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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

August 12, 2014

The Honorable Arne Duncan
Secretary
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary Duncan,

I write to you to express concerns with the Department of Education's rulemaking efforts for the Higher Education Act (HEA), Title IV student loan disbursement process. While the Department's policy objectives for the Title IV disbursement process are appropriately aimed at protecting students, the negotiated rulemaking process that did not reach consensus and the advance notice of the proposed rulemaking that stem from that process raise a number of concerns. If not addressed, these concerns would result in a rule that creates a backdoor and burdensome regulation on traditional banking products, which ultimately may force financial institutions to exit campus markets leading to diminished student choice, restricted convenience, and more unbanked young people.

First, the Department seeks to regulate student financial accounts that may be unrelated to the Title IV disbursement process. For example, the Department has defined "sponsored account" to include, among other things, any financial account that "an enrolled student or parent of an enrolled student *may* choose to open, obtain, or use the account . . . to receive Title IV, HEA program funds."¹ This definition could include a basic bank account set-up by a student during freshman orientation that never receives or was intended to receive Title IV funds. As such, it would be impossible for financial institutions to discern which account is a "sponsored account" and which one is not, leading to a presumption that most accounts of college-age consumers are in fact "sponsored accounts" and subject to the Department's regulations. I am concerned that such an expansive approach exceeds the Department's statutory authority under the HEA and will interfere with the prudential banking regulation of such financial products.

¹ *Proposed Regulatory Language, Issue #4 - Cash Management*, U.S. Department of Education, Negotiated Rulemaking 2013-2014 Program Integrity and Improvement - Session 4 (May 19-20, 2014) (emphasis added).

Second, according to the results of outreach from my office to Federal banking regulators, the Department has completed the negotiated rulemaking process without a single consultation with prudential banking regulators even though the very product the Department is proposing to regulate – a consumer’s checking account – is subject to myriad of existing Federal and state laws. For example, overdraft fees, ATM fees, and financial account disclosures are subject to consumer protection and safety and soundness regulation. I am concerned the Department has taken certain policy positions without giving due regard to the current regulatory framework. This may lead to inconsistent and confusing compliance regimes for financial institutions, supervisory challenges for Federal and state banking regulators, and to unintended consequences that may in the end limit student choice and convenience.

Third, the Department has indicated it will move quickly with this rulemaking to ensure its final rule will become effective next year. For a rule to become effective in July 2015, the Department would have to finalize it by November 1, 2014 – two and a half months from now. That raises concerns that the Department may not be able to sufficiently seek, obtain and consider stakeholders’ input and work through all the challenges that its proposal creates in time to meet the November 1st deadline. A rule of this magnitude and complexity warrants a 90-day comment period following publication in the *Federal Register*. Moreover, such longer timeframe comports with Executive Order 13563, dated January 18, 2011, stipulating that Federal agencies should afford “*at least 60 days*” for public comment to ensure public participation and the open exchange of ideas.² While it may seem important to finalize this rule by November 1st, it is more important to get the rule right.

As you move forward, I respectfully request that the Department address each of these concerns before finalizing a rule on the HEA, Title IV student loan disbursement process. Please include this letter in the official public comment docket for this rulemaking. I look forward to your prompt response.

Sincerely,



Mike Crapo
Ranking Member

² Improving Regulation and Regulatory Review, 76 Fed. Reg. 3821 (2011) (emphasis added), available at <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>