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FINAL MANAGEMENT INFORMATION REPORT

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Dear Dr. Dann-Messier and Mr. Runcie:

This final management information report, "Third-Party Servicer Use of Debit Cards to Deliver Title IV Funds," presents the results of our work at four postsecondary schools[1] (schools) and one third-party servicer (servicer). The objectives of our review were to (1) identify the methods, terms and conditions, and time frames for delivering Title IV of the Higher Education Act of 1965, as amended (Title IV) funds to students; (2) determine what personal student information is provided by schools or collected by servicers during the Title IV funds delivery process; (3) identify school and servicer procedures for addressing student complaints about the use of debit cards to deliver Title IV funds; and (4) determine how Federal Student Aid (FSA) monitors schools' and servicers' delivery of Title IV funds through the use of debit cards to protect students from inappropriate practices. We determined that the U.S. Department of Education (Department) needs to take action to better ensure that the interests of students are being served when schools use servicers to deliver credit balances.

[1] Postsecondary schools include public and private, for-profit and nonprofit universities, colleges, community colleges, and proprietary schools.

BACKGROUND

This report responds to an inquiry from Congressman George Miller and Senator Richard Durbin regarding the use of debit cards to deliver Title IV funds to students. Recent reports and media attention have also raised concerns about whether the terms and conditions of the debit cards that servicers use to deliver credit balances are in the best interests of students.

Title IV authorizes various programs that provide financial aid to eligible postsecondary students enrolled in eligible programs at participating schools. FSA is responsible for administering the Title IV programs, including overseeing the activities carried out by schools, servicers and other entities involved in administering the programs. The Office of Postsecondary Education (OPE) formulates Federal postsecondary education policy.

The Department provides Title IV financial aid, typically in the form of grants or loans. According to FSA's annual reports, the Department provided $141.9 billion of Title IV funds to more than 15 million students during fiscal year (FY) 2012 (October 1, 2011, through September 30, 2012) and $137.6 billion to more than 14 million students during FY 2013. The Department's FY 2014 budget request estimates that $182.9 billion in Title IV assistance will be provided in FY 2014.

Schools draw down the Title IV funds from the Department on behalf of eligible students. Schools then disburse the Title IV funds to students by crediting their accounts at the schools. When the total amount of Title IV funds credited exceeds the amount of tuition and fees, room and board, and other institutional charges, the result is a "credit balance." Schools or their servicers deliver these credit balances to students to pay for noninstitutional costs of attendance such as supplies and living expenses. Schools or their servicers must deliver these credit balances to students within time frames established in regulations.

Under Title 34 of the Code of Federal Regulations, Section 668.25 (34 C.F.R. § 668.25), schools may contract with servicers for the administration of any aspect of the school's participation in Title IV programs. A school may accept the standard contract terms and conditions in a servicer's proposal for delivering credit balances or negotiate the terms and conditions to meet the specific needs of the school or its students. For example, a school may negotiate the amount it will pay the servicer, the credit balance delivery options the servicer will offer students, or the number of automated teller machines (ATMs) to be located on each campus.

Schools or servicers may use various methods to deliver credit balances to students, such as issuing a check, transferring the funds to a student's existing bank account through direct deposit, or by issuing a stored value card or debit card linked to a checking account. Section 487(a)(2) of the Higher Education Act of 1965, as amended (HEA) prohibits schools from charging students any fees for processing Title IV assistance. Pursuant to regulations at 34 C.F.R. § 668.164(c), when schools provide students with delivery options through a servicer's debit card or a specific bank, schools must ensure that students have convenient fee-free access to their funds at an ATM or branch office on or immediately adjacent to the campus.

Our review involved limited work at four schools and one servicer and covered the 2010–2011 and 2011–2012 award years (July 1 through June 30). We performed work at three schools that contracted with servicers to deliver credit balances to students: Portland State University (Portland), Houston Community College (Houston), and El Camino Community College (El Camino). We also performed work at California State University, Fullerton (Fullerton) which did not use a servicer to deliver students' credit balances, but partnered with U.S. Bank to offer on-campus financial services to students. Fullerton developed an in-house system for delivering funds to students by direct deposit or check. Fullerton provided its students with a U.S. Bank cobranded student ID/debit card. Table 1 provides additional detail on the schools included in our review.

Table 1: Summary Information on Schools Included in Our Review

School	Location	Servicer	Student Enrollment (a)	Title IV Funds Delivered (millions)(b)
Portland State University	Portland, OR	Higher One	30,000	$211.2
Houston Community College	Houston, TX	Higher One	58,000	$186.9
El Camino Community College	Torrance, CA	Sallie Mae	32,000	$36.5
California State University, Fullerton	Fullerton, CA	Not Applicable	38,000	$162.0

Source: We obtained the student enrollment information from schools and the funding information from Department systems.
(a) Enrollment for fall 2012
(b) Funding from July 1, 2011, through June 30, 2012

Officials at Portland, Houston, and El Camino cited various factors that led them to outsource credit balance delivery. School officials stated that outsourcing eliminated a school process that consumed significant resources, which has been especially important in recent years as schools have faced difficult fiscal conditions and staffing reductions. Officials at all three schools also noted that before outsourcing, students faced long lines and wait times on campus to pick up their financial aid checks. In addition, it was difficult for schools to maintain correct mailing addresses for students and financial aid checks were frequently undeliverable, lost, or stolen. Some school officials noted that it would be difficult and expensive to implement a school-based direct deposit delivery process because of the systems and security measures that would be required. Officials said that students wanted access to their financial aid funds as quickly as possible and that servicers were able to process and deliver the credit balances faster than the schools.

We also performed limited work at Higher One Holdings, Inc., (Higher One) which, according to FSA records, contracted with more schools to deliver credit balances to students than any other servicer did at the time of our review. Higher One's primary business is providing credit balance delivery to students on behalf of schools. It also provides financial services to students who open a Higher One checking account (OneAccount). Higher One's records showed that from July 1, 2011, through June 30, 2012, it had 367 contracts with schools. During this period, it delivered a total of

$9.6 billion in credit balances to about 2.5 million students, including deposits of $7.3 billion to about 1.9 million student OneAccounts.

Higher One reported that of its $198 million of revenues for the year that ended December 31, 2012, 76 percent came from account activity fees paid by OneAccount holders and interchange fees paid by merchants on point-of-sale transactions. Higher One told us that about 50 percent of its $180 million of revenues for the year that ended December 31, 2011, came from account activity fees associated with the OneAccount, and that about 29 percent came from interchange fees.[2] Higher One's records showed that less than 5 percent of its annual revenue came from school payments on contracts for the delivery of credit balances.

The OneAccount is a Federal Deposit Insurance Corporation (FDIC) insured checking account maintained by Higher One's partner banks, and is available to students enrolled at any school contracting with Higher One. Higher One offered students a choice between a standard account with no monthly fee or an upgraded account that involves a monthly fee and additional features. Higher One provides customer service for the OneAccount, and its partner banks maintain the deposits. According to Higher One, the partner banks retain the interest earned on deposits, and Higher One retains the fees charged to students or merchants based on account activity.

At the time of our review, El Camino contracted with Sallie Mae, Inc. (Sallie Mae) to deliver credit balances to students.[3] According to a report issued by the United States Public Interest Research Group,[4] Sallie Mae was the second largest provider of credit balance delivery at the time of our review. El Camino students had the option of receiving their credit balance through a check or on a reloadable stored-value debit card that was not linked to a checking account.

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[2] Not all of these fees were paid by students because not all OneAccount account holders are students. Account holders include college graduates and those who have withdrawn from school but maintained their OneAccounts.

[3] In May 2013, Higher One announced the acquisition of Sallie Mae's Campus Solutions unit, which includes Sallie Mae's business operation that delivers credit balances to students.

[4] "The Campus Debit Card Trap—Are Bank Partnerships Fair To Students?" (May 30, 2012).

RESULTS

We determined that the Department should take action to better ensure that student interests are served when schools use servicers to deliver credit balances. We performed work at three schools that outsourced the Title IV credit balance delivery process, one school that did not outsource the process, and one servicer. Our work identified the following issues.

- Schools that outsourced credit balance delivery gave servicers significant control over the Title IV funds delivery process and relied on them to meet Title IV regulations. However, the 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. (Issue 1)
- Schools did not prevent their servicers from using marketing and other strategies to persuade students to select their debit card over other available options. (Issue 2)
- The schools' servicers appeared to deliver Title IV funds to students without charging fees. However, students who chose a servicer's debit card option could incur fees after the servicer deposited the funds into the student accounts. In some cases, those fees appeared to be unique or higher than those of the alternative financial service providers. (Issue 3)
- Schools had financial incentives in their contracts with servicers that created the potential for conflicts of interest that could influence school officials' decisions and actions at the expense of student interests. (Issue 4)
- Schools that contracted with Higher One had fee-free ATMs on campus, but one school that contracted with Sallie Mae did not. (Issue 5)
- Schools provided, or servicers collected, student information that was not needed to deliver credit balances. In addition, the schools did not monitor servicer activities for compliance with Federal requirements for handling personally identifiable information. (Issue 6)

Specific results obtained at the schools and servicer in our review may not be representative of the actual circumstances at other schools or servicers.

FSA used a variety of mechanisms to monitor schools and servicers that participated in Title IV programs, such as program reviews, financial statement reviews, and special projects. Regarding the delivery of Title IV credit balances, FSA's school program review procedures issued in May 2011 focused on the timely delivery of funds to students. FSA also used annual compliance audit reports as a tool to monitor schools and servicers, but the section of those reviews related to the delivery of credit balances also focused only on timeliness.

In April 2010 FSA, in collaboration with OPE and the Department's Office of the General Counsel, undertook a special project that focused on the delivery of Title IV funds to students using debit cards. FSA reviewed nine schools and their servicer contracts with Higher One. The project identified similar concerns and risks as those we identified with our audit, such as the availability of ATMs on campus, Higher One's policy of delivering credit balances after 21 days in some cases, and revenue sharing agreements. FSA also noted similarities to the improper activities of some

lenders to secure applicants for Federal Family Education Loan (FFEL) Program loans (financial inducements).

FSA shared these issues with OPE and used them as a basis for discussing potential changes in the Title IV regulations. FSA also used the results of this project to enhance its school program review procedures in August 2012 and to contribute to OPE's issuance of a Dear Colleague Letter in April 2012.[5] FSA also presented information on the use of debit cards to deliver credit balances during its November 2012 and December 2013 annual conferences to remind schools and servicers of their responsibilities in this area. However, the updated program review procedures are informational in nature and are not directed at servicer and school compliance with regard to credit balance delivery.

Without additional regulation and proper oversight by the Department and schools to ensure that integrity and transparency exists in relationships between schools and servicers, practices associated with the delivery of Title IV funds might not always serve the best interests of students.

OPE and FSA Comments

We provided a draft of this report to OPE and FSA for comment on February 14, 2014. In a joint response, OPE and FSA stated that they concurred with our suggestions. OPE agreed to consider our suggestions on topics that could involve regulatory changes during its current negotiated rulemaking efforts on cash management. However, OPE noted that it is early in the rulemaking process and therefore uncertain what regulatory changes will ultimately be made. For several other suggestions in our report, OPE and FSA agreed to initiate appropriate reviews to determine what additional actions may be required to protect student interests and what specific regulatory modifications to consider in future negotiated rulemaking efforts. For Suggestion 5.2, FSA concurred and will take appropriate action to ensure that the applicable schools comply with the requirement to provide students who establish accounts with servicers convenient access to a bank branch or ATM for making cash withdrawals at no cost. For Suggestion 6.1, OPE will coordinate with other Department offices to determine what additional actions might be required to ensure that institutions using servicers for credit balance delivery comply with the Family Educational Rights and Privacy Act (FERPA) rules. We have included the full text of the Department's comments as Attachment 2 to this report.

ISSUE 1 – Schools Outsourcing Credit Balance Delivery Should Monitor Servicer Activities

Relevant Requirements. Congress and the Department have established the expectation that schools act in the best interests of students when administering Title IV programs. The House Report for the Higher Education Opportunity Act of 2008 stated, "[t]he nation's financial aid system

[5] Dear Colleague Letter GEN 12-08 provided guidance to schools and reminded them of their responsibilities when using servicers to carry out Title IV activities related to delivering credit balances to students.

exists for a single purpose: to serve students and their families." Additionally, the Senate's Committee on Health, Education, Labor, and Pensions stated in a 2007 report on proposed amendments to the HEA, that "[t]he committee believes strongly that lenders, guaranty agencies and institutions of higher education must act with honesty and integrity at all times to ensure that the financial aid programs under title IV serve the best interests of students." Furthermore, one of FSA's strategic goals is ". . . to ensure that all participants in the system of funding postsecondary education serve the interests of students."

As principal participants of the Title IV programs, schools are ultimately responsible for ensuring that the processes related to the delivery of Title IV funds are in the best interests of students and comply with program requirements. Schools are responsible for the actions of their servicers, and servicers are jointly liable for violations of the Title IV requirements.

Schools Should Routinely Monitor Servicer Activities and Title IV Compliance. Our work demonstrates that schools outsourcing the delivery of Title IV funds should routinely monitor servicer activities to ensure that student interests are protected and that servicers comply with applicable Title IV requirements. The three schools in our review outsourcing credit balance delivery gave servicers significant control over the Title IV funds delivery process and relied on servicers to meet the Title IV requirements. Higher One markets itself as a full-service provider for the delivery of Title IV funds that also offers customer service, regulatory compliance, marketing, and reporting to schools. Sallie Mae advertised to schools that it assumes responsibility for the Title IV funds delivery process. Both Higher One and Sallie Mae stated that they were aware of all applicable Title IV regulations and that they would comply with the regulations in all material respects.

Schools in our review that contracted with servicers did not routinely oversee servicer activities to ensure that students received sufficient, appropriate, and objective information from servicers. The schools gained an understanding of the servicers' policies and practices for delivering credit balances during contract negotiations and program establishment. However, once the schools provided the credit balance amounts and related student information to the servicers, the schools did not adequately oversee the servicers' activities to ensure that policies were followed, continued to be in the best interests of students, and complied with program requirements. For example, Higher One's written procedures did not comply with the requirement that credit balances must be delivered within 14 days of the date that a school establishes a balance on a student's account.[6] According to officials at Higher One, Portland, and Houston, if a student had a credit balance and had not selected a delivery preference, Higher One would send an email to remind the student to make a selection. If the student did not select a delivery preference within 21 days of the credit balance occurring, Higher One would mail a check to the student. We did not test student files at the schools we visited or at Higher One to determine whether there were actual cases where Higher One did not deliver a credit balance within the 14-day period. However, the Department followed up with schools and Higher One to correct these procedures.

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[6] According to 34 C.F.R. § 668.164(e), a school must pay the student no later than 14 days after the balance occurred if the credit balance occurred after the first day of class of a payment period or no later than 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.

Schools Should Monitor Servicer Actions to Address Student Complaints. The three schools in our review did not proactively monitor servicer actions to address student complaints. School and servicer officials said that students often contacted the servicer directly with questions or concerns about the credit balance process or if they had questions or concerns about fees, account terms, or other issues related to their debit cards. Servicers had an incentive to resolve student complaints without school involvement in order to maintain a positive image with school officials who could influence the renewal of servicer contracts.

Officials at the three schools had not received many student complaints regarding the delivery of Title IV funds performed by the servicers, but may not have been aware of all complaints received by the servicers. Some officials stated that they had received occasional student complaints about certain fees charged by the servicers (for example, inactivity fees and card replacement fees) or other issues.

Beyond their existing general student complaint processes, none of the schools in our review had specific processes to monitor and follow up on student complaints about the servicer's credit balance delivery, customer service, and debit cards. The contracts between schools and servicers in our review did not include provisions to require the servicers to report information on student complaints to the schools. Better monitoring of servicers by schools may have also helped mitigate the concerns we discuss in Issues 2 and 6.

Suggestion. We suggest that the Acting Assistant Secretary for OPE:

1.1 Amend the administrative capability regulations to require any school using a third-party servicer to administer any aspect of the school's participation in Title IV, HEA programs to monitor the servicer's compliance with Title IV requirements and have a process to ensure resolution of any student complaints regarding the servicer.

ISSUE 2 – Schools Should Ensure That Students Receive Appropriate and Objective Information on Credit Balance Delivery Options

Relevant Requirements. Under 34 C.F.R. § 668.164(c), a school (or its designated servicer) may deliver Title IV funds to a student by issuing a check, dispensing cash, or delivering funds through a direct deposit to a bank account. A school also has the option to establish a process in which the student opens a bank account with an associated debit card to receive Title IV funds or receives the funds through a stored-value card. A school must inform the student of the terms and conditions associated with accepting and using the debit card or stored-value card before opening the account. If a student does not comply with the school's process, the school must deliver the funds to the student by cash or check. The regulations at 34 C.F.R. § 668.16(h) require schools to adequately counsel students on the method that will be used to deliver Title IV funds to the student.

Schools Should Ensure That Students Receive Appropriate and Objective Information to Make Informed Decisions When Selecting a Delivery Option. The three schools that outsourced credit balance delivery did not ensure that servicers presented appropriate and objective information to students so they could make informed decisions as to which available delivery option was best.

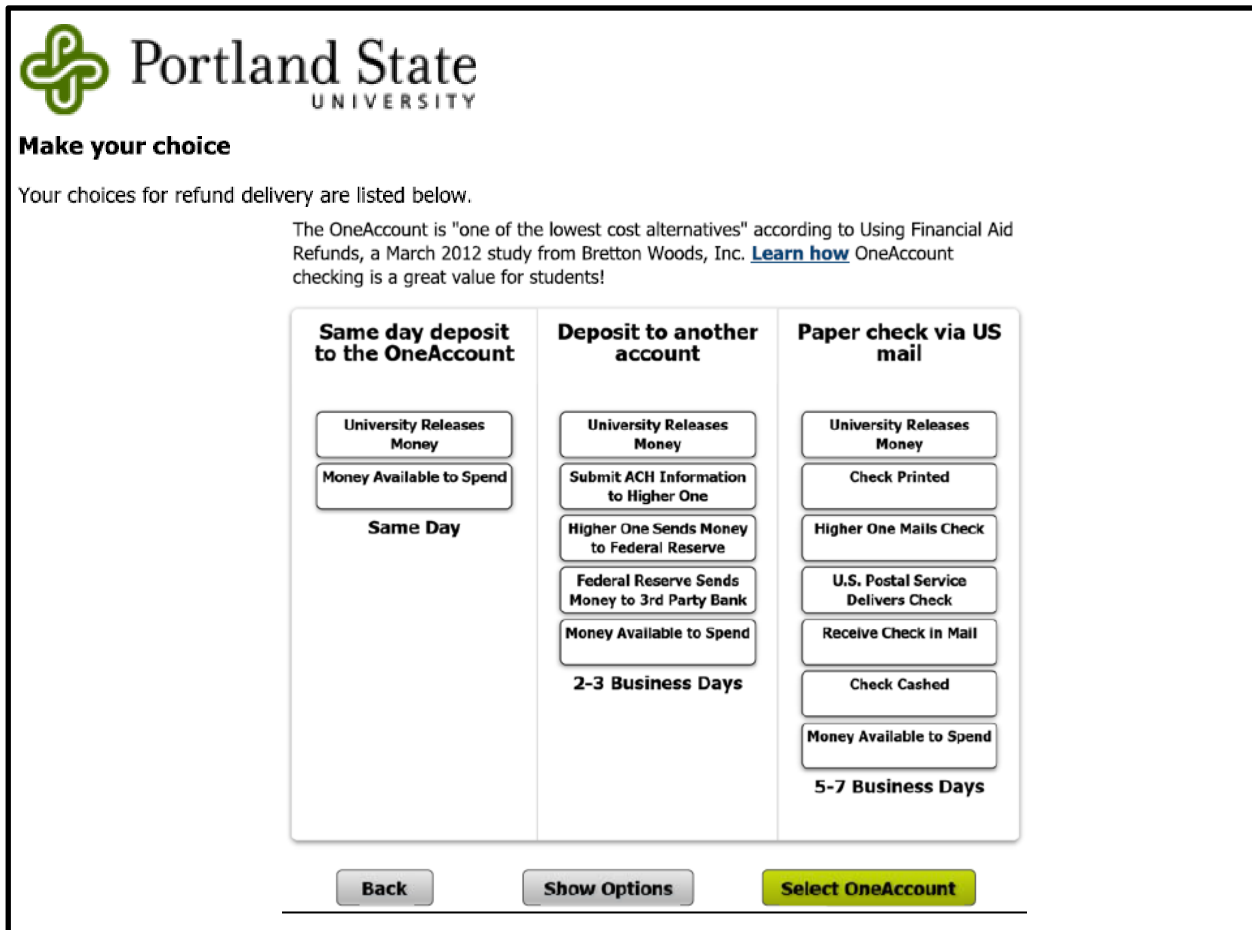
Servicers offered students a choice of at least two options for receiving their funds, including the servicer's debit card, direct deposit to a nonservicer account, or check. However, the servicers administered the process that students used to select delivery methods and used various marketing practices to persuade students to select their debit card over other delivery options.

At the two schools in our review that contracted with Higher One, most students chose the debit card option. According to school officials, students wanted quick and convenient access to their funds. Students chose the debit card because it offered the quickest access to their funds. Higher One's marketing information indicates that it generally takes 5–7 business days for students to receive their funds by check and 2–3 business days by direct deposit. In contrast, students who chose Higher One's OneAccount generally had same-day access to their funds according to the servicer. According to El Camino officials, students typically had to wait 5–7 days before receiving the Sallie Mae stored-value debit card and having access to their funds. Subsequent credit balances were "loaded" onto the cards and students generally had same-day access to those funds. Students who chose to receive a check also generally received their funds within 5–7 days according to school officials.

Higher One used marketing and other techniques in an attempt to persuade students to select its OneAccount. Higher One mailed "fulfillment packages" to students that included an overview of the delivery options available to the student, an inactive Higher One debit card with the student's name on it, and instructions to login to the Higher One Web site to select a delivery preference. Higher One's requirement that students log in to its Web site to select a delivery preference enabled Higher One to market its OneAccount to students throughout the selection process.

The way that Higher One presented the available delivery options on its Web site could also influence students' choices. Figure 1 shows the initial Web page for Portland students to select a delivery option at the time of our review. The presentation makes Higher One's OneAccount appear to be the easiest method for a student to obtain his or her funds because of the number of steps portrayed for each delivery method. In addition, the page exposes students to Higher One's marketing by citing a study commissioned by Higher One and concluding that the "OneAccount is one of the lowest cost alternatives," and that it ". . . is a great value for students." The page presentation made it easier for a student to select the OneAccount than other delivery options. As shown in Figure 1, a student could select the OneAccount directly on the main page, with one mouse click. However, if the student wished to select direct deposit or check, the student had to click on the "Show Options" button, which then revealed the additional options and allowed the student to select an option other than the OneAccount. Additionally, Higher One's Web site prompted students who selected either direct deposit or check about whether they wanted to open a OneAccount as they completed the screens necessary to finalize their choice.

Figure 1: The Higher One Delivery Options Web Page Used at Portland



The content of the Higher One delivery options Web page varied between schools. Higher One's delivery options Web page for another school promoted the OneAccount as the "preferred" delivery method, and included the statement, "[j]oin more than 2 million people who have already selected same day deposit to one of Higher One's checking accounts." Higher One's contracts with schools allowed it to market the OneAccount to students using email, direct mail, telephone, school distributed mail, posters, brochures, press releases, and other advertising. We observed numerous Higher One posters and brochures displayed on the Portland and Houston campuses.

Sallie Mae also used marketing and other techniques in an attempt to persuade students to select its stored-value debit card instead of the check delivery method. El Camino sent students an email during the initial registration process promoting Sallie Mae's debit card and directions to login to Sallie Mae's Web site to select a delivery preference. Sallie Mae's Implementation and Marketing Plan for El Camino encouraged school officials to incorporate the Sallie Mae Web site into the school's financial aid or registration process. The plan also encouraged school officials to distribute marketing materials, send periodic marketing emails, and promote the Sallie Mae debit card to students to raise adoption rates and lower the overall cost to the school.

The language that Sallie Mae encouraged schools to use in marketing its debit card could also influence student choice. Sallie Mae's Implementation and Marketing Plan provided El Camino with a notification template to instruct students to log into Sallie Mae's Web site and sign up for the stored-value card. Students may have perceived that Sallie Mae's debit card was the only delivery option because the notification states that El Camino will process credit balance deliveries using Sallie Mae's debit card and does not disclose that students may also request a check. Students may have been persuaded to select Sallie Mae's card because the notice appeared to be a school endorsement of that option.

Servicers used other persuasive methods to encourage the adoption of their debit card. Some of these practices could make students believe that their school prefers the servicer's financial product over other delivery options. For Portland, Higher One's use of the Portland logo at the top of the Web page in Figure 1 above, as well as the Web site's URL (psuone.higheroneaccount.com), may lead students to believe that the Web site is administered by the school and adds to an apparent school endorsement of Higher One. Higher One offered students at many schools cobranded debit cards showing the school name, or logo. Additionally, some Higher One debit cards had multiple functions and students used them as an official school ID card and as a debit card if they opened the OneAccount, resulting in an implicit or explicit endorsement by the school of the servicer's financial product.

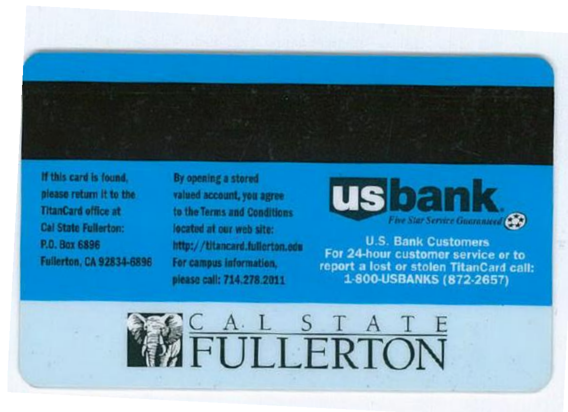
Figure 2 provides an example of the dual-purpose student ID and debit card that Higher One issues to Portland students.[7]

Figure 2: Cobranded Portland Student ID/Debit Card

The student ID card that Fullerton provided to all students was cobranded with the U.S. Bank logo on the back, as shown in Figure 3. The card could function as a prepaid on-campus purchase card ("TitanTender") and as a debit card connected to a U.S. Bank checking account. Although both of these card functions were optional, Fullerton officials said that students sometimes misunderstood how the two accounts worked and whether the checking account was required.

[7] Portland students who did not activate the debit card functionality of the card by opening a OneAccount still needed to retain the card for use as their official school ID.

Figure 3: Fullerton Student ID Card Cobranded with U.S. Bank Logo



Suggestions. We suggest that the Acting Assistant Secretary for OPE:

2.1 Develop regulations that require servicers to provide objective and neutral information to students on the available delivery options.

2.2 Develop regulations to require schools to provide students with disclosures and other information as part of the process for selecting a credit balance delivery option, including:
   a. a notice from the school on all relevant materials that the servicer provides to students, including the servicer's Web site, that the school has reviewed the materials and determined that they are objective and neutral; and
   b. a notice from the school on why it selected the servicer and why the services provided are in the interests of students.

ISSUE 3 – Schools Should Inform Students About Debit Card Fees and Regulations Are Needed to Ensure Students Incur No Fees for Delivery of Title IV Funds by Servicers

Relevant Requirements. Section 487(a)(2) of the HEA prohibits schools from charging students any fees for processing Title IV assistance. According to 34 C.F.R. § 668.164(c)(3), when a school has established a process for a student to follow in opening a bank account to receive Title IV funds, the school must ensure that the student does not incur any cost in opening the account or initially receiving a debit card or stored-value debit card used to access the funds. In Dear Colleague Letter GEN-12-08, "Disbursing or Delivering Title IV Funds Through a Contractor," April 26, 2012, the Department encouraged schools to disclose a breakdown of the average annual costs incurred by their students publically, based on the debit cards activated through schools' servicer agreements, and update the information on an annual basis.

Schools Should Inform Students About Debit Card Fees and Alternative Banking Options. Higher One and Sallie Mae appeared to deliver Title IV funds to students without charging fees initially, in accordance with Federal regulations. However, students who chose the servicer's debit card option could incur fees based on their account activity after the servicer deposited credit

balance funds into the student accounts. At the schools in our review, servicers provided debit card fee schedules to students during the sign up process and posted the fee schedules on their Web sites. However, none of the schools disclosed the actual debit card fees incurred by their students on an average cost-per-student basis. Schools should be proactive in ensuring that students understand the fees that they are subject to if they select the servicer's debit card.

We compared the Higher One and Sallie Mae fee schedules with the fee schedules for comparable accounts at banks and credit unions that had branch locations or ATMs on or near the campuses of the schools in our review (referred to as "alternative banking options" in this report). We based the comparison on the full list of fees published in each institution's fee schedule at the time of our review and not on the amount of fees actually incurred by students. Thus, the comparison identified the types and amount of fees that could be charged by the financial institutions but did not identify how frequently the fees were assessed or the average annual cost of holding an account at each of the financial institutions.

We determined that many of the individual fees listed on the servicers' fee schedules were comparable to fees published by the alternative banking options. However, we did identify some fees charged by the servicers that appeared to be unique or higher than the fees charged by the alternative banking options. For example, Higher One published a debit transaction fee of $0.50, whereas the alternative banking options did not assess such a fee. The debit transaction fee applied to all students with Higher One's basic account, except for students at Portland and Southern Oregon University, which negotiated the elimination of the fee as discussed below. Higher One assessed the debit transaction fee each time a student used the debit card at a merchant and chose the "debit" option, which required the student to enter their personal identification number at checkout. Students could avoid this fee by selecting the "credit" option at checkout and signing for the purchase. However, students may not be aware of this option for avoiding the debit transaction fee or may be confused about selecting the credit option when using a debit card. We also observed that Higher One published a $20 fee for card replacement, while the alternative banking options published card replacement fees of $5 or no cost to the student.[8]

Higher One published a $29 overdraft fee when a student spent more funds than were available in his or her account. According to an August 8, 2012, FDIC press release, Higher One settled a lawsuit with Federal regulators in which it agreed to return an estimated $11 million to students for account overcharges, which included charging students multiple overdraft fees for the same transaction. Most of the overcharges occurred from July 2008 through July 2010, when the amendments to Regulation E[9] took effect.

[8] Comparison based on the lowest cost card replacement option available from each financial institution.

[9] Title 12 C.F.R. § 205 (Regulation E), established under the authority of the Federal Reserve Board, governs electronic funds transfers. Effective July 1, 2010, Regulation E was amended to provide requirements for overdraft services (12 C.F.R. § 205.17). The amendments prohibit financial institutions from charging overdraft fees for one-time debit card transactions unless the consumer "opts-in" to an overdraft service for these types of transactions. The financial institution will deny the transaction if a consumer does not opt-in to an overdraft service and attempts a purchase exceeding available funds. Overdrafts can still occur in limited instances, such as when a consumer writes a bad check or signs up for recurring monthly charges (such as a gymnasium membership) that the financial institution must honor.

The Sallie Mae debit card was a stored-value card that was not linked to a checking account. However, El Camino students using the Sallie Mae debit card were subject to fees similar to a checking account. We determined that most of the individual fees associated with the Sallie Mae debit card were comparable to fees published by the other financial institutions. However, Sallie Mae's published replacement card fee was $15, whereas the alternative banking options provided replacement cards for fees ranging from $5 to no cost. Additionally, although Sallie Mae's published abandoned account fee was comparable to the fee charged by the alternative banking options, Sallie Mae levied the fee sooner.

Accounts subject to changing types of fees or subject to waivers can negatively affect students. At the time of our review, both Higher One and Sallie Mae assessed abandoned account fees (inactivity fees).[10] After a period of 6 months in which a student has no account activity, Higher One charged a monthly fee of $10; however, no fee was assessed on accounts with a $0 balance. In a similar manner, after 9 months of no account activity, Sallie Mae charged a monthly fee of $3 if the debit card had a balance on it. As of August 1, 2013, Higher One assessed a monthly service fee of $3.95; however, the fee would be waived if the account owner was identified as a "student" or had direct deposits of $100 or more per month.

We noted that students who choose to receive their Title IV funds by check or direct deposit to an existing account might incur fees or other costs to access and spend the funds once they have been delivered. Students who have their funds transferred to an existing bank account are subject to the fees charged by their financial institution based on account activity, whereas students who choose to receive their funds by check may incur check-cashing fees.

Officials at Houston and El Camino did not attempt to negotiate better terms for their students who chose the debit card option. Instead, Houston and El Camino accepted the account terms and fee schedules offered by Higher One and Sallie Mae, respectively. Officials at Houston viewed the student's optional banking relationship with Higher One as being separate from the student's relationship with the school. Portland also accepted the account terms and fee schedules for the OneAccount in its first contract with Higher One. However, when Portland renewed its contract with Higher One in 2009, it negotiated to eliminate the $0.50 debit transaction fee because the school had received numerous student complaints. Higher One officials stated that Portland and Southern Oregon University were the only two schools whose students were not subject to the debit transaction fee. Portland also negotiated to receive a quarterly discretionary stipend of $1,000 that the school could use to reverse debit card fees disputed by individual students. Higher One officials said that this feature is available in about 20 of its contracts.

Regulations Are Needed to Ensure Students Incur No Fees for Delivery of Title IV Funds by Servicers. Some of the fees discussed above can result in students incurring fees for delivery of Title IV assistance. Section 487(a)(2) of the HEA prohibits schools from charging students any fee for processing Title IV assistance. A third-party servicer is bound by the same requirement and cannot charge a fee that a school is prohibited from charging. When a servicer offers an option to hold funds for a student to access later through a debit card, that option is no different than a school holding a credit balance with student authorization and providing access to that balance through a

[10] As of August 2013, Higher One's fee schedule no longer included an inactivity fee.

"stored-value card or other similar device" as permitted by 34 C.F.R. 668.165(b)(1). If a school cannot charge for holding the student's funds, neither can a servicer. When a student authorizes a servicer to hold Title IV funds through the use of a debit card account, the servicer has the same obligation as a school to provide access to that credit balance without fees. Regulations are needed to ensure that servicers do not charge transaction or administrative fees for students to access Title IV funds.

Suggestions. We suggest that the Acting Assistant Secretary for OPE:

3.1 Develop regulations to ensure that servicers providing debit cards do not charge transaction or administrative fees to access Title IV funds.

3.2 Develop regulations that require schools 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.

ISSUE 4 – Revenue Sharing and Cost Provisions in Contracts Can Create the Potential for Conflicts of Interest at Schools

Relevant Requirements. Congress and the Department have established the expectation that schools act in the best interests of students when administering Title IV programs. The House Report for the Higher Education Opportunity Act of 2008 stated, "[t]he nation's financial aid system exists for a single purpose: to serve students and their families." Additionally, the Senate's Committee on Health, Education, Labor, and Pensions stated in a 2007 report on proposed amendments to the HEA, that "[t]he committee believes strongly that lenders, guaranty agencies and institutions of higher education must act with honesty and integrity at all times to ensure that the financial aid programs under title IV serve the best interests of students." Furthermore, one of FSA's strategic goals is ". . . to ensure that all participants in the system of funding postsecondary education serve the interests of students."

Financial Incentives, if Unmitigated, Can Result in Conflicts of Interest. School and servicer contracts that include financial incentives for schools, such as revenue sharing or a cost structure that provides monetary benefits to schools can encourage school officials to promote the servicer's debit card over other delivery options available to students. Such financial incentives, if unmitigated, can result in conflicts of interest because the schools' financial interests would not be aligned with the best interests of students. Three of the four schools in our review had contractual relationships that included some form of financial incentive that could create the potential for conflicts of interest similar to those that occurred with preferred lender arrangements. Portland's contract with Higher One had a revenue-sharing provision based on the number of students who chose the servicer's debit card and the amount of funds held in student accounts with the servicer. In the 2011–2012 award year, Portland received about $30,000 through the revenue-sharing provision and paid Higher One $113,000 for contracted services. According to information provided by Higher One in September 2012, 71 of its 367 active contracts included revenue-sharing provisions.

Revenue-sharing provisions were not limited to contracts between schools and servicers. Fullerton had a royalty agreement with its partner bank, U.S. Bank, which provides on-campus banking services. Under this agreement, Fullerton received an annual royalty payment based on the number of students, faculty, and staff opening a U.S. Bank checking account. Over the first 5 years of the contract, Fullerton received $215,000 in royalty payments. Fullerton collaborated with U.S. Bank to promote and market the account to students.

The cost structure of servicer contracts can also provide an incentive for schools to promote the servicer's debit card as a preferred delivery method because it can reduce the school's costs. Although some Higher One contracts charged schools the same amount regardless of the delivery method that individual students chose, other contracts made the OneAccount less costly for the school than other delivery methods. For example, Portland did not incur any additional cost for the delivery of credit balances to a student's OneAccount or to a student's existing bank account through direct deposit. However, Higher One charged Portland $5 to deliver funds by check. Sallie Mae also did not charge El Camino to deliver a student's credit balance via its stored-value debit card, but did charge $0.75 plus postage to deliver a student's credit balance by check. El Camino officials acknowledged that they promoted Sallie Mae's debit card to students and that they eventually would like all credit balances to be delivered via the debit card to reduce the school's operating costs.

Concerns about schools' conflicts of interest when outsourcing the delivery of credit balances are similar to past concerns about the relationships between schools and FFEL Program lenders and the practices of some of these lenders. These practices included improper lender activities intended to secure applicants for loans, such as incentive payments to schools (financial inducements). Congress specifically prohibited these financial inducements and the Department developed regulations that require schools to report how arrangements with FFEL program lenders serve the interests of students.

Suggestion. We suggest that the Acting Assistant Secretary for OPE:

4.1 Develop student consumer protection regulations for credit balance delivery services addressing conflicts of interests and financial incentives, similar to those governing institutions and lenders in 34 C.F.R. Part 601.

ISSUE 5 – Schools Should Ensure Students Have Convenient and Fee-Free Access to Credit Balances on Campus

Relevant Requirements. Under 34 C.F.R. § 668.164(c)(3), when a school has established a process for a student to follow to open a bank account to receive Title IV funds, the school must ensure that the student has convenient fee-free access to a branch or ATM of the bank (or ATM of another bank) so that the student does not incur any costs in making cash withdrawals. The bank's branch or ATM must be located on the school's campus or on public property directly adjacent to and accessible from the campus.

Student Access to Fee-Free Higher One ATMs Appeared Sufficient. Student access to Title IV funds through fee-free Higher One ATMs at Portland and Houston appeared to be sufficient. Higher

One consulted with school officials to determine the number of ATMs needed to serve the student population and where to place the ATMs on campus. The ATMs were generally located in student unions, dormitories, and administration buildings—areas with high student traffic, adequate security and lighting, and long hours of access. At the time of our review, Higher One had about 770 ATMs in place to serve its 367 contracts. The number of ATMs varied from contract to contract ranging from zero to 26. According to a Higher One official, the contracts with zero ATMs were schools that offered only distance education, did not qualify as branch campuses, or had exclusivity agreements with other ATM providers.

Higher One had installed four ATMs on the Portland campus and one additional ATM was to be installed that would offer 24 hour access to students. Higher One installed eight ATMs on Houston's campuses. Each of Houston's six main campuses had at least one Higher One ATM. Officials and staff at both Portland and Houston did not identify concerns or student complaints related to the number of ATMs on campus or student access to the ATMs. Those officials also stated that the Higher One ATMs were serviced regularly and generally did not run out of funds, even during periods of high transaction volume.

Students Did Not Have Access to Fee-Free ATMs on El Camino Campuses. Students could not access their Title IV funds through fee-free ATMs on El Camino's main (Torrance) or satellite (Compton) campuses. Sallie Mae linked its stored-value debit cards to a nationwide ATM network providing fee-free access. According to El Camino's Web site, there were several ATMs near the Torrance campus offering fee-free access. However, none of the ATMs were on public property directly adjacent to and accessible from the campus as required by Federal regulation. The closest network ATM was across from the campus inside a convenience store; it was not located on public property. There were three ATMs on the Torrance campus but a local credit union owned the machines and had an exclusivity agreement with El Camino that prevented the installation of other financial institutions' ATMs on campus. Students using these on-campus ATMs to access funds using their Sallie Mae debt card would pay $4.25 in fees for each withdrawal, consisting of a $2.75 fee charged by the credit union and a $1.50 fee charged by Sallie Mae for using an out-of-network ATM.

As we noted in the Background section, Higher One acquired the Sallie Mae unit that administered its credit balance delivery services in May 2013. According to Higher One, schools contracting with Sallie Mae will be converted to Higher One's credit balance delivery platform by March 2014. As part of this conversion, Higher One will work with schools to ensure adequate fee-free ATM coverage.

Suggestions. We suggest that the Acting Assistant Secretary for OPE:

5.1 Develop regulations to define convenient access to fee-free ATMs.

We suggest that the Chief Operating Officer for FSA:

5.2 Ensure that El Camino and other schools that previously had contracts with Sallie Mae and now have contracts with its successor (Higher One) comply with the requirements at 34 C.F.R. § 668.164(c)(3)(v) to provide students who establish accounts with the servicer

with convenient access to a bank branch or ATM so that no costs are incurred in making cash withdrawals.

ISSUE 6 – Schools Should Ensure That Servicers Only Obtain, Use, and Share Information That is Necessary to Perform Contracted Services

Relevant Requirements. According to FERPA, 12 U.S.C. § 1232g, and the implementing regulations at 34 C.F.R. § 99.30, a school must obtain a student's written consent before disclosing the student's personally identifiable information (PII) to other parties, unless an exception applies. Situations when a student's prior consent is not required to disclose PII are addressed in 34 C.F.R. § 99.31. For example, a school may disclose PII from a student's education record without consent if the disclosure is to another school official that the school has determined has a legitimate educational interest in the information. Further, a contractor or other party to whom a school has outsourced school services or functions may be considered a school official provided that the outside party (1) performs a school service or function for which the school would otherwise use employees, (2) is under the direct control of the school with respect to the use and maintenance of education records, and (3) is subject to the requirements of Federal regulations governing the use and redisclosure of PII from education records.

According to 34 C.F.R. § 99.31, a school must use reasonable methods to ensure that parties acting as school officials obtain access to only those education records in which they have a legitimate educational interest. Further, 34 C.F.R. § 99.33 states that the parties acting as school officials must use the student information only for the purposes for which the disclosure was made and that they may not disclose the information to any other party without the prior consent of the student.

Schools Should Ensure That Servicers Obtain Only Student Information That is Needed to Perform Contracted Services. Schools provide student information to servicers so that the servicers can perform their contracted functions, such as delivering credit balances to students or producing student ID cards. The three schools in our review that used servicers to deliver Title IV funds provided the servicers with an initial student data file containing student names, addresses, and other information, followed later by files identifying the amounts of credit balances due to particular students. Table 2 shows the student data elements schools provided to servicers in the initial files at the time of our review.

Table 2: Initial Student Information Provided to Servicers by Schools

Student Data Element	Higher One	Sallie Mae
Photo	✓ (a)	
Full Name	✓	✓
Physical Address	✓	✓
Birthdate	✓	✓ (b)
Student ID Number	✓	✓
Phone Number	✓ (c)	
Email Address	✓ (b)	✓ (b)
Gender	✓ (b)	

(a) Higher One collected a photo from schools only when Higher One was producing the school ID card.
(b) Data element was identified as optional in the servicers' file procedures provided to schools.
(c) Higher One's file formatting procedures state that the phone number is required, but also state that it will not halt card production if the school does not provide the number. Thus, it is effectively an optional data element.

All three schools provided student information that the servicer indicated was optional (for example, phone number, email address, or birthdate) and therefore not needed to complete the credit balance delivery. As optional information, it did not serve a legitimate educational purpose and should not have been disclosed under FERPA.

Each school in our review had a different process for determining which students' information would be shared with servicers in the initial data submission. Portland contracted out its school ID production to Higher One, and thus initially provided data on all enrolled students to Higher One. Houston did not use Higher One for ID services, and thus did not provide information on all students. Instead, Houston sent student information to Higher One for newly enrolled students who were likely to receive a credit balance. Higher One officials said that determining which students' information would be provided to Higher One was left to the discretion of each school. El Camino provided student information to Sallie Mae for all financial aid applicants, regardless of whether the students ultimately received financial aid. El Camino should not have provided the personal information of students who were not expected to have credit balances.

Servicers also collected information from students that was not needed to deliver funds. The Title IV funds delivery process used by Higher One and Sallie Mae requires that students log in to the servicers' Web sites to select a preferred delivery option. At that time, both servicers requested that students provide additional information. Higher One requested that students provide their expected graduation date and citizenship status. Higher One officials did not identify a legitimate purpose for collecting students' expected graduation dates or the citizenship status of students who opted to receive their credit balances by check or direct deposit. Sallie Mae requested that each student provide a maiden name (if applicable), personal email address, marital status, and home and mobile phone numbers, although all of these fields were optional. The fact that the data fields were optional indicates that Sallie Mae did not require the information to perform its contracted services. The FERPA regulations, which apply to the schools' sharing of student information with third parties, do not address servicer collection of information directly from students.

Schools Should Monitor Servicer Use and Redisclosure of Student Information. The contracts between the schools in our review and both servicers delivering credit balances contained provisions that the servicers would comply with the requirements of FERPA with regard to the use and sharing of student information. However, school officials stated that they did not monitor servicer activities to ensure compliance with FERPA, and instead relied on the terms of the contract. We interviewed school officials and reviewed contract terms to gain an understanding of the schools' oversight of the servicers' compliance with FERPA. We did not conduct testing of servicers' use and disclosure of student information and therefore did not conclude on whether servicers complied with FERPA.

Suggestions. We suggest that the Chief Operating Officer for FSA work with the Department's Family Policy Compliance Office to:

6.1 Determine what additional actions are required to ensure schools using third-party servicers for credit balance delivery comply with FERPA.

We suggest that the Chief Operating Officer for FSA work with OPE and the Department's Family Policy Compliance Office to:

6.2 Determine whether the Department can identify the data elements needed to deliver credit balances to students.

We suggest that the Acting Assistant Secretary for OPE:

6.3 Develop regulations to require schools to ensure that third-party servicers do not collect information from students that is not necessary to perform the contracted Title IV function.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of our review were to:

(1) identify the methods, terms and conditions, and time frames for delivering Title IV funds to students;
(2) determine what personal student information is provided by schools or collected by servicers during the Title IV funds delivery process;
(3) identify school and third-party servicer procedures for addressing student complaints about the use of debit cards to deliver Title IV funds; and
(4) determine how FSA monitors schools' and servicers' delivery of Title IV funds through the use of debit cards to protect students from inappropriate practices.

To obtain background information on the use of debit cards and other Title IV funds delivery methods we reviewed (1) school and servicer Internet Web sites, (2) the report "The Campus Debit Card Trap —Are Bank Partnerships Fair To Students?," issued on May 30, 2012, by the United States Public Interest Research Group, and (3) media articles and other available information on the subject. We also interviewed Department officials from FSA and OPE.

To achieve our objectives, we:

- reviewed selected provisions of Federal laws and regulations and Department guidance that we determined were applicable to our objectives;
- interviewed Department, servicer, and school officials;
- reviewed Department budgets and annual reports, information associated with FSA monitoring, a Department listing of contracts between schools and servicers, and other Department records; and
- reviewed information provided by servicers or schools including (1) contracts for the delivery of Title IV funds; (2) information available to students on school and servicer Web sites such as fee schedules, account terms and conditions, and funds delivery options; (3) marketing information; and (4) annual audit and compliance reports.

We judgmentally selected and performed limited work at three schools that contracted with third-party servicers for the delivery of credit balances to students, one servicer that delivered credit balances for two schools included in our review, and one school that contracted with a bank to provide financial services to students but performed its own credit balance delivery process. Our work at the schools and the servicer covered the 2010–2011 and 2011–2012 award years. We did not review detailed student records, sample student accounts at the schools or servicer, or review student banking information. We performed only limited work to corroborate the amounts and figures presented in the report.

We compared the fees charged by the servicers in our review with the fees charged for comparable accounts at banks and credit unions (alternative banking options) that had branch locations and ATMs on or near the campuses of the schools in our review. We judgmentally selected student account types for our comparisons. We used the lowest cost checking accounts available for our comparisons when the alternative banking options did not offer student accounts. We obtained fee information from fee schedules by searching the bank and credit union Web sites and by calling branch locations. We did not interview bank or credit union staff and we did not obtain additional documentation to verify that our understanding of the fees was correct.

For the five entities (four schools and one servicer) included in our review we also performed the following procedures, as applicable, to achieve our objectives:

- gained an understanding of each entity's organizational structure;
- gained an understanding of each entity's policies, procedures, and practices related to the delivery of Title IV funds;
- physically observed ATMs and their locations (on or off campus);
- analyzed information such as the (1) amounts of Title IV funding available, (2) total amount of credit balances delivered to students, (3) number of students receiving credit balances, and (4) number of students selecting the various funds delivery methods; and
- reviewed information provided by schools and servicers or that was available on their Web sites related to the provision, collection, and sharing of personal student information.

We held an entrance conference with FSA and OPE on August 15, 2012. We performed work at schools located in Portland, Oregon; Houston, Texas; Torrance, California; Fullerton, California; and a servicer located in New Haven, Connecticut from August 2012 through November 2012. We

held an exit conference with FSA and OPE officials in February 2014. We conducted our work in accordance with the Council of Inspectors General on Integrity and Efficiency "Quality Standards for Inspection and Evaluation."

ADMINISTRATIVE MATTERS

Statements that managerial practices need improvements, as well as other conclusions and suggestions in this report, represent the opinions of the Office of Inspector General.

This management information report issued by the Office of Inspector General will be made available to members of the press and general public to the extent information contained in the report is not subject to exemptions in the Freedom of Information Act (5 U.S.C. § 552) or protection under the Privacy Act (5 U.S.C. § 552a).

If you would like to discuss the information presented in this report or obtain additional information, please call Raymond Hendren, Regional Inspector General for Audit, at (916) 930-2399, or me at (202) 245-6949.

Sincerely,

/s/

Patrick J. Howard
Assistant Inspector General for Audit

Electronic cc:
Dawn Dawson, Audit Liaison Officer, FSA
Janie Funkhouser, Audit Liaison Officer, OPE

Attachments

Attachment 1: Abbreviations, Acronyms, and Short Forms Used in this Report

ATM	Automated Teller Machine
C.F.R.	Code of Federal Regulations
Department	U.S. Department of Education
El Camino	El Camino Community College
FDIC	Federal Deposit Insurance Corporation
FERPA	Family Educational Rights and Privacy Act (20 U.S. Code § 1232g)
FFEL	Federal Family Education Loan Program
FSA	Federal Student Aid
Fullerton	California State University, Fullerton
FY	Fiscal Year
HEA	Higher Education Act of 1965, as amended
Higher One	Higher One Holdings, Inc.
Houston	Houston Community College
OPE	Office of Postsecondary Education
PII	Personally Identifiable Information
Portland	Portland State University
Sallie Mae	Sallie Mae, Inc.
Title IV	Title IV of the Higher Education Act of 1965, as amended

Attachment 2: OPE and FSA Comments on the Draft Report

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

MEMORANDUM

DATE MAR 06 2014

TO: Patrick J. Howard
Assistant Inspector General for Audit

FROM: Brenda Dann-Messier /s/
Acting Assistant Secretary
Office of Postsecondary Education

James W. Runcie /s/ (James F. Manning signed for Mr. Runcie)
Chief Operating Officer
Federal Student Aid

SUBJECT: Response to Draft Management Information Report – Audit Control No. ED-OIG/X09N0003 – Audit of Third-Party Servicer Use of Debit Cards to Deliver Title IV Funds

The Office of Postsecondary Education (OPE) and Federal Student Aid (FSA) appreciate your review of third-party servicers' use of debit cards to deliver Title IV funds and we concur with your suggestions. Below we address each issue the Office of Inspector General (OIG) identified, OIG's suggestion(s) and the U.S. Department of Education's (Department's) response to each suggestion.

ISSUE 1 – Schools outsourcing credit balance delivery should monitor servicer activities

SUGGESTION:

1.1 Amend the administrative capability regulations to require any school using a third-party servicer to administer any aspect of the school's participation in Title IV, HEA programs to

monitor the servicer’s compliance with Title IV requirements and have a process to ensure resolution of any student complaints regarding the servicer.

RESPONSE: An institution is already fully responsible for complying with all regulations associated with the administration of programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA). An institution’s responsibility includes the delivery of Title IV funds to its students, regardless of whether the institution chooses to employ a third-party servicer to assist with any of the functions necessary for that effort. Thus, institutions arguably should also ensure, through monitoring, that their servicers are in compliance with the pertinent regulations. However, OPE will request that FSA’s Third-Party Servicer Oversight Group (TPSOG) share the results of their on-site reviews of third party servicers’ compliance with Title IV requirements. If these review activities reveal problems/abuses that are endemic to this area, OPE will support consideration of future proposed negotiated rulemaking to address any necessary regulatory modifications.

ISSUE 2 – Schools should ensure that students receive appropriate and objective information on credit balance delivery options

SUGGESTIONS:

2.1 Develop regulations that require servicers to provide objective and neutral information to students on the available delivery options.

RESPONSE: The Department is working with the Consumer Financial Protection Bureau (CFPB) and others on this issue as it continues with negotiated rulemaking efforts on cash management. This negotiated rulemaking process began on November 20, 2013, with publication of a *Federal Register* notice. In that notice, the Department announced its intention to establish a negotiated rulemaking committee to prepare proposed regulations to address program integrity and improvement issues for the Federal Student Aid Title IV programs. Public hearings were held in Washington, D.C., San Francisco, Atlanta and Minneapolis. At these hearings, the Department received a number of comments on credit balance delivery issues and elected to place these issues on the regulatory agenda. Actual negotiations began on February 19, 2014, and will conclude on April 25, 2014. After completing negotiations, we will publish proposed rules in the *Federal Register* for comment by the general public, and then publish final regulations.

2.2 Develop regulations to require schools to provide students with disclosures and other information as part of the process for selecting a credit balance delivery option, including:

a. a notice from the school on all relevant materials that the servicer provides to students, including the servicer’s Web site, that the school has reviewed the materials and determined that they are objective and neutral; and

b. a notice from the school on why it selected the servicers and why the services provided are in the interests of students.

RESPONSE: The Department is also working on this issue as it continues with the aforementioned negotiated rulemaking efforts on cash management. The provision of objective and neutral materials to students is one of the specific concerns that the rulemaking committee is considering to ensure that students, to the extent that they are provided with a choice on how they receive their Title IV funds, are not put in a position of having to choose a credit balance delivery method based on misleading, inaccurate, or otherwise incomplete information from their institution or its third-party servicer. However, it is too early in the rulemaking process to know exactly how the regulations will address the particulars of this issue. (See the response to suggestion 2.1 for the negotiated rulemaking timeframe.)

During the first rulemaking session, held February 19-21, 2014, OPE indicated to the panel of negotiators that it was interested in developing regulations to require schools to provide students disclosures and other consumer information as part of the process for selecting a credit balance delivery option. The goal would be to ensure that the servicer provides objective and accurate materials to the prospective customer.

ISSUE 3 – Schools should inform students about debit card fees and regulations are needed to ensure students incur no fees for delivery of Title IV funds by servicers

SUGGESTIONS:

3.1 Develop regulations to ensure that servicers providing debit cards do not charge transaction or administrative fees to access Title IV funds.

3.2 Develop regulations that require schools 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.

RESPONSE: OPE is also addressing these issues through the negotiated rulemaking efforts on cash management. Specifically, we are exploring the issue of free or inexpensive access to a student's credit balance. Credit balances are those student aid funds distributed directly to a student after his/her institutional charges are paid in full. Depending on how we regulate that issue, we may also decide to incorporate a requirement that institutions provide certain fee information to their students in the final regulations. (See the response to suggestion 2.1 for the negotiated rulemaking timeframe.)

ISSUE 4 – Revenue sharing and cost provisions in contracts can create the potential for conflicts of interest at schools

SUGGESTION:

4.1 Develop student consumer protection regulations for credit balance delivery services addressing conflicts of interest and financial incentives, similar to those governing institutions and lenders in 34 C.F.R Part 601.

RESPONSE: OPE is aware of this issue and is considering the best way to address it through the negotiated rulemaking efforts on cash management. If it is determined during the negotiations that any conflicts of interest that an institution may have or develop would hinder the overall effort to protect the student's right to receive his/her credit balance in a completely safe, efficient, and relatively cost-free manner, we will develop regulations to address these conflicts of interest. However, at this time, it is too early to know whether regulating potential conflicts of interest will be necessary. It may well be that the regulations resulting from the negotiations will fully protect the student's rights as noted above, without the need to also regulate an institution's efforts to incorporate revenue sharing in its contracts with various third-party servicers. (See the response to suggestion 2.1 for the negotiated rulemaking timeframe.)

ISSUE 5 – Schools should ensure students have convenient and fee-free access to credit balances on campus

SUGGESTION:

5.1 Develop regulations to define convenient access to fee-free ATMs.

RESPONSE**:** OPE is also working on this issue as it continues with its negotiated rulemaking efforts on cash management. The overall goal is to ensure that necessary regulations are developed and implemented to protect the student's right to receive his/her Federal student aid with minimal cost and in a convenient manner. To the extent that stored value cards remain an option to deliver credit balances to students, we will define what convenient and free (or relatively inexpensive) access to the credit balance entails and regulate accordingly. (See the response to suggestion 2.1 for the negotiated rulemaking timeframe.)

5.2 Ensure that El Camino and other schools that previously had contracts with Sallie Mae and now have contracts with its successor (Higher One) comply with the requirements at 34 C.F.R § 668.164(c)(3)(v) to provide students who establish accounts with the servicer with convenient access to a bank branch or ATM so that no costs are incurred in making cash withdrawals.

RESPONSE**:** FSA concurs with this suggestion and will take the appropriate action to ensure that El Camino Campuses and other schools that contract with third-party servicers comply with the requirements of 34 C.F.R. § 668.164(c)(3)(v) to provide students who establish accounts with the servicer with convenient access to a bank branch or ATM so that no costs are incurred in making cash withdrawals.

ISSUE 6 – Schools should ensure that servicers only obtain, use, and share information that is necessary to perform contracted services

SUGGESTIONS:

6.1 Determine what additional actions are required to ensure schools using third-party servicers for credit balance delivery comply with FERPA.

RESPONSE: FSA will initiate the appropriate review to determine what additional actions are required to ensure schools that contract with third-party servicers comply with the Family Educational Rights and Privacy Act (FERPA) in the delivery of credit balance disbursements.

6.2 Determine whether the Department can identify the data elements needed to deliver credit balances to students.

RESPONSE: FSA will coordinate with the Department's Family Policy Compliance Office (FPCO) and OPE to determine if the data elements needed to deliver credit balances to students can be identified.

6.3 Develop regulations to require schools to ensure that third-party servicers do not collect information from a student that is not necessary to perform the contracted Title IV Function.

RESPONSE: OPE will coordinate with the Department's FPCO and FSA to determine what additional actions might be required to ensure that institutions using third-party servicers for credit balance delivery comply with FERPA rules. Our discussions with FPCO and with the negotiators will identify the data elements that might be needed to deliver those credit balances to students, and we will stress that third-party servicers must not collect information from students that is not necessary to perform their contracted functions. To this end, OPE is interested in the outcomes produced by FSA's TPSOG, as they may reveal additional abuses that may require regulatory action. We are equally interested in the OIG's development of a revised Third-Party Audit Guide that would also bolster oversight in this critical area.

Thank you again for your review of this important and timely issue. Please contact Lynn Mahaffie, Acting Deputy Assistant Secretary, if you have any questions or wish to discuss this issue further. She can be reached at (202) 502-7903.

Electronic cc:

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Lynn Mahaffie, Acting Deputy Assistant Secretary, OPE
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