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CFPB, Department of Education Take Aim at College-Sponsored Financial Products

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On October 13, 2022, the Consumer Financial Protection Bureau (CFPB) issued its annual report concerning banking products offered to students by financial institutions partnering with institutions of higher education (IHEs). In connection with the report, the Department of Education (ED) released its own reminder to colleges and universities of their obligations around disclosure and product neutrality, and threatened increased enforcement in that area. The ED noted it would "look to the CFPB" when evaluating such financial arrangements – a critical announcement given the bureau's recent assertion of broad jurisdiction over institutional lenders that offer private education loans as defined in the Truth in Lending Act (which does not exempt, as does Regulation Z, no-interest payment plans of fewer than 12 months). This move also signals the resurgence of coordination between the CFPB and the ED, similar to what we saw under the Obama administration.

ED's cash management regulations

In October 2015, the ED finalized new cash management rules affecting IHEs that have arrangements with banks and third-party servicers processing Title IV credit balance refunds.

There are two types of arrangements covered in the cash management rules: tier one (T1) and tier two (T2). The regulations require colleges and universities to disclose the contract establishing a T1 or T2 arrangement on their website, and provide the ED with the web address of the contract.

Although the rules applicable to T1 and T2 relationships are different, there are some throughlines that provide the basis for the CFPB's research and report, which are important for IHEs to know. In addition to publishing any T1 and T2 arrangements publicly, IHEs should focus on:

- Ensuring students have options and thorough information about the terms and conditions of any account under which they can receive their Title IV credit balances.
- Securing the student's consent to open the financial account before issuing the student a debit card or other means of accessing funds.
- Not sharing student information with banks or other financial services providers until after the student has selected the financial account.
- Ensuring that the student has convenient access to the financial account through a surcharge-free national or regional ATM network, and that there are no other fees associated with opening the account.
- Ensuring the account is not marketed as, or converted into, a credit card.
- Ensuring that the terms of the accounts are consistent with the best financial interests of the students opening them, accomplished by conducting a diligence review at least every other year.

Report finds misaligned incentives, regulatory violations in college-sponsored products

The report focuses on the market for college-associated deposit accounts, one mechanism through which IHEs distribute hundreds of millions in federal student aid every year. It also raises concerns about school-sponsored financial account disclosures and fees, as well as the opacity of agreements between universities and financial firms. Specifically, the bureau found as part of its review that:

- IHEs did not prominently post the requisite disclosures on their websites, potentially making it difficult for students to assess

their banking options and for policymakers to assess consumer risk, violating ED cash management regulations.[1]

- IHEs failed to present options through which students could receive direct payments in a neutral manner. Instead, a large proportion of eligible students were directed to websites where they were presented with account options in ways that did not appear to meet ED cash management regulations.[2]
- IHEs, along with their partner financial institutions, often promoted products that were more costly than what students could receive from other providers or, in some cases, even at the same financial institution. Promotion of products with "unreasonable and uncommon financial account fees" violates the express purpose of ED cash management rules.
- With one-third of surveyed accounts having a revenue-sharing agreement with the partner school, the report suggested that financial inducements associated with product sponsorships may compromise the ability of some colleges and universities to prioritize their students' financial well-being.

The CFPB also analyzed the credit card market at colleges, but found the number of school- or organization-sponsored credit card agreements in effect and the number of accounts continued their multiyear decline.

ED notes regulatory violations, pledges increased enforcement

In connection with the bureau's findings, the ED in a "Dear Colleague" advisory letter reminded IHEs of their obligation to ensure that campus financial products are consistent with students' best financial interests pursuant to the ED's 2015 regulations. The guidance emphasized the responsibility of IHEs to protect students when it comes to financial products, including that the terms of accounts offered under agreement with financial partners are consistent with the best financial interests of the students. The ED further noted that institutions that administer Title IV funds act **in a fiduciary capacity**. As a result, IHEs must meet the ED's regulatory obligations under the regulations with respect to arrangements with partner financial institutions, including:

- Ensuring student options for receiving credit balance payments are described and presented in a clear, fact-based, and neutral manner.
- Disclosing sponsorship arrangements with financial institutions, including prior-year compensation.
- Independently evaluating whether any fees assessed are consistent with or below prevailing market rates, and documenting this due diligence research.

The ED also announced in its advisory letter that it will take steps to enhance enforcement of its cash management regulations by tracking new data and bringing on additional staff to conduct oversight of college banking arrangements.

Looking forward

The report and the accompanying commitment of increased enforcement resources to monitor compliance with ED cash management rules and student best interest standards suggest institutions in this space should confirm their compliance. Financial products marketed through IHEs have long been a focus for the bureau and Director Rohit Chopra. The bureau's recent announcements and supervisory guidance illustrate its continued scrutiny and focus on such products, and it is likely to remain a focus moving forward. In January 2022, the CFPB announced it would begin examining post-secondary schools, such as for-profit colleges that extend private loans directly to students, and it published an updated education loan exam procedures manual. In the same month, the bureau announced it was soliciting public comment on potential "junk fees" charged by financial companies, including fees assessed for student loans and other student-oriented financial products. In September, the CFPB's Supervisory Highlights Student Loan Servicing Special Edition asserted, among other things, that withholding transcripts from students until they make outstanding payments on their loans violates the unfair, deceptive, or abusive acts or practices (UDAAP) standard.

Given the robust enforcement the ED has promised, IHEs and partner financial firms should take a close look at fees, terms, and disclosures for school-sponsored financial products. Similarly, with the CFPB's announcement earlier this year that it is interpreting Regulation Z in a more expansive manner to include institutional lenders making private education loans, the bureau will likely flex its examination authority in this area.

Cooley regulatory analyst Shane Zerr also contributed to this alert.

Notes

1. 34 CFR §§ 668.164(e)(vi)-(vii), (f)(iii)-(iv)
2. 34 CFR § 668.164(d)(4)

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Key Contacts

Kate Lee Carey San Diego	kleecarey@cooley.com +1 858 550 6089
Kate Goodman Chicago	kgoodman@cooley.com +1 312 881 6685

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