

May 31, 2012

Ms. Wendy Macias
U.S. Department of Education
1990 K Street NW., Room 8017
Washington, DC 20006

Re. Docket ID ED-2012-OPE-0008 Negotiated Rulemaking Committee; Public Hearings

Dear Ms. Macias:

These comments are in response to the May 1, 2012 [Federal Register notice](#) soliciting input on topics to be included in the U.S. Department of Education's upcoming negotiated rulemaking. The Institute for College Access & Success (TICAS) is an independent, non-profit organization that works to make higher education more available and affordable for people of all backgrounds. Through nonpartisan research, analysis, and advocacy, we aim to improve the processes and public policies that can pave the way to successful educational outcomes for students and for society.

The Federal Register notice specifically requests comments on the Department's plans to convene a committee to develop proposed regulations designed to prevent student aid fraud, especially via enrollment in online courses, and to address the use of debit cards and other banking mechanisms for disbursing Federal Student Aid funds. We address both of these issues below, and also recommend additional modifications to current regulations that would address other types of fraudulent and abusive practices that harm students and taxpayers, improve access to aid at community colleges, and provide appropriate relief for distressed borrowers. Our main recommendations include:

- Carefully target efforts to mitigate fraud to preserve legitimate students' access to aid.
- Ensure that students have a real choice of aid disbursement options.
- Protect Title IV funds disbursed through debit and prepaid cards from erosion by fees.
- Update and revise the false certification determination regulations to provide relief for borrowers harmed because their eligibility for aid was falsely certified and to deter schools from engaging in such illegal and abusive activities.

- Accept participation rate index (PRI) appeals from colleges with low borrowing rates in any year rather than forcing them to wait until they are at imminent risk of losing access to aid.
- Ensure that relief is available for financially distressed borrowers and that those who default can get back into repayment and onto more secure financial footing.

Title IV Fraud

We appreciate the Department's intent to develop proposed regulations to prevent fraud in Title IV programs. However, we urge the Department to do so in ways that will not reduce college access and completion for the vast majority of honest, hard-working students. Effective financial aid programs serve both students and taxpayers well. For students, financial aid can open the door to the possibility of college, as well as help them finance their attendance in ways that support their success. Once students graduate from college and enter the workforce, investments in financial aid reap dividends for taxpayers as graduates' higher incomes bolster the tax base. Financial aid fraud, however limited in scope, undermines the intent of the program and the expected financial return.

The September 26, 2011 [report](#) of the Office of Inspector General (OIG) described the anatomy of distance education fraud rings, and it recommended a number of steps the Department should take to mitigate the risk of fraudulent activity.¹ Many of the recommendations are common sense and do not require any regulatory changes. For instance, the Department should immediately start flagging for colleges potential fraud ring participants who repeatedly enroll and withdraw at school after school.

In fact, most of the ways identified by the OIG report to pinpoint potential fraud – such as identifying common street addresses, IP addresses, or web server logs – can and should be implemented administratively by the Department, which has data on all FAFSA applicants and federal aid recipients nationwide. Focusing these efforts at the federal level maximizes student privacy and minimizes institutional burden. Having robust administrative policies and procedures at the federal level to hunt for fraud will not only help alleviate the need for every college to have them, but also help focus colleges' workloads by properly identifying high-risk applicants for them. This could ultimately achieve the same end as requiring more tracking and data collection by colleges, without the need to create burdensome new rules, such as the one recommended by OIG, which would require colleges to collect and retain IP

¹ While beyond the scope of this proposed rulemaking, the OIG report also made one legislative recommendation, which would change the calculation of cost of attendance for online students. We strongly oppose this recommendation that federal law be changed to reduce aid to all online students, and disagree with the rationale cited by the OIG that online students do not incur these costs. Legitimate online students still incur living costs of attendance, and reducing the amount of aid these students are eligible for is simply not an appropriate way to address fraud concerns.

addresses for students throughout their application, enrollment, and attendance at the college.

Importantly, we urge that efforts to combat fraud be limited to mitigating fraud and do not discourage legitimate students' attendance. For instance, the burden of verification falls most heavily on the lowest income students and the community colleges that serve the largest share of them. We have found that the verification process may prevent students from receiving the aid for which they are eligible. In our 2010 report, [After the FAFSA](#), we documented research findings that Pell-eligible FAFSA filers who were selected for verification were less likely to receive Pell Grants than those who were not selected. College financial aid directors interviewed suggested that the burden of additional bureaucratic requirements better explained the lower grant-receipt rates among students selected for verification than did the idea that those selected were not paid because they were not truly eligible. A survey of Pell-eligible students at one college who had not completed the process corroborated this theory, with students demonstrating widespread confusion about their eligibility and what they needed to do next.² New verification regulations finalized in 2010 are still untested, but may well serve to increase burdens on students and schools without a corresponding increase in program integrity.

New regulations intended to ferret out fraud could end up having the same unintended effect on legitimate access to aid if not carefully targeted.

The Role of Debit Cards

We are encouraged by the Department's intention to propose new regulations on debit or other bank-provided cards, which institutions are increasingly using to distribute financial aid refunds to students. The recent U.S. PIRG [report](#) on the topic documented the myriad ways in which these arrangements may be far more advantageous for colleges than for students. It also highlights the need for stronger laws and regulations to ensure that student aid is administered in a way that maximizes students' ability to cover college costs and supports consumer choice, regardless of whether aid is distributed by the college or a third-party servicer

Currently, some third-party services providing debit cards charge students fees for using their cards ("swipe fees") as well as for not using their cards ("inactivity fees").³ In some cases, they even charge fees expressly forbidden by the Department, such as "lack of documentation fees."⁴ These fees can add up to

² *After the FAFSA: How Red Tape Can Prevent Eligible Students from Receiving Financial Aid*, 2010, <http://ticas.org/files/pub/AfterFAFSA.pdf>.

³ For instance, see "Students feel pinch of fees for accessing aid," May 20, 2012, *The Register-Guard*, <http://www.registerguard.com/web/newslocalnews/28070587-41/higher-students-fees-fee-account.html.csp>.

⁴ See attached screenshot of market leader Higher One fee schedule documenting a \$50 "lack of documentation fee" on May 24, 2012. An April 2012 Dear Colleague Letter from the Department

hundreds of dollars per year,⁵ chipping steadily away at the amount of aid available to cover college costs. Perhaps most troublingly, students often enter agreements with these servicers under the perception that they have no other option.

Meanwhile, by choosing to partner with servicers for disbursement, colleges have effectively shifted their administrative costs to students, with the greatest adverse impact on the lowest income students who are the most dependent on federal student aid.

As the Department considers how best to refine the current rules, we offer the following two core principles:

1. Colleges must not use Title IV funds as a vehicle to limit consumer choice to banking products. Students must be provided with information about disbursement options prior to establishing accounts for the initial purpose of receiving financial aid.
2. Financial aid funds are provided to help students cover college costs, and students must not be charged problematic or excessive fees to access their aid. Padding servicers' bottom lines is simply not an allowable use of Title IV funds.

False Certification of Aid Eligibility

Conform False Certification Regulations to Statutory Authority. The false certification discharge provisions in the Higher Education Act (20 USC 1087(c)) are intended to provide relief for harmed students and discourage illegal, abusive school practices by providing for the discharge of loans falsely certified by institutions and for the Secretary to recover the discharged amounts from schools and their affiliates.

The false certification statutory authority is very broad, but the Department has implemented it very narrowly. The current false certification regulations (e.g., 34 C.F.R. § 685.215) should be modified to ensure that they more explicitly address various forms of false certification that harm both students and taxpayers.

The statute is not limited to specific types of false certification. It provides for relief for a range of illegal and abusive acts. For example, borrowers should be eligible for relief in any case in which a school falsely certifies eligibility. Relief should also be available if the school improperly or falsely certifies a student's satisfactory

confirmed that such fees, naming a "lack of documentation fee" in particular, are not allowable: <http://www.ifap.ed.gov/dpccletters/GEN1208.html>.

⁵ "Students feel pinch of fees for accessing aid," May 20, 2012, *The Register-Guard*, <http://www.registerguard.com/web/newslocalnews/28070587-41/higher-students-fees-fee-account.html.csp>.

academic progress, which is a necessary requirement for student eligibility.⁶ Another way schools falsely certify student eligibility is by enrolling students in career education programs that lack the programmatic accreditation necessary for employment in the occupation. Other false certifications of eligibility for programs from which students cannot benefit include enrolling students who do not speak English in programs taught only in English, or enrolling students with criminal records in programs that prepare them for employment in professions from which they are barred because of their criminal record. These false certifications need to be stopped and borrowers provided relief from the resulting debts. The regulations should be revised to more explicitly provide relief in these and other circumstances that constitute false certification.

Adopt the Fair Credit Reporting Act Standard of Proof for Identity Theft

Cancellations. In 2006, Congress provided for the cancellation of loans resulting from identity theft false certifications. However, the current regulations require borrowers to prove that a crime was committed in order to obtain relief, even though police rarely prosecute cases of identity theft. The Department should adopt a standard of proof similar to the Fair Credit Reporting Act, which defines identity theft as fraud committed or attempted using the identifying information of another person without authority. The Department could rely on the same type of documentation that credit reporting agencies rely on to determine if a crime of identity theft has occurred, to place fraud alerts or to remove erroneous information from credit reports.

Address Problems with the Burden of Proof. Currently, the Department regularly requires borrowers to present independent evidence, including proof of federal or state investigatory findings of fraud. However, in many cases, the schools have not been investigated and such evidence does not exist. The Department has been relying on a 1995 Dear Colleague letter that states that an absence of findings of improper practices raises an inference that no improper practices were reported because none were taking place.⁷ The regulations should clarify that the Department should look at evidence of findings from oversight agencies or other evidence such as student complaints. The regulations should specify that assuming the borrower's statement and any other evidence is credible, the Department must grant discharges if it does not find evidence contradicting the information in the borrower's application. The Department should also reinforce in regulations the guidance in the 2007 Dear Colleague letter for FFEL loans, which requires agencies to check for the availability of evidence to support false certification allegations and to make inferences in certain circumstances that problems or violations have occurred.⁸ The Department should also be required to keep all evidence that it

⁶ For examples of teachers being pressured to manipulate grades in order to retain students, see Kelly Field, "Faculty at For-Profit Colleges Allege Constant Pressure to Keep Students Enrolled", *Chronicle of Higher Education* (May 8, 2011)

⁷ U.S. Department of Education, Dear Colleague Letter Gen-95-42 (Sept. 1995).

⁸ U.S. Department of Education, Dear Colleague Letter FP-07-09 (Sept. 20, 2007).

collects in evaluating discharge applications and promptly make the information available to borrowers on request. Once presumptive eligibility is established based on the borrower's application, the burden should shift to the Department to disprove the borrower's eligibility.

Require Evaluation for Group Discharges. The Department should be required to grant group discharges in cases where the Department determines that a school committed pervasive and serious violations of false certification provisions (e.g., if the Department determines that a school was systematically falsely certifying ATB tests during a certain period of time). Individual borrowers simply do not have access to the full range of information that guaranty agencies and the Department collect, and the Department should not be able to avoid group discharges in cases of serious widespread violations affecting an identifiable group of students.

Participation Rate Index Challenges and Appeals for Cohort Default Rate Sanctions

Colleges where relatively few students borrow may be able to challenge or appeal cohort default rate (CDR) sanctions if their CDR rises above typical sanction thresholds. For example, a college where 18 percent of eligible students borrow loans would need three consecutive three-year CDRs above 34.7 before losing eligibility for Pell Grants and federal loans, rather than three years at the typical CDR sanction threshold of 30 percent. This is an important protection for community colleges in particular, where an average of just 13 percent of students borrow, but the Department's process for administering the appeals process is deeply flawed. Further, the Department has pointed to current regulations as a barrier to improving it.

Specifically, the Department has stated that the college cannot use the PRI challenge until they are actually subject to loss of Title IV aid, rather than when they first receive a CDR that could lead to the loss of Title IV aid. This means that colleges would have to wait until they have three high CDRs – and are just months away from losing Pell Grants – to see whether the Department decides to grant an appeal. The American Association of Community College has [pointed out](#) that the stakes for the colleges are simply too high to wait until they have three high CDRs. Meanwhile, colleges are pulling out of the federal loan program based on inflated fears of their risk of sanctions.⁹ The Department should use the upcoming negotiated rulemaking session to remove whatever regulatory barriers exist to making this process and protection more effective for colleges. Doing so will help community colleges continue to provide access to federal loans, supporting students' success by ensuring that the safest type of loans are available to those who need to borrow to stay in and complete college.

Distressed Borrower Issues

We support the [2011 recommendations](#) of the National Consumer Law Center on the following issues:

- Conform Direct Loan regulations to the FTC Holder Rules.
- Require creditors to remove all negative history on a credit report after rehabilitation.
- Eliminate the requirement that guaranty agencies must sell loans to new holders prior to rehabilitation, or if it is not eliminated, clarify when sale is required.
- Ensure that borrowers in economic hardship may request to have the amount collected reduced or suspended, as is currently the case under the Debt Collection Improvement Act.

Clarify definition of income for economic hardship deferment eligibility. We recommend the Department clarify that the monthly income used for determining economic hardship deferment eligibility is one-twelfth of the borrower's AGI, limiting it only to taxable income.

Thank you for the opportunity to provide input on these topics. If you have any questions about our comments, please feel free to contact me at (510) 318-7900 or dcochrane@ticas.org.

Sincerely,



Debbie Cochrane
Program Director



Email Address:

Password:

Ex: janedoe@yahoo.com

(case sensitive)

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Fee Schedules

We offer optional services to help you manage your account and avoid fees. To learn more about them, click on the [video links below](#) or use [EasyHelpSM](#) to learn more.

[OneAccount Fee Schedule](#) ▼

[OneAccount Flex Fee Schedule](#) ▼

[OneAccount Premier Fee Schedule](#) ▼

Services with no additional fees		Effective December 20, 2010
Minimum Balance Charge	No minimum balance required	
Online Bill Payment Service	No additional fee	
Check Writing	No additional fee	
Electronic Statements	No additional fee	
Higher One ATM Transactions	No additional fee	
Signature Debit MasterCard® Transactions	No additional fee	
MasterCard Zero Liability Protection Provided by Higher One	No additional fee (Paid for by Higher One when you "Swipe and Sign" for purchases)	
Incoming Wire Transfer (Domestic and International)	No additional fee	
Add Money to the OneAccount	No additional fee	
Family and Friends Send Money	No additional fee	
Transfer Money Between OneAccounts	No additional fee	
Research and Legal Service	First hour no additional fee. Extra hours by arrangement	
24/7 Customer Service Access by Email with EasyHelp SM and via Automated Phone Services Line	No additional fee	

OneAccount Fee Schedule

OneAccount Flex Fee Schedule

OneAccount Premier Fee Schedule

[How to Use the OneAccount for Free](#)

Effective May 1, 2012

Service	Fee	Why is a fee assessed for this service?	How to avoid this fee
Stop Payment	\$24.00	The stop payment of a check or electronic transaction has been requested by a customer.	Always be sure you have sufficient funds in your account to cover outstanding checks or electronic transfers.
Return Deposit Item	\$7.00	A deposit was made into the OneAccount that does not clear the other bank. More	Do your best to confirm that someone who writes you a check has sufficient funds in their account. More
Official Check	\$8.00	As per your request, Higher One has issued an official check.	Official checks are only required for very specific instances such as closing costs for a home purchase. More
Multiple Copies of Checks, Deposits and Archived Statements	First copy no additional fee. \$5.00 per additional item.	Sometimes, to reconcile records or figure out what you paid to whom, you may want more information than is offered on a statement. In this case, you can order check, deposit or archived documents for free. However, there is a fee for more than one copy of this document.	Do your best to only request a single copy of these documents and be sure to make use of the online services. Consider printing your account statements periodically so that you have easy access to this information should you require it.

Video Tips

[How to choose a checking account](#)

[Avoid foreign ATM fees](#)

[Avoid PIN fees](#)

Higher One: Fee Schedules

Outgoing Wire Transfer	Domestic: \$25.00 International: \$50.00	As per your request, Higher One has debited funds from your OneAccount via wire transfer for delivery to another bank account. More	Higher One offers less costly alternatives for transferring funds. Always explore these options prior to requesting a wire transfer and paying the fee.
Merchant PIN-Based Transaction	\$0.50 per transaction	At checkout you selected "debit" and entered your Personal Identification Number (PIN), or a merchant processed your transaction as a PIN-less debit transaction even if you did not explicitly provide your PIN.	Over half of OneAccount holders never receive more than one PIN fee...they are easy to avoid! Instead of entering your Personal Identification Number (PIN) at checkout, choose "credit" and sign the receipt to avoid the PIN fee.
Non-Higher One ATM Transactions (Includes all withdrawals, inquiries, and declines)	Domestic: \$2.50 International: \$5.00	A non-Higher One ATM has been used.	"Swipe and Sign" for all your purchases instead of visiting the ATM. However, if you must use an ATM, do so at FREE Higher One ATMs only.
Insufficient or Uncollected Funds - Returned Item or Paid Item	First item: \$29.00 Additional items: \$38.00	You have spent more money than you have available in your OneAccount by making recurring debit card payments, a purchase made with an e-check or paper check, or via ACH.	The majority of account holders never pay an insufficient funds fee. To ensure you're among them, sign up for our Mobile Alerts, track your purchases and pay special attention to recurring debit card purchases, purchases made with an e-check or a paper check, and via ACH. More
Card Replacement	Non-Prox: \$20.00 Prox: \$20.00	A replacement card was ordered for you.	Be sure to keep your card in a safe place to protect against loss or theft.
Abandoned Account Fee (Charged after 6 months with no transactions) Note: There is no fee on accounts with a \$0 balance	Up to \$10.00 per month	You have not used your OneAccount in 6 consecutive months. Higher One proactively sends you an email notification so that you can avoid this fee.	Use your account regularly. Or, if you do not plan to continue using your account, take the steps to close it.
Cash Advances	3.5% (\$5.00 minimum)	You took a withdrawal of cash from your OneAccount. More	"Swipe and Sign" for all your purchases, or withdraw cash for free at a Higher One ATM instead of taking a cash advance. More
International Transactions	3%	Your card was used at a merchant location that is identified as being outside of the United States.	This fee is applied for being able to use your card in this manner.
Delinquent Account Fee	\$50.00	Your account has been overdrawn for 45 consecutive days and for \$5 or more.	Pay off the balance if you overdraw your account. Or, if you do not plan to continue using your account, take the steps to close it.
Lack of Documentation Fee	\$50.00	You did not provide documentation required to verify your identity within the allotted timeframe.	Provide identification information promptly if asked to do so.

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