Department of Education Releases Proposed Rules on Cash Management

On May 18, the U.S. Department of Education (ED, or the Department) released proposed program integrity rules related to cash management. The regulations arise from institutions increasingly relying on third-party financial institutions to process and disburse aid, often through prepaid or debit cards that are marketed as a more convenient means to accessing credit balances. Although these financial servicers can alleviate some administrative burden on institutions, ED is concerned these accounts may be less convenient for certain student populations, could cause students to incur unavoidable fees, and may lead to the release of private student information unrelated to financial aid.

The regulations classify financial services contracts into two categories: Tier 1 and Tier 2 arrangements. In a Tier 1 (T1) arrangement, an institution contracts with a third-party servicer who performs one or more of the functions associated with processing direct payment of Title IV funds on behalf of the institution to student (or parent, in the case of PLUS Loans) financial accounts that are offered under the contract or by the third-party servicer.

A Tier 2 (T2) arrangement refers to a contract with a financial institution (or entity that offers financial accounts through a financial institution) under which financial accounts are offered and marketed directly to students or their parents. An account is considered to be marketed to students or parents if the institution communicates information about the account and how it may be opened; if the account is co-branded with the institution’s name, mascot, or logo; or if a card or tool that is used for institutional purposes (such as a student ID card) is linked to the financial account.

If the institution engages in a T1 or T2 arrangement, it must obtain the student’s or parent’s consent to open the financial account, and inform the student or parent of the terms and conditions of the account. Institutions must also ensure that students have convenient access to a network of surcharge-free ATMs from which funds may be retrieved. For Tier 1 arrangements, the student or parent must not incur costs for opening the account, for conducting point-of-sale transactions, for conducting in-network ATM withdrawals, or overdrawing the account. Charges initiated by the institution or Tier 1 servicer may not be incurred for at least 30 days after the Title IV funds are deposited into the account. Neither T1 or T2 accounts may be marketed as, or converted to, credit cards.

The proposed rules require the institution to establish a student and parent choice process when entering into a T1 or T2 arrangement. Under this process, the institution must communicate, in writing, that the student or parent is not required to open or obtain a specific financial account in order to receive Title IV funds. The institution must also provide students with a list of options on how credit balances may be paid. All options must be presented in a neutral manner and include EFT, cash, and checks. A student or parent’s pre-existing account must be listed as the first, most prominent, and default option, and the student or parent must be allowed to change her or his account preference with reasonable notice. The
institution must also ensure that payments deposited into an existing account are as timely as payments deposited into an account offered under a T1 or T2 arrangement.

The proposed rules also require several transparency, disclosure, and due diligence measures. If the institution participates in a T1 or T2 agreement, it must post the entirety of the contract with the financial institution on its website, along with disclosures on the number of students with accounts and the mean and median of actual costs incurred annually. These disclosures must be prominently displayed and the URL must be shared with the Department. Additionally, institutions must conduct periodic reviews to ensure the accounts offered by the third-party are in the best financial interests of students by conducting periodic reviews of fees, complaints, and the fulfillment of requirements.

The proposed regulations include some miscellaneous rules related to cash management, books and supplies, and clock hour to credit hour conversations. The rules state that Title IV funds must be kept in an account at an insured bank. If the funds are kept in an interest-bearing account, the institution may keep no more than $500 per year in accrued interest. The regulations allow institutions to include books and supplies in the cost of tuition, but institutions must explain why including those costs is in the best financial interest of the student.

The Department also proposes to streamline clock-to-credit hour conversions. Under current regulations, a credit hour program must be treated as a clock hour program if it is required to measure student progress in clock hours to receive State or Federal approval or licensure, if the credit hours in the program do not align with the regulatory definition of a credit hour, or if the institution does not offer all underlying clock hours that are the basis for the credit hours awarded. ED’s proposal removes these restrictions, and seeks to clarify if a program should be measured in clock or credit hours.

The regulations could also lead to major changes in how aid is disbursed to students. In a brief section, the proposed rules would allow the Secretary to disburse Title IV funds via debit or prepaid cards issued by the Department of Education or another federal agency, similar to cards issued by the Treasury Department to pay federal benefits to beneficiaries. While the regulations state the Department does not currently plan to establish a program, these regulations could provide the authority for ED to pursue this avenue in the future.

The Department has requested that comments on the proposed rule be submitted on or before July 2, 2015 via the Federal Rulemaking portal or postal mail.