensure that the foregoing data is included on the URL provided to the Secretary disclosing the contract.

4. If the institution is located in a State, it must 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.

5. The institution must ensure that the financial accounts are not marketed or portrayed as, or converted into, credit cards.

6. The institution must ensure that the terms of the accounts offered under 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 the institution documents that it conducts reasonable due diligence reviews at least every two years, to ascertain whether the fees imposed under the accounts are, considered as a whole, consistent with or lower than prevailing market rates; and all contracts for the marketing or offering of the accounts to the institution's students provide for termination of the arrangement at the discretion of the institution based on complaints received from students or a determination by the institution that the fees assessed under the account are not consistent with or are above prevailing market rates.

7. The institution must take affirmative steps, by way of contractual arrangements with the financial institution as necessary, to ensure that these requirements are met with respect to all accounts offered under a T2 arrangement.

8. The institution must ensure that students incur no cost for opening the account or initially receiving or validating an access device.

9. If the institution enters into an agreement for the cobranding of a financial account but maintains that the account is not marketed principally to its enrolled students and is not otherwise marketed directly, the institution must retain the cobranding contract and other documentation it believes establishes this.

10. The requirements of paragraph (f)(4) do not apply to a student no longer enrolled if there are no pending title IV disbursements pending for that students, except that the institution remains responsible for including in the disclosures required of it any data regarding a T2 account maintained by a student during the preceding award year and the fees the student incurred, regardless of whether the student is no longer enrolled at the time institution discloses the data.

Burden calculation: Under the regulations, we estimate that an institution with a T2 arrangement will have to modify its systems or procedures to, among other things: establish a consent process; provide account terms and conditions disclosures; provide the required disclosures, contract disclosures, and use and cost data within 60 days after the end of the award year. In addition, other changes may be required regarding how the institution will conduct its periodic due diligence and updating of third-party servicer contracts to allow for termination of the contract based upon student complaints or the institution's assessment that third-party servicer fees have become inconsistent with or higher than prevailing market rates.

Based upon our examination of the 2013–14 NSLDS and IPEDS data on title IV recipients there were 7,539 institutions of higher education participating in title IV, HEA programs.

Of these 7,539 institutions, according to NSLDS–IPEDS–CFPB data, 144 are public institutions with T2 arrangements. We estimate that the changes necessitated by the requirements relating to T2 arrangements will add an additional 45 hours of burden per institution, increasing burden by 6,480 hours under OMB Control Number 1845–0106.

Of the 7,539 institutions, according to NSLDS–IPEDS–CFPB data, 74 are private not-for-profit institutions with T2 arrangements. We estimate that the changes necessitated by the requirements relating to T2 arrangements will add an additional 45 hours of burden per institution, increasing burden by 3,330 hours under OMB Control Number 1845–0106.

Of the 7,539 institutions, according to NSLDS–IPEDS–CFPB data, no private for-profit institutions where title IV recipients had credit balances have T2 arrangements.

Overall, burden to institutions will increase by 9,810 hours (the sum of 6,480 hours and 3,330 hours).

From the NSLDS–IPEDS–CFPB data, we projected that there were 260,089 title IV recipients with credit balances at institutions with T2 arrangements. Of those recipients, the data showed that 259,997 were enrolled at public institutions. We estimate that, on average, each recipient will take 15 minutes (.25 hours) to read the institution's required disclosures and consent information and decide whether to provide consent or not. Therefore, the additional burden on title IV recipients will increase by 64,999 hours under OMB Control Number 1845–0106.

Of the total 260,089 title IV recipients with credit balances at institutions that had a T2 arrangement, we estimated that 92 were enrolled at private not-for-profit institutions. We estimate that, on average, each recipient will take 15 minutes (.25 hours) to read the institution's required disclosures and consent information and decide whether to provide consent or not. Therefore, the additional burden on title IV recipients will increase by 23 hours under OMB Control Number 1845–0106.

Of the total 260,089 title IV recipients with credit balances at institutions with T2 arrangements, the data showed that zero were enrolled at private for-profit institutions.

Overall, burden to title IV recipients will increase by 65,022 hours (the sum of 64,999 hours and 23 hours).

Collectively, the total increase in burden for § 668.164 will be 1,109,649 hours under OMB Control Number 1845–0106.

Consistent with the discussion above, the following chart describes the sections of the final regulations involving information collections, the information being collected, and the collections that the Department has submitted to OMB for approval, and the estimated costs associated with the information collections. The monetized net costs of the increased burden on institutions and borrowers, using wage data developed using BLS data, available at *www.bls.gov/ncs/ect/sp/ecsuphst.pdf,* is $19,431,272 as shown in the chart below. This cost was based on an hourly rate of $36.55 for institutions and $16.30 for students.

COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB Control No. and estimated burden [change in burden]	Estimated costs
668.164–Disbursing Funds.	The final regulations require institutions to establish an account selection process if the institution sends EFT payments to an account described in § 668.164(e) or (f). Under § 668.164(e), when an institution enters into a T1 arrangement, the institution must, among other things, provide the terms and conditions of the financial accounts, provide convenient access to ATMs if the institution is located in a State, ensure the account cannot be converted to a credit instrument, disclose the details of the contract on the institution's Web site by providing a URL to a link showing the contract, including the mean and median costs incurred over the prior year as well as the number of students with these financial accounts. Under § 668.164(f), when an institution enters into a T2 arrangement, the institution or financial account provider must, among other things, obtain consent to open an financial account or provide an access device that is cobranded with the institution's name, logo, mascot, or other affiliation and principally marketed to students, or a card or tool that is provided to the student for institutional purposes such as a student ID card that is linked to the financial account, and provide the terms and conditions of the account, disclose the contract between the institution and the financial institution.	OMB 1845–0106 .... This will be a revised collection. We estimate that the burden will increase by 1,109,649 hours..	$19,431,272

The total burden hours and change in burden hours associated with each OMB Control number affected by these regulations follows:

Control No.	Total proposed burden hours	Proposed change in burden hours
1845–0106	4,282,188	+ 3,599,340
Total	4,282,188	= 3,599,340

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(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 668

Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: October 21, 2015.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 1. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070a, 1070g, 1085, 1087b, 1087d, 1087e, 1088, 1091, 1092, 1094, 1099c, 1099c–1, 1221e–3, and 3474, unless otherwise noted.

■ 2. Section 668.2 is amended by revising the definition of ''Full-time student'' in paragraph (b) to read as follows:

§ 668.2 General definitions.

* * * * *

(b) * * *

Full-time student: An enrolled student who is carrying a full-time academic workload, as determined by the institution, under a standard applicable to all students enrolled in a particular educational program. The student's workload may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student. For a term-based program, the student's workload may include repeating any coursework previously taken in the program but may not include more than one repetition of a previously passed course. However, for an undergraduate student, an institution's minimum standard must equal or exceed one of the following minimum requirements:

(1) For a program that measures progress in credit hours and uses standard terms (semesters, trimesters, or quarters), 12 semester hours or 12 quarter hours per academic term.

(2) For a program that measures progress in credit hours and does not use terms, 24 semester hours or 36 quarter hours over the weeks of instructional time in the academic year, or the prorated equivalent if the program is less than one academic year.

(3) For a program that measures progress in credit hours and uses nonstandard terms (terms other than semesters, trimesters, or quarters) the number of credits determined by—

(i) Dividing the number of weeks of instructional time in the term by the number of weeks of instructional time in the program's academic year; and

(ii) Multiplying the fraction determined under paragraph (3)(i) of this definition by the number of credit hours in the program's academic year.

(4) For a program that measures progress in clock hours, 24 clock hours per week.

(5) A series of courses or seminars that equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

(7) For correspondence coursework, a full-time course load must be—

(i) Commensurate with the full-time definitions listed in paragraphs (1) through (6) of this definition; and

(ii) At least one-half of the coursework must be made up of non-correspondence coursework that meets one-half of the institution's requirement for full-time students.

(Authority: 20 U.S.C. 1082 and 1088)

■ 3. Section 668.8 is amended by revising paragraphs (k) and (l) to read as follows:

§ 668.8 Eligible program.

* * * * *

(k) *Undergraduate educational program in credit hours.* If an institution offers an undergraduate educational program in credit hours, the institution must use the formula contained in paragraph (l) of this section to determine whether that program satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and the number of credit hours in that educational program for purposes of the title IV, HEA programs, unless—

(1) The program is at least two academic years in length and provides an associate degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by the Secretary; or

(2) Each course within the program is acceptable for full credit toward that institution's associate degree, bachelor's degree, professional degree, or equivalent degree as determined by the Secretary provided that—

(i) The institution's degree requires at least two academic years of study; and

(ii) The institution demonstrates that students enroll in, and graduate from, the degree program.

(l) *Formula.* (1) Except as provided in paragraph (l)(2) of this section, for purposes of determining whether a program described in paragraph (k) of this section satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and determining the number of credit hours in that educational program with regard to the title IV, HEA programs—

(i) A semester hour must include at least 37.5 clock hours of instruction;

(ii) A trimester hour must include at least 37.5 clock hours of instruction; and

(iii) A quarter hour must include at least 25 clock hours of instruction.

(2) The institution's conversions to establish a minimum number of clock hours of instruction per credit may be less than those specified in paragraph (l)(1) of this section if the institution's designated accrediting agency, or recognized State agency for the approval of public postsecondary vocational institutions for participation in the title IV, HEA programs, has not identified any deficiencies with the institution's policies and procedures, or their implementation, for determining the credit hours that the institution awards for programs and courses, in accordance with 34 CFR 602.24(f) or, if applicable, 34 CFR 603.24(c), so long as—

(i) The institution's student work outside of class combined with the clock hours of instruction meet or exceed the numeric requirements in paragraph (l)(1) of this section; and

(ii)(A) A semester hour must include at least 30 clock hours of instruction;

(B) A trimester hour must include at least 30 clock hours of instruction; and

(C) A quarter hour must include at least 20 hours of instruction.

* * * * *

■ 4. Subpart K is revised to read as follows:

Subpart K—Cash Management

Sec.

§ 668.161 Scope and institutional responsibility.

(a) *General.* (1) This subpart establishes the rules under which a participating institution requests, maintains, disburses, and otherwise manages title IV, HEA program funds.

(2) As used in this subpart—

(i) *Access device* means a card, code, or other means of access to a financial account, or any combination thereof, that may be used by a student to initiate electronic fund transfers;

(ii) *Day* means a calendar day, unless otherwise specified;

(iii) *Depository account* means an account at a depository institution described in 12 U.S.C. 461(b)(1)(A), or an account maintained by a foreign institution at a comparable depository institution that meets the requirements of § 668.163(a)(1);

(iv) *EFT (Electronic Funds Transfer)* means a transaction initiated electronically instructing the crediting or debiting of a financial account, or an institution's depository account. For purposes of transactions initiated by the Secretary, the term ''EFT'' includes all transactions covered by 31 CFR 208.2(f). For purposes of transactions initiated by or on behalf of an institution, the term ''EFT'' includes, from among the transactions covered by 31 CFR 208.2(f), only Automated Clearinghouse transactions;

(v) *Financial account* means a student's or parent's checking or savings account, prepaid card account, or other consumer asset account held directly or indirectly by a financial institution;

(vi) *Financial institution* means a bank, savings association, credit union, or any other person or entity that directly or indirectly holds a financial account belonging to a student, issues to a student an access device associated with a financial account, and agrees with the student to provide EFT services;

(vii) *Parent* means the parent borrower of a Direct PLUS Loan;

(viii) *Student ledger account* means a bookkeeping account maintained by an institution to record the financial transactions pertaining to a student's enrollment at the institution; and

(ix) *Title IV, HEA programs* means the Federal Pell Grant, Iraq-Afghanistan Service Grant, TEACH Grant, FSEOG, Federal Perkins Loan, FWS, and Direct Loan programs, and any other program designated by the Secretary.

(b) *Federal interest in title IV, HEA program funds.* Except for funds provided by the Secretary for administrative expenses, and for funds used for the Job Location and Development Program under 20 CFR part 675, subpart B, funds received by an institution under the title IV, HEA programs are held in trust for the intended beneficiaries or the Secretary. The institution, as a trustee of those funds, may not use or hypothecate (*i.e.,* use as collateral) the funds for any other purpose or otherwise engage in any practice that risks the loss of those funds.

(c) *Standard of conduct.* An institution must exercise the level of care and diligence required of a fiduciary with regard to managing title IV, HEA program funds under this subpart.

§ 668.162 Requesting funds.

(a) *General.* The Secretary has sole discretion to determine the method under which the Secretary provides title IV, HEA program funds to an institution. In accordance with procedures established by the Secretary, the Secretary may provide funds to an institution under the advance payment method, reimbursement payment method, or heightened cash monitoring payment method.

(b) *Advance payment method.* (1) Under the advance payment method, an institution submits a request for funds to the Secretary. The institution's request may not exceed the amount of funds the institution needs immediately for disbursements the institution has made or will make to eligible students and parents.

(2) If the Secretary accepts that request, the Secretary initiates an EFT of that amount to the depository account designated by the institution.

(3) The institution must disburse the funds requested as soon as administratively feasible but no later than three business days following the date the institution received those funds.

(c) *Reimbursement payment method.* (1) Under the reimbursement payment method, an institution must credit a student's ledger account for the amount of title IV, HEA program funds that the student or parent is eligible to receive, and pay the amount of any credit balance due under § 668.164(h), before the institution seeks reimbursement from the Secretary for those disbursements.

(2) An institution seeks reimbursement by submitting to the Secretary a request for funds that does not exceed the amount of the disbursements the institution has made to students or parents included in that request.

(3) As part of its reimbursement request, the institution must—

(i) Identify the students or parents for whom reimbursement is sought; and

(ii) Submit to the Secretary, or an entity approved by the Secretary, documentation that shows that each student or parent included in the request was—

(A) Eligible to receive and has received the title IV, HEA program funds for which reimbursement is sought; and

(B) Paid directly any credit balance due under § 668.164(h).

(4) The Secretary will not approve the amount of the institution's reimbursement request for a student or parent and will not initiate an EFT of that amount to the depository account designated by the institution, if the Secretary determines with regard to that student or parent, and in the judgment of the Secretary, that the institution has not—

(i) Accurately determined the student's or parent's eligibility for title IV, HEA program funds;

(ii) Accurately determined the amount of title IV, HEA program funds disbursed, including the amount paid directly to the student or parent; and

(iii) Submitted the documentation required under paragraph (c)(3) of this section.

(d) *Heightened cash monitoring payment method.* Under the heightened cash monitoring payment method, an institution must credit a student's ledger account for the amount of title IV, HEA program funds that the student or parent is eligible to receive, and pay the amount of any credit balance due under § 668.164(h), before the institution—

(1) Submits a request for funds under the provisions of the advance payment method described in paragraphs (b)(1) and (2) of this section, except that the institution's request may not exceed the amount of the disbursements the institution has made to the students included in that request; or

(2) Seeks reimbursement for those disbursements under the provisions of the reimbursement payment method described in paragraph (c) of this section, except that the Secretary may modify the documentation requirements and review procedures used to approve the reimbursement request.

§ 668.163 Maintaining and accounting for funds.

(a)(1) *Institutional depository account.* An institution must maintain title IV, HEA program funds in a depository account. For an institution located in a State, the depository account must be insured by the FDIC or NCUA. For a foreign institution, the depository account may be insured by the FDIC or NCUA, or by an equivalent agency of the government of the country in which the institution is located. If there is no equivalent agency, the Secretary may approve a depository account designated by the foreign institution.

(2) For each depository account that includes title IV, HEA program funds, an institution located in a State must clearly identify that title IV, HEA program funds are maintained in that account by—

(i) Including in the name of each depository account the phrase ''Federal Funds''; or

(ii)(A) Notifying the depository institution that the depository account contains title IV, HEA program funds that are held in trust and retaining a record of that notice; and

(B) Except for a public institution located in a State or a foreign institution, filing with the appropriate State or municipal government entity a UCC–1 statement disclosing that the depository account contains Federal funds and maintaining a copy of that statement.

(b) *Separate depository account.* The Secretary may require an institution to maintain title IV, HEA program funds in a separate depository account that contains no other funds if the Secretary determines that the institution failed to comply with—

(1) The requirements in this subpart;

(2) The recordkeeping and reporting requirements in subpart B of this part; or

(3) Applicable program regulations.

(c) *Interest-bearing depository account.* (1) An institution located in a State is required to maintain its title IV, HEA program funds in an interest-bearing depository account, except as provided in 2 CFR 200.305(b)(8).

(2) Any interest earned on Federal Perkins Loan program funds is retained by the institution as provided under 34 CFR 674.8(a).

(3) An institution may keep the initial $500 in interest it earns during the award year on other title IV, HEA program funds it maintains in accordance with paragraph (c)(1) of this section. No later than 30 days after the end of that award year, the institution must remit to the Department of Health and Human Services, Payment Management System, Rockville, MD 20852, any interest over $500.

(d) *Accounting and fiscal records.* An institution must—

(1) Maintain accounting and internal control systems that identify the cash balance of the funds of each title IV, HEA program that are included in the institution's depository account or accounts as readily as if those funds were maintained in a separate depository account;

(2) Identify the earnings on title IV, HEA program funds maintained in the institution's depository account or accounts; and

(3) Maintain its fiscal records in accordance with the provisions in § 668.24.

§ 668.164 Disbursing funds.

(a) *Disbursement.* (1) Except as provided under paragraph (a)(2) of this section, a disbursement of title IV, HEA program funds occurs on the date that the institution credits the student's ledger account or pays the student or parent directly with—

(i) Funds received from the Secretary; or

(ii) Institutional funds used in advance of receiving title IV, HEA program funds.

(2)(i) For a Direct Loan for which the student is subject to the delayed disbursement requirements under 34 CFR 685.303(b)(5), if an institution credits a student's ledger account with institutional funds earlier than 30 days after the beginning of a payment period, the Secretary considers that the institution makes that disbursement on the 30th day after the beginning of the payment period; or

(ii) If an institution credits a student's ledger account with institutional funds earlier than 10 days before the first day of classes of a payment period, the Secretary considers that the institution makes that disbursement on the 10th day before the first day of classes of a payment period.

(b) *Disbursements by payment period.* (1) Except for paying a student under the FWS program or unless 34 CFR 685.303(d)(4)(i) applies, an institution must disburse during the current payment period the amount of title IV, HEA program funds that a student enrolled at the institution, or the student's parent, is eligible to receive for that payment period.

(2) An institution may make a prior year, late, or retroactive disbursement, as provided under paragraph (c)(3), (j), or (k) of this section, respectively, during the current payment period as long as the student was enrolled and eligible during the payment period covered by that prior year, late, or retroactive disbursement.

(3) At the time a disbursement is made to a student for a payment period, an institution must confirm that the student is eligible for the type and amount of title IV, HEA program funds identified by that disbursement. A third-party servicer is also responsible for confirming the student's eligibility if the institution engages the servicer to perform activities or transactions that lead to or support that disbursement. Those activities and transactions include but are not limited to—

(i) Determining the type and amount of title IV, HEA program funds that a student is eligible to receive;

(ii) Requesting funds under a payment method described in § 668.162; or

(iii) Accounting for funds that are originated, requested, or disbursed, in reports or data submissions to the Secretary.

(c) *Crediting a student's ledger account.* (1) An institution may credit a student's ledger account with title IV, HEA program funds to pay for allowable charges associated with the current payment period. Allowable charges are—

(i) The amount of tuition, fees, and institutionally provided room and board assessed the student for the payment period or, as provided in paragraph (c)(5) of this section, the prorated amount of those charges if the institution debits the student's ledger account for more than the charges associated with the payment period; and

(ii) The amount incurred by the student for the payment period for purchasing books, supplies, and other educationally related goods and services provided by the institution for which the institution obtains the student's or parent's authorization under § 668.165(b).

(2) An institution may include the costs of books and supplies as part of tuition and fees under paragraph (c)(1)(i) of this section if —

(i) The institution—

(A) Has an arrangement with a book publisher or other entity that enables it to make those books or supplies available to students below competitive market rates;

(B) Provides a way for a student to obtain those books and supplies by the seventh day of a payment period; and

(C) Has a policy under which the student may opt out of the way the institution provides for the student to obtain books and supplies under this paragraph (c)(2). A student who opts out under this paragraph (c)(2) is considered to also opt out under paragraph (m)(3) of this section;

(ii) The institution documents on a current basis that the books or supplies, including digital or electronic course materials, are not available elsewhere or accessible by students enrolled in that program from sources other than those provided or authorized by the institution; or

(iii) The institution demonstrates there is a compelling health or safety reason.

(3)(i) An institution may include in one or more payment periods for the current year, prior year charges of not more than $200 for—

(A) Tuition, fees, and institutionally provided room and board, as provided under paragraph (c)(1)(i) of this section, without obtaining the student's or parent's authorization; and

(B) Educationally related goods and services provided by the institution, as described in paragraph (c)(1)(ii) of this section, if the institution obtains the student's or parent's authorization under § 668.165(b).

(ii) For purposes of this section—

(A) The current year is—

(*1*) The current loan period for a student or parent who receives only a Direct Loan;

(*2*) The current award year for a student who does not receive a Direct Loan but receives funds under any other title IV, HEA program; or

(*3*) At the discretion of the institution, either the current loan period or the current award year if a student receives a Direct Loan and funds from any other title IV, HEA program.

(B) A prior year is any loan period or award year prior to the current loan period or award year, as applicable.

(4) An institution may include in the current payment period unpaid allowable charges from any previous payment period in the current award year or current loan period for which the student was eligible for title IV, HEA program funds.

(5) For purposes of this section, an institution determines the prorated amount of charges associated with the current payment period by—

(i) For a program with substantially equal payment periods, dividing the total institutional charges for the program by the number of payment periods in the program; or

(ii) For other programs, dividing the number of credit or clock hours in the current payment period by the total number of credit or clock hours in the program, and multiplying that result by the total institutional charges for the program.

(d) *Direct payments.* (1) Except as provided under paragraph (d)(3) of this section, an institution makes a direct payment—

(i) To a student, for the amount of the title IV, HEA program funds that a student is eligible to receive, including Direct PLUS Loan funds that the student's parent authorized the student to receive, by—

(A) Initiating an EFT of that amount to the student's financial account;

(B) Issuing a check for that amount payable to, and requiring the endorsement of, the student; or

(C) Dispensing cash for which the institution obtains a receipt signed by the student;

(ii) To a parent, for the amount of the Direct PLUS Loan funds that a parent does not authorize the student to receive, by—

(A) Initiating an EFT of that amount to the parent's financial account;

(B) Issuing a check for that amount payable to and requiring the endorsement of the parent; or

(C) Dispensing cash for which the institution obtains a receipt signed by the parent.

(2) *Issuing a check.* An institution issues a check on the date that it—

(i) Mails the check to the student or parent; or

(ii) Notifies the student or parent that the check is available for immediate pick-up at a specified location at the institution. The institution may hold the check for no longer than 21 days after the date it notifies the student or parent. If the student or parent does not pick up the check, the institution must immediately mail the check to the student or parent, pay the student or parent directly by other means, or return the funds to the appropriate title IV, HEA program.

(3) *Payments by the Secretary.* The Secretary may pay title IV, HEA credit balances under paragraphs (h) and (m) of this section directly to a student or parent using a method established or authorized by the Secretary and published in the **Federal Register**.

(4) *Student choice.* (i) An institution located in a State that makes direct payments to a student by EFT and that enters into an arrangement described in paragraph (e) or (f) of this section, including an institution that uses a third-party servicer to make those payments, must establish a selection process under which the student chooses one of several options for receiving those payments.

(A) In implementing its selection process, the institution must—

(*1*) Inform the student in writing that he or she is not required to open or obtain a financial account or access device offered by or through a specific financial institution;

(*2*) Ensure that the student's options for receiving direct payments are described and presented in a clear, fact-based, and neutral manner;

(*3*) Ensure that initiating direct payments by EFT to a student's existing financial account is as timely and no more onerous to the student as initiating an EFT to an account provided under an arrangement described in paragraph (e) or (f) of this section;

(*4*) Allow the student to change, at any time, his or her previously selected payment option, as long as the student provides the institution with written notice of the change within a reasonable time;

(*5*) Ensure that no account option is preselected; and

(*6*) Ensure that a student who does not make an affirmative selection is paid the full amount of the credit balance within the appropriate time-period specified in paragraph (h)(2) of this section, using a method specified in paragraph (d)(1) of this section.

(B) In describing the options under its selection process, the institution—

(*1*) Must present prominently as the first option, the financial account belonging to the student;

(*2*) Must list and identify the major features and commonly assessed fees associated with each financial account offered under the arrangements described in paragraphs (e) and (f) of this section, as well as a URL for the terms and conditions of each account. For each account, if an institution by July 1, 2017 follows the format, content, and update requirements specified by the Secretary in a notice published in the **Federal Register** following consultation with the Bureau of Consumer Financial Protection, it will be in compliance with the requirements of this paragraph with respect to the major features and assessed fees associated with the account; and

(*3*) May provide, for the benefit of the student, information about available financial accounts other than those described in paragraphs (e) and (f) of this section that have deposit insurance under 12 CFR part 330, or share insurance in accordance with 12 CFR part 745.

(ii) An institution that does not offer or use any financial accounts offered under paragraph (e) or (f) of this section may make direct payments to a student's or parent's existing financial account, or issue a check or disburse cash to the student or parent without establishing the selection process described in paragraph (d)(4)(i) of this section.

(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 of title IV, HEA program funds 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;

(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 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; and

(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 title IV recipients' 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:

$$\frac{\text{The average number of students with credit balances for the three most recently completed award years}}{\text{The average number of students enrolled at the institution at any time during the three most recently completed award years.}}$$

(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 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) If the institution is located in a State, 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;

(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 provisions of paragraphs (d)(4)(i), (f)(4), and (f)(5) of this section.

(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 title IV recipients' enrollment status with the financial institution or entity that is party to the arrangement.

(g) *Ownership of financial accounts opened through outreach to an institution's students.* Any financial account offered or marketed pursuant to an arrangement described in paragraph (e) or (f) of this section must meet the requirements of 31 CFR 210.5(a) or (b)(5), as applicable.

(h) *Title IV, HEA credit balances.* (1) A title IV, HEA credit balance occurs whenever the amount of title IV, HEA program funds credited to a student's ledger account for a payment period exceeds the amount assessed the student for allowable charges associated with that payment period as provided under paragraph (c) of this section.

(2) A title IV, HEA credit balance must be paid directly to the student or parent as soon as possible, but no later than—

(i) Fourteen (14) days after the balance occurred if the credit balance occurred after the first day of class of a payment period; or

(ii) Fourteen (14) days after the first day of class of a payment period if the credit balance occurred on or before the first day of class of that payment period.

(i) *Early disbursements.* (1) Except as provided in paragraph (i)(2) of this section, the earliest an institution may disburse title IV, HEA funds to an eligible student or parent is—

(i) If the student is enrolled in a credit-hour program offered in terms that are substantially equal in length, 10 days before the first day of classes of a payment period; or

(ii) If the student is enrolled in a credit-hour program offered in terms that are not substantially equal in length, a non-term credit-hour program, or a clock-hour program, the later of—

(A) Ten days before the first day of classes of a payment period; or

(B) The date the student completed the previous payment period for which he or she received title IV, HEA program funds.

(2) An institution may not—

(i) Make an early disbursement of a Direct Loan to a first-year, first-time borrower who is subject to the 30-day delayed disbursement requirements in 34 CFR 685.303(b)(5). This restriction does not apply if the institution is exempt from the 30-day delayed disbursement requirements under 34 CFR 685.303(b)(5)(i)(A) or (B); or

(ii) Compensate a student employed under the FWS program until the student earns that compensation by performing work, as provided in 34 CFR 675.16(a)(5).

(j) *Late disbursements*—(1) *Ineligible student.* For purposes of this paragraph (j), an otherwise eligible student becomes ineligible to receive title IV, HEA program funds on the date that—

(i) For a Direct Loan, the student is no longer enrolled at the institution as at least a half-time student for the period of enrollment for which the loan was intended; or

(ii) For an award under the Federal Pell Grant, FSEOG, Federal Perkins Loan, Iraq-Afghanistan Service Grant, and TEACH Grant programs, the student is no longer enrolled at the institution for the award year.

(2) *Conditions for a late disbursement.* Except as limited under paragraph (j)(4) of this section, a student who becomes ineligible, as described in paragraph (j)(1) of this section, qualifies for a late disbursement (and the parent qualifies for a parent Direct PLUS Loan disbursement) if, before the date the student became ineligible—

(i) The Secretary processed a SAR or ISIR with an official expected family contribution for the student for the relevant award year; and

(ii)(A) For a loan made under the Direct Loan program or for an award made under the TEACH Grant program, the institution originated the loan or award; or

(B) For an award under the Federal Perkins Loan or FSEOG programs, the institution made that award to the student.

(3) *Making a late disbursement.* Provided that the conditions described in paragraph (j)(2) of this section are satisfied—

(i) If the student withdrew from the institution during a payment period or period of enrollment, the institution must make any post-withdrawal disbursement required under § 668.22(a)(4) in accordance with the provisions of § 668.22(a)(5);

(ii) If the student completed the payment period or period of enrollment, the institution must provide the student or parent the choice to receive the amount of title IV, HEA program funds that the student or parent was eligible to receive while the student was enrolled at the institution. For a late disbursement in this circumstance, the institution may credit the student's ledger account as provided in paragraph (c) of this section, but must pay or offer any remaining amount to the student or parent; or

(iii) If the student did not withdraw but ceased to be enrolled as at least a half-time student, the institution may make the late disbursement of a loan under the Direct Loan program to pay for educational costs that the institution determines the student incurred for the period in which the student or parent was eligible.

(4) *Limitations.* (i) An institution may not make a late disbursement later than

180 days after the date the institution determines that the student withdrew, as provided in § 668.22, or for a student who did not withdraw, 180 days after the date the student otherwise became ineligible, pursuant to paragraph (j)(1) of this section.

(ii) An institution may not make a late second or subsequent disbursement of a loan under the Direct Loan program unless the student successfully completed the period of enrollment for which the loan was intended.

(iii) An institution may not make a late disbursement of a Direct Loan if the student was a first-year, first-time borrower as described in 34 CFR 685.303(b)(5) unless the student completed the first 30 days of his or her program of study. This limitation does not apply if the institution is exempt from the 30-day delayed disbursement requirements under 34 CFR 685.303(b)(5)(i)(A) or (B).

(iv) An institution may not make a late disbursement of any title IV, HEA program assistance unless it received a valid SAR or a valid ISIR for the student by the deadline date established by the Secretary in a notice published in the **Federal Register**.

(k) *Retroactive payments.* If an institution did not make a disbursement to an enrolled student for a payment period the student completed (for example, because of an administrative delay or because the student's ISIR was not available until a subsequent payment period), the institution may pay the student for all prior payment periods in the current award year or loan period for which the student was eligible. For Pell Grant payments under this paragraph (k), the student's enrollment status must be determined according to work already completed, as required by 34 CFR 690.76(b).

(l) *Returning funds.* (1) Notwithstanding any State law (such as a law that allows funds to escheat to the State), an institution must return to the Secretary any title IV, HEA program funds, except FWS program funds, that it attempts to disburse directly to a student or parent that are not received by the student or parent. For FWS program funds, the institution is required to return only the Federal portion of the payroll disbursement.

(2) If an EFT to a student's or parent's financial account is rejected, or a check to a student or parent is returned, the institution may make additional attempts to disburse the funds, provided that those attempts are made not later than 45 days after the EFT was rejected or the check returned. In cases where the institution does not make another attempt, the funds must be returned to the Secretary before the end of this 45-day period.

(3) If a check sent to a student or parent is not returned to the institution but is not cashed, the institution must return the funds to the Secretary no later than 240 days after the date it issued the check.

(m) *Provisions for books and supplies.* (1) An institution must provide a way for a student who is eligible for title IV, HEA program funds to obtain or purchase, by the seventh day of a payment period, the books and supplies applicable to the payment period if, 10 days before the beginning of the payment period—

(i) The institution could disburse the title IV, HEA program funds for which the student is eligible; and

(ii) Presuming the funds were disbursed, the student would have a credit balance under paragraph (h) of this section.

(2) The amount the institution provides to the student to obtain or purchase books and supplies is the lesser of the presumed credit balance under this paragraph or the amount needed by the student, as determined by the institution.

(3) The institution must have a policy under which the student may opt out of the way the institution provides for the student to obtain or purchase books and supplies under this paragraph (m). A student who opts out under this paragraph is considered to also opt out under paragraph (c)(2)(i)(C) of this section;

(4) If a student uses the method provided by the institution to obtain or purchase books and supplies under this paragraph, the student is considered to have authorized the use of title IV, HEA funds and the institution does not need to obtain a written authorization under paragraph (c)(1)(ii) of this section and § 668.165(b) for this purpose.

§ 668.165 Notices and authorizations.

(a) *Notices.* (1) Before an institution disburses title IV, HEA program funds for any award year, the institution must notify a student of the amount of funds that the student or his or her parent can expect to receive under each title IV, HEA program, and how and when those funds will be disbursed. If those funds include Direct Loan program funds, the notice must indicate which funds are from subsidized loans, which are from unsubsidized loans, and which are from PLUS loans.

(2) Except in the case of a post-withdrawal disbursement made in accordance with § 668.22(a)(5), if an institution credits a student's account at the institution with Direct Loan, Federal Perkins Loan, or TEACH Grant program funds, the institution must notify the student or parent of—

(i) The anticipated date and amount of the disbursement;

(ii) The student's or parent's right to cancel all or a portion of that loan, loan disbursement, TEACH Grant, or TEACH Grant disbursement and have the loan proceeds or TEACH Grant proceeds returned to the Secretary; and

(iii) The procedures and time by which the student or parent must notify the institution that he or she wishes to cancel the loan, loan disbursement, TEACH Grant, or TEACH Grant disbursement.

(3) The institution must provide the notice described in paragraph (a)(2) of this section in writing—

(i) No earlier than 30 days before, and no later than 30 days after, crediting the student's ledger account at the institution, if the institution obtains affirmative confirmation from the student under paragraph (a)(6)(i) of this section; or

(ii) No earlier than 30 days before, and no later than seven days after, crediting the student's ledger account at the institution, if the institution does not obtain affirmative confirmation from the student under paragraph (a)(6)(i) of this section.

(4)(i) A student or parent must inform the institution if he or she wishes to cancel all or a portion of a loan, loan disbursement, TEACH Grant, or TEACH Grant disbursement.

(ii) The institution must return the loan or TEACH Grant proceeds, cancel the loan or TEACH Grant, or do both, in accordance with program regulations provided that the institution receives a loan or TEACH Grant cancellation request—

(A) By the later of the first day of a payment period or 14 days after the date it notifies the student or parent of his or her right to cancel all or a portion of a loan or TEACH Grant, if the institution obtains affirmative confirmation from the student under paragraph (a)(6)(i) of this section; or

(B) Within 30 days of the date the institution notifies the student or parent of his or her right to cancel all or a portion of a loan, if the institution does not obtain affirmative confirmation from the student under paragraph (a)(6)(i) of this section.

(iii) If a student or parent requests a loan cancellation after the period set forth in paragraph (a)(4)(ii) of this section, the institution may return the loan or TEACH Grant proceeds, cancel the loan or TEACH Grant, or do both, in accordance with program regulations.

(5) An institution must inform the student or parent in writing regarding the outcome of any cancellation request.

(6) For purposes of this section—

(i) Affirmative confirmation is a process under which an institution obtains written confirmation of the types and amounts of title IV, HEA program loans that a student wants for the period of enrollment before the institution credits the student's account with those loan funds. The process under which the TEACH Grant program is administered is considered to be an affirmative confirmation process; and

(ii) An institution is not required by this section to return any loan or TEACH Grant proceeds that it disbursed directly to a student or parent.

(b) *Student or parent authorizations.* (1) If an institution obtains written authorization from a student or parent, as applicable, the institution may—

(i) Use the student's or parent's title IV, HEA program funds to pay for charges described in § 668.164(c)(1)(ii) or (c)(3)(i)(B) that are included in that authorization; and

(ii) Unless the Secretary provides funds to the institution under the reimbursement payment method or the heightened cash monitoring payment method described in § 668.162(c) or (d), respectively, hold on behalf of the student or parent any title IV, HEA program funds that would otherwise be paid directly to the student or parent as a credit balance under § 668.164(h).

(2) In obtaining the student's or parent's authorization to perform an activity described in paragraph (b)(1) of this section, an institution—

(i) May not require or coerce the student or parent to provide that authorization;

(ii) Must allow the student or parent to cancel or modify that authorization at any time; and

(iii) Must clearly explain how it will carry out that activity.

(3) A student or parent may authorize an institution to carry out the activities described in paragraph (b)(1) of this section for the period during which the student is enrolled at the institution.

(4)(i) If a student or parent modifies an authorization, the modification takes effect on the date the institution receives the modification notice.

(ii) If a student or parent cancels an authorization to use title IV, HEA program funds to pay for authorized charges under paragraph (a)(4) of this section, the institution may use title IV, HEA program funds to pay only those authorized charges incurred by the student before the institution received the notice.

(iii) If a student or parent cancels an authorization to hold title IV, HEA program funds under paragraph (b)(1)(ii) of this section, the institution must pay those funds directly to the student or parent as soon as possible but no later than 14 days after the institution receives that notice.

(5) If an institution holds excess student funds under paragraph (b)(1)(ii) of this section, the institution must—

(i) Identify the amount of funds the institution holds for each student or parent in a subsidiary ledger account designed for that purpose;

(ii) Maintain, at all times, cash in its depository account in an amount at least equal to the amount of funds the institution holds on behalf of the student or the parent; and

(iii) Notwithstanding any authorization obtained by the institution under this paragraph, pay any remaining balance on loan funds by the end of the loan period and any remaining other title IV, HEA program funds by the end of the last payment period in the award year for which they were awarded.

§ 668.166 Excess cash.

(a) *General.* The Secretary considers excess cash to be any amount of title IV, HEA program funds, other than Federal Perkins Loan program funds, that an institution does not disburse to students by the end of the third business day following the date the institution—

(1) Received those funds from the Secretary; or

(2) Deposited or transferred to its Federal account previously disbursed title IV, HEA program funds, such as those resulting from award adjustments, recoveries, or cancellations.

(b) *Excess cash tolerance.* An institution may maintain for up to seven days an amount of excess cash that does not exceed one percent of the total amount of funds the institution drew down in the prior award year. The institution must return immediately to the Secretary any amount of excess cash over the one-percent tolerance and any amount of excess cash remaining in its account after the seven-day tolerance period.

(c) *Consequences for maintaining excess cash.* Upon a finding that an institution maintained excess cash for any amount or time over that allowed in the tolerance provisions in paragraph (b) of this section, the actions the Secretary may take include, but are not limited to—

(1) Requiring the institution to reimburse the Secretary for the costs the Federal government incurred in providing that excess cash to the institution; and

(2) Providing funds to the institution under the reimbursement payment method or heightened cash monitoring payment method described in § 668.162(c) and (d), respectively.

§ 668.167 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the section or the application of its provisions to any person, act, or practice shall not be affected thereby.

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