NACUBO

National Association of College and University Business Officers
1110 Vermont Ave, NW, Washington, DC 20005
T 202.861.2500 F 202.861.2583
www.nacubo.org

July 2, 2015

Mr. Jean-Didier Gaina
U.S. Department of Education
1990 K Street, NW Room 8055
Washington, DC 20006

Re: Docket ID ED-2015-OPE-0020

Dear Mr. Gaina:

The National Association of College and University Business Officers appreciates the opportunity to comment on the Department of Education's notice of proposed rulemaking on program integrity and improvement published in the *Federal Register* on May 18, 2015. NACUBO represents chief financial officers and their staff including bursars and student financial services administrators at 2,100 public and nonprofit colleges and universities. We are dedicated to sound fiscal and administrative practices at institutions of higher education.

The undersigned associations also join in these comments.

The modern college experience is very different from what it looked like just a few years ago. From experimenting with flipped classrooms to utilizing data analytics to improve access and success, colleges and universities are constantly exploring innovative ways to offer improved services to students and find administrative savings.

Recognizing the growth of student banking options at colleges and universities in recent years and the growing public interest in student debit card options, our association in 2012 developed guidance for our members recommending competitive processes to select vendors and partners, the involvement of student representatives in the selection process, and transparency in the terms of any contracts they enter into. Most importantly, NACUBO stressed that colleges and universities should keep the interests of students first. We challenged schools to negotiate low- or no-fee options and convenient services and to oversee marketing efforts to ensure students are presented with a fair explanation of services and not with misleading, biased, or aggressive marketing.

Colleges and universities enter into agreements with third-party servicers and banks for a number of reasons. Schools are continually seeking ways to increase efficiencies and decrease costs. In addition, students often drive colleges and universities to partner with a third-party servicer or bank. They expect and ask for the modern tools and access devices that third-party servicers and banks provide. Many of these products allow students faster access to their credit balance refunds, often at times of the year when they need ready access to those dollars to pay rent or purchase books and supplies.

Further, many students arrive on campus without any banking experience or an existing relationship with a financial institution. Because of their age, past credit history, or other circumstances, they might not otherwise have access to a bank account if not for the services offered by financial institutions with agreements with their college and university. Government statistics show that some 13 percent of young Americans were unbanked, and another 26 percent were underbanked in 2013 (*2013 Survey of Unbanked and Underbanked Households*, FDIC, October 2014). Young Americans were defined as those under 35, so the unbanked proportion of traditionally aged college students is likely considerably higher. Lack of sufficient funds to meet minimum balance requirements was the most frequently cited reason for not having an account. Notably, accounts offered through campus arrangements almost universally ensure that accounts are available to all students without a minimum balance requirement. They also often provide for consumer alerts and financial literacy counseling to help students learn to manage their money and accounts wisely.

Data security and privacy are critical issues for our members. Often, schools contract with a third-party servicer because they are wary of housing student bank and electronic funds transfer (EFT) data on campus record systems. The costs associated with securing this type of data are high and can divert resources from academic program support. It makes sense for higher education institutions to contract with third-party servicers and banks for which securing important financial information is a core function. These businesses are subject to extensive federal regulation and have the expertise to securely host and use this data on behalf of schools.

NACUBO has several broad concerns with the manner in which ED proposes to revise the cash management regulations.

1. If these rules are too proscriptive, too difficult, and too expensive to implement, third-party servicers and banks will simply exit this marketplace, leaving colleges and universities without valuable partners who have helped them improve services to students. Several reputable firms, faced with the uncertainty engendered by ED's long regulatory process, have already done so.

This would force schools to return to the days when they struggled to perform the tasks associated with processing credit balance refunds in the peak periods at the beginning of terms. For many colleges and universities, this would also likely mean a return to providing credit balance refunds by paper check as the route with the least compliance risk. Services available to students would decrease and costs to schools would increase (which are, of course, ultimately borne by students). NACUBO believes that the interests of schools and, most importantly, their students are best served by a robust, competitive marketplace for services.

2. ED has overstepped its statutory authority in the proposed rules. The connection between Tier Two arrangements under which colleges and universities enter into agreements with financial institutions to offer student bank accounts and Title IV funds is flimsy at best. ED has pinned this authority on the assumption that some students might choose to deposit their Title IV credit balance refund in such an account. NACUBO finds the legal analysis submitted by the Consumer Bankers Association on this point compelling.

NACUBO also believes ED's proposal to require schools to disclose and justify the costs of books and supplies when they are included as part of tuition and fees goes too far. This provision appears to contradict section 133 of the Higher Education Act which limits ED's authority to regulate disclosures about course materials.

3. The proposed regulations go well beyond the remedies necessary to resolve the problems that ED has identified in justifying its action, imposing considerable and unnecessary burden on the regulated parties for very little added benefit. ED's arguments for building layer upon layer of safeguards are unconvincing. ED should be looking for the most efficient and least restrictive means of reaching the desired result. Once the problem has been effectively addressed, piling on additional mandates is overkill.

NACUBO believes, for instance, that the requirements for establishing a selection process for credit balance refunds, combined with those restricting imposition of fees for opening an account, using an in-network ATM, or at the point-of-sale should, by themselves, ensure that students are treated fairly and have a reasonable opportunity to access their Title IV funds at no cost to them. Heaping on numerous other requirements only increases compliance costs and adds to confusion.

NACUBO's detailed, section-by-section comments on the NPRM are attached. We appreciate the opportunity to comment on this NPRM, and look forward to answering any questions ED may have about our response. Please direct your questions to Anne Gross, vice president of regulatory affairs, at 202.861.2544 or agross@nacubo.org.

Sincerely,

John D. Walda
President and CEO

On behalf of:
American Association of Community Colleges
Association of Community College Trustees
Coalition of Higher Education Assistance Organizations
National Association of Campus Card Users
National Association of Independent Colleges and Universities
National Association of Student Financial Aid Administrators

National Association of College and University Business Officers Detailed Comments on Changes to the Cash Management Rules Proposed on May 18, 2015

Maintaining and Accounting for Funds (§668.163)
Nightly cash sweeps are part of standard cash management practices for large organizations. Secured investment accounts are not inherently risky. In the twenty years the current rules have been in place, we know of no losses to Title IV funds, despite a dramatic economic downturn during that time.

Therefore, NACUBO is disappointed to see ED change the rules at §668.163(a)(1) allowing Title IV funds to be held in secured investment accounts. We recognize, however, that Office of Management and Budget guidance requires when possible the use of insured bank accounts for federal funds. Today, for the most part, colleges and universities are either disbursing Title IV funds before drawing down the funds or doing so very shortly thereafter, so the issue of where funds are held is less important than it was in the past.

The requirement as stated is confusing in specifying that funds must be deposited in an insured account. The cap on FDIC and NCUA insurance is currently $250,000 per depositor, per insured bank. Colleges and universities often hold considerably more funds than that, particularly at busy times of the year. At the negotiated rulemaking meetings, the ED negotiator said that Title IV funds did not need to be maintained in an account that was under the insurance limit, but such assurances were not reiterated in the NPRM. This should be clarified in the final rule.

Books and Supplies Included in Tuition and Fees (§668.164(c)(2))
ED proposes to require institutions that include the cost of books and supplies in tuition and fees to separately disclose those costs and to explain why this is in the best interest of students. NACUBO urges ED to delete the proposed provision. Including this change will stifle innovation, impose unnecessary burdens on institutions, and will not result in meaningful or actionable information being shared with students.

Colleges and universities have responded to concerns about the rising cost of textbooks and marketplace shifts in a variety of ways over the last few years. Some have also been motivated by concerns about ensuring students have timely access to all of the pedagogical materials they need to succeed in their classes. Schools are trying new ways to provide access to electronic books, expanded rental programs and more.

Our concerns with this provision include the following:

- "Books and supplies" is a broad and ill-defined term. Does ED mean to include course-specific content produced by the professor, department, or school? Only books that can be purchased elsewhere? Laboratory supplies? Software? Electronic devices such as tablets?
- The intended level of specificity of these disclosures is also unclear. Is ED expecting them to be general explanations of broad fee policies or detailed accountings of the costs of materials for individual courses or programs? When a college or university decides to include certain costs as part of tuition or mandatory fees, they are by

nature generalized across the curriculum. Institutions would need to rely on educated estimates of the amounts attributable to books and supplies.

While we agree that schools should not artificially inflate the cost of books and supplies to justify increasing tuition or imposing additional fees, we do not believe that such disclosures are warranted under the statute and doubt that they would actually address the concerns voiced by ED. The provision would be potentially time-consuming and expensive to implement, and the result would be confusing or meaningless to students.

Finally, we note also that cash management regulations do not appear to be the appropriate vehicle to impose an additional disclosure requirement on schools.

Checks as an Option (§668.164(d))

Check payments are problematic to students and institutions alike. For good reasons, most schools have done away with the traditional lines of students picking up their credit balance checks at the bursar's office in favor of, wherever possible, electronic payments.

Current §668.164(c)(3) allows an institution to "establish a policy requiring its students to provide bank account information or open an account at a bank of their choosing as long as this policy does not delay the disbursement of title IV, HEA program funds to students." If a student does not comply with an institution's policy to provide account information, the school still must issue a check to the student within the 14-day disbursement window.

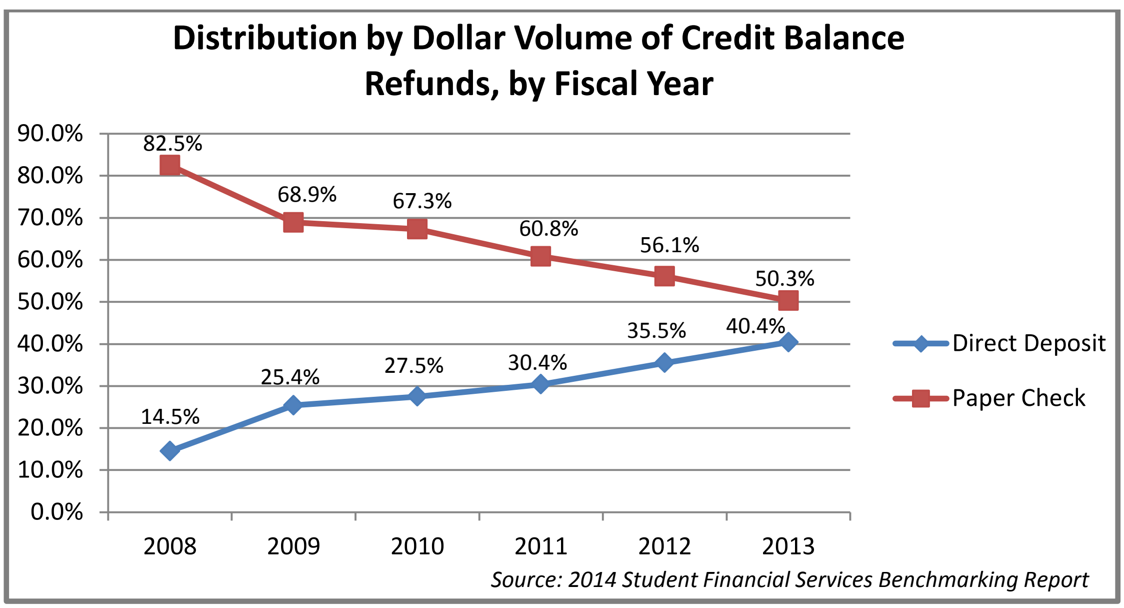
For years, this provision has allowed institutions to promote electronic disbursement of credit balance refunds. Electronic transactions have become the norm in all aspects of consumer finance—from government payments to retail transactions—because they are faster, safer, less expensive, and more convenient. Paradoxically, this provision has been deleted in the NPRM.

When checks are issued, they are most often sent through the mail. Unfortunately, students move a lot during the course of their education and often do not update their address information with their institution. This results in checks being mailed to the student's permanent address or being sent to an incorrect address and then returned to the sender, requiring further work on the part of the institution to locate the student. Students also sometimes misplace checks, leading to stop payment charges and issuing a new check. Both circumstances delay the student's receipt of the funds. Students without a financial account have difficulty using the funds, sometimes relying on expensive check cashing services and often converting them to cash—hardly conducive to good money management.

NACUBO strongly opposes proposed §668.164(d)(4)(i)(B)(*4*) which would require institutions with T1 or T2 arrangements to "include issuing a check as an option for a student or parent to receive payments" as part of the required selection process. While paper checks should remain the disbursement method of last resort, as mentioned above, including checks as an option is a step backwards. It could delay credit balance refunds from getting to students as fast as possible and would open students to unnecessary risk. Electronic disbursement also frees students from the expense of check-cashing services and the hazard of carrying unsafe amounts of cash. Even when students deposit paper checks in their own bank account, they often must wait for two to three business days for the check to clear before having access to the funds.

The Treasury Department agrees. Since March 1, 2013, as a result of the Debt Collection Improvement Act of 1996[1] as amended, the agency has mandated all federal benefits be paid by direct deposit to a bank account or to a Direct Express® debit card. On the "Go Direct" website[2], Treasury notes, "Direct deposit is safer than mailing checks. In fact, beneficiaries are 125 times more likely to have a problem with a paper check than with an electronic payment like direct deposit." The agency goes on to explain that direct deposit is "easier than checks, because people who get benefits don't need to go to the bank or a credit union to deposit a check. Their payment goes straight into their account." Finally, Treasury describes how direct deposit "allows immediate access to funds from virtually anywhere." In summary, in the eyes of the Treasury Department, direct deposit is safer, easier, faster, and more convenient than paper checks. In fact, Treasury is so committed to direct deposit, it grants exceptions only in rare circumstances.

NACUBO recommends that its member institutions encourage students to receive credit balance refunds electronically[3]. According to data from NACUBO's *2014 Student Financial Services Benchmarking Report*, the majority of credit balance refunds paid by schools, by dollar volume, are still issued by check; however, the gap between checks and direct deposits is shrinking. In 2008, 82.5 percent of refund dollars were disbursed by paper check while only 14.5 percent were disbursed by direct deposit. Contrast that with 2013, where only 50.3 percent of dollars were refunded by check and 40.4 percent were by direct deposit. The balance has already tipped at most types of institutions, with the exception of small colleges. We anticipate that within the next year or two, direct deposit will surpass paper checks as the predominant, and preferred, method of providing refunds to students.



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[1] 31 U.S.C. 3332
[2] https://www.godirect.gov/gpw/about
[3] Safeguarding Student Finances: Guidance for Campuses Offering Student Debit Card Options, NACUBO, 2012. http://www.nacubo.org/Documents/BusinessPolicyAreas/NACUBOGUIDANCE.pdf

Payments by the Secretary (§668.164(d)(3))
Proposed §668.164(d)(3) would allow the Department to disburse credit balance refunds directly to students using a method to be determined by ED. While the Department acknowledges that it is not doing so at this time, it is unclear to us how the agency would administer such a process. The suggestion that ED would pay credit balance refunds directly to students runs contrary to the foundation upon which the partnership between ED and schools is built and the roles that they play.

At the time that credit balance refunds are issued, ED has neither the necessary information nor the funds with which to pay students. Students often receive aid from sources other than Title IV; and credit balance refunds may contain Title IV and non-Title IV funds. If ED were responsible for the Title IV portion of a student's refund and institutions were responsible for the non-Title IV dollars, the Department and institutions would have to run parallel processes, resulting in a situation where a student could receive two refunds, one from each entity. Students would have to provide information to both entities about how they wished to receive their payments. It is hard to see a benefit to anyone in this inherently chaotic and confusing arrangement. Administrative burden and cost, on both ED and institutions, would surely increase—which could result in delayed disbursements—if the Department elected to pay credit balance refunds. This runs counter to ED's goal of getting Title IV dollars into the hands of students as quickly as is practically possible.

Further, NACUBO objects to the premise that a one-sentence placeholder in these rules, combined with a subsequent notice in the *Federal Register* outlining the new method, would be sufficient to implement such a major change in the way the Title IV programs operate. Changes to long-standing processes and rules should be subject to extensive consultation with institutions, students, and other stakeholders through negotiated rulemaking. Given the complexities schools and the department would face implementing such a scheme, this section should be deleted in the final rule.

Student or Parent Choice (§668.164(d)(4))
NACUBO has several concerns and questions about the proposed provision under 668.164(d) that would require colleges and universities with T1 or T2 arrangements to establish a selection process that students and parents may use to choose how they wish to receive Title IV credit balance payments.

Parents. Currently, few schools offer parents the option to receive credit balance refunds for PLUS loans by EFT. This is generally because the schools do not maintain separate records for parents in their databases and are not inclined to gather and manage this additional information. Further, it is rare for institutions to include financial accounts for parents within the scope of their agreements with servicers and/or financial institutions. Even if the school offers parents a choice of an EFT or check, NACUBO does not believe it makes sense to require institutions to provide the other information and disclosures to parents unless it also offers them an account under a T1 or T2 arrangement.

T2 Arrangements. Colleges and universities should not be required to comply with this section merely because an institution may have a T2 arrangement with a financial institution, and should not be forced to offer the financial account under that arrangement as an option in the credit balance disbursement process.

It is hard to reconcile the proposed regulatory language for this section with the explanation provided on page 28500 in the preamble to the NPRM. The preamble says:

> The proposed requirements include contractual disclosures and information related to average account holder costs; and *for any account listed on the institution's list of credit balance receipt options*, disclosure of the account[']s fees and terms in an easily understood format. [emphasis added]

Footnote 64 on that page goes further, seeming to clarify that disclosure requirements would only apply to students that "select the account from the student choice menu."

NACUBO believes that it is ill-considered and inappropriate to require colleges and universities with T2 arrangements to bring those financial accounts into the selection process for Title IV credit balance refunds if they are not otherwise inclined to do so. At many schools, T2 arrangements are completely independent of the credit balance disbursement process and are not called out or explicitly offered as a choice at the time a student is asked to tell the school how he/she prefers to receive credit balance payments. This is particularly true when the student financial accounts offered under a T2 arrangement take the form of traditional checking accounts. The college typically has no role in the student opening an account. From the standpoint of the selection process, students who have opted to open an account at the bank with a T2 arrangement will simply have an existing account that they will designate as the destination for direct deposit of refunds.

The proposed regulatory language mandates that any school with a T2 arrangement include the related T2 financial account as an explicit choice in the selection process and provide detailed information about the account, including a link to additional information. In essence, ED is forcing schools, against their own inclinations, to market these financial accounts as part of the selection process for Title IV credit balance refunds. These requirements go well beyond the marketing that colleges and universities often provide under T2 arrangements.

We acknowledge that some schools may have T2 arrangements that are intended to ensure that students without existing bank accounts have a readily available option for receiving electronic payments of credit balances. In that case, where the school wants to list the T2 account as one alternative for students to choose, it is appropriate for fee and feature information to be readily available. This could be done by linking to a separate webpage that lists the required disclosures.

Initiating Direct Payments Electronically. Paragraph (4)(i)(A)(*3*) requires schools to ensure that "initiating direct payments electronically to a financial account or access device associated with an existing student or parent financial account is as timely and no more onerous" than to a T1 or T2 account.

First, the terminology used in this paragraph seems to be inconsistent with what ED has specifically defined §668.161(a). It is not apparent which part of the selection or payment process ED means by "initiating direct payments electronically" or why the defined term "EFT" was not used. And, as a practical matter, an EFT would not be made to an access device but only to the financial account underlying that device.

It is our understanding that there are some efficiencies in processing that favor electronic deposits into accounts held at the same financial institution as the entity initiating the payment since the payments do not need to utilize the national payment network and therefore naturally take place very quickly. That said, fund delivery speed is increasing and this lag is likely to become shorter in the near future. Schools have no control over the processing timelines maintained by various banks.

First and Default Option. Paragraph (4)(i)(B)(*1*) requires a school to list the student's "existing financial account or access device" as the "first and default option" in the selection process. We again question the necessity or meaning of access device in this instance: the school is seeking information on a financial account to which funds would be deposited, not the means by which the student would access the funds in the account. More importantly, it is not apparent what ED means by specifying that this would be a default option. Either the student or parent selects the option and provides the necessary account information or they do not. There is no way that a school can default to this option otherwise.

Additionally, this provision reflects assumption flawed premise on the part of ED—a misperception driving the overall cash management rulemaking effort—that a student's "existing financial account or access device" is necessarily the better consumer banking option. In fact, a 2014 Government Accountability Office (GAO) report found that most of the college card fees it reviewed "generally were not higher, or in some cases were lower than those associated with a selection of basic or student checking accounts at national banks."[4]

Fees and Features. NACUBO advocates providing clear information about the features and fees of financial accounts offered to students or, for that matter, anyone else. Paragraph (4)(i)(B)(*2*) provides a safe harbor for institutions that use a disclosure format that will be developed at some future time by ED in consultation with the CFPB. We note that CFPB currently is working on a standard format for fee disclosures for general purpose prepaid cards. It is not clear why a separate format would be needed for this purpose. A similar disclosure could be developed for bank accounts. Since few if any schools offer more than one type of student financial account, there is no need to have a format that is the same for both bank accounts and prepaid cards. It would be confusing for students if the disclosure provided by the school were different from what they received from the financial institution.

In any event, it is disappointing that ED did not include a prototype of this disclosure in the NPRM and invite comment. We hope that the public will be invited to weigh in on the development of the form. Additionally, we are concerned with the prescriptive nature of this requirement and how ED expects the information to be displayed. Keep in mind that some institutions still use paper forms for direct deposit instructions, and that even for those that use electronic processes too much information displayed on a page is unhelpful and confusing. How much freedom will schools have to design the menus? May the account features and fees information be provided in a link? If not, the disclosures will need to be kept to a minimum.

[4] GAO-14-81 College Debit Cards

Tier One Arrangement (§668.164(e))
Sharing Student Information. Paragraph (e)(2)(i) restricts the information about students that institutions may share with their third-party servicer, a financial institution, or their agents before a student consents to open a financial account. NACUBO finds this provision confusing on several levels.

First, when an institution contracts with a third-party servicer to assist with processing credit balance refunds, a key service often sought is managing the students' choice of how they would like to receive any credit balance payments. The servicer must be able to authenticate that the person making the choice is actually the student. This is especially true if the student wants to select an existing financial account. Fraud prevention practices require the servicer to have a "shared secret" with the individual—a piece of personal information that others are unlikely to know such as the last four digits of a Social Security number or the student's ID number. Second, whether the student does or does not opt to open an offered financial account is immaterial to the servicer's need to have information necessary to authenticate the student's identity. Third, the servicer needs a unique identifier for each student (regardless of what option they choose) in order to match the eventual payment to the delivery method selected by the student.

And, finally, we have trouble picturing the work flow ED anticipates. Would this be a two-step process in which the student would first be asked if they were interested in the offered financial account and then, if so, the institution would share additional information about the student with the servicer? From a process standpoint, and understanding the challenges inherent in persuading college students to take care of administrative details, this is a non-starter. Once students focus on the task, they need to be able to complete it easily and seamlessly.

As you are aware, colleges and universities share student information with various third-party servicers who act as their agents for various purposes. The sharing and use of this information is governed by the Family Education Rights and Privacy Act (FERPA) which servicers are required to follow as well. ED should not use undocumented concerns of parties lacking in operational expertise to hinder schools ability to set up rational processes and guard against fraud. Colleges and universities devote a great deal of time and resources to FERPA compliance. Current regulatory authority is more than adequate to address any instances of third-party misuse of student information that arise.

ATM Access. NACUBO agrees that students should have ready access to their student aid funds without incurring charges. However, we are concerned that overly rigid regulations could be detrimental. Requiring an ATM located on or near each location of the institution may be challenging for institutions with campuses in rural locations or with a large number of additional locations. NACUBO is assuming that, as stated in footnote 115 on page 28505 of the NPRM, ED means to refer only to additional locations at which the college or university offers at least 50 percent of an academic program. Even so, such a location might serve only a few hundred students and not be located in a commercial area offering convenient access to an ATM.

ATMs are expensive to install and maintain—the Government Accountability Office estimated the annual cost of installing and maintaining a single ATM ranged between $20,000 to more than $40,000 for calendar year 2011, excluding capitalized hardware and software costs[5]. There would need to be a potential critical mass of users at the location to make installation of an ATM sensible. It should also be noted that ATMs cannot be installed on a temporary basis to meet peak demand since they must be installed securely and hardwired to network services. Given that the T1 financial account also would need to be tied into a surcharge-free network, students at out-of-the-way locations would arguably already have access typical for their location and would, of course, have the option to choose a different account. Perhaps the rules could be written so that an ATM would only need to be provided at locations serving more than a minimum number of students or that the institution would have to disclose upfront to students if ATMs were not provided at certain additional locations.

Restrictions on Certain Fees. Proposed §668.164(e)(2)(iii) and (iv) would require schools to ensure that a student does not incur any cost —imposed by the school, its servicer, or the affiliated financial institution—for point-of-sale fees, in-network ATM transactions, any charge for 30 days after a credit balance disbursement was deposited into the account, and any transaction that exceeds the balance on "the card."

NACUBO agrees that account holders in T1 arrangements should not be charged point-of-sale swipe or PIN debit fees when using their access device. Further, we agree with the Department's proposed language stating that students should not be charged a fee for using an in-network ATM. These two requirements, together with the option of getting cash back at a retailer, provide ample opportunity for students to access Title IV funds at no cost.

However, the provision for a 30-day fee-free period following each payment containing any Title IV funds is too broad, onerous, and unnecessary. ED goes too far when in proposing to prohibit charges for other ancillary financial services a student might choose to use. This goes well beyond providing access to Title IV funds and instead mandates cost-free access to banking services. ED is proposing to mandate significantly better terms than the federal government, with its immense buying power, provides to other, no less deserving, benefit recipients.

Simply tracking multiple overlapping 30-day periods will be complex and fraught with difficulty. Currently, third-party servicers and affiliated financial institutions do not know, and have no need to know, the source of credit balance refunds being paid to students. The school merely instructs them to pay a certain amount to the student. Students may receive payments from the school that contain no Title IV funds, or may get multiple payments that do include Title IV funds over the course of a year. Entities providing T1 accounts would have to set up complex systems to track these periods of time and prevent charges from accruing. They would lose the ability to project the costs of offering the accounts. At the same time, students—who are not necessarily interested in the source behind their credit balance refund—would frequently be confused about when they were and weren't on the hook for various usage fees.

A student could incur charges for out-of-network ATMs, wire transfers, teller services, foreign currency exchange, and more with impunity. This is at odds with our educational goals of teaching students responsible money management skills. These services often represent substantial costs to financial institutions. NACUBO is concerned that if all fees are eliminated

[5] GAO-13-266, App. II

from these products, the financial risk to third-party servicers and their associated financial institutions will be too high. They will either remove valuable features from these accounts or simply no longer offer them to students. For instance, at least one provider has deliberately offered a debit card product with international functionality at low cost—a real benefit for students studying abroad, international students, or those who plan to travel. If they had to cover currency conversion fees for broad swaths of time, that feature would be discontinued.

Finally, we question the use of the word "card" in §668.164(e)(2)(iv). In §668.161(a), ED proposes adding "access device" to the list of existing definitions. In the preamble, the Department notes that its intent is to "capture all types of access devices to all types of accounts into which a student or parent may wish to deposit his or her title IV credit balance." While ED uses "access device" throughout the NPRM, in §668.164(e)(2)(iv) ED specifically states "no credit may be extended or associated with the financial account, and that no fee is charged to the student or parent for any transaction that exceeds the balance on the card." Does the ED intend for this provision to only apply when the transaction is made using a card or to any transaction that exceeds the balance of the financial account"?

Tier Two Arrangement (§668.164(f))
ED defines a T2 arrangement as an agreement between a college or university and a financial institution or related entity that under which financial accounts are offered and marketed directly to students or their parents. The proposal specifies that marketing directly includes the institution providing information to students about the accounts; co-branding of the account or access device; or linking the account to a student ID card or similar tool.

Threshold. Paragraph (f)(2) states the presumption that Title IV funds will be deposited or transferred into financial accounts offered under T2 arrangements, thereby establishing ED's right to regulate the accounts. ED proposes to exempt institutions from some, but apparently not all, of the requirements imposed on such accounts if the institution can show that no student enrolled in the previous year was paid a Title IV credit balance. Ironically, the provision that would still apply is the requirement under paragraph (d)(4) that the school set up a selection process in which it must actively promote the T2 account.

NACUBO believes that ED's authority to regulate these arrangements is tenuous at best. Once the school pays a Title IV credit balance to a student, the funds belong to the student who is free to do with them what she wants. The student might decide to stash them under her mattress (also often provided by the school), but that hardly gives ED the right to regulate dormitory mattresses. If the college or university does not introduce a T2 financial account into the credit balance disbursement process by offering it as an option or noting its availability, ED has no legitimate claim to regulating the relationship or the accounts.

If ED persists on this path, the current regulatory threshold results in dubious benefits that are completely out of line with the costs that would be imposed on colleges and universities attempting to comply. Given the various requirements tied to designation as a T2 agreement, it is unreasonable to set up a scheme that allows the determination to change from year-to-year when agreements run, of necessity, for a period of years.

Contract Disclosure (§668.164(e)(2)(v)(A) and (f)(4)(iii)(A))
NACUBO feels that providing a summary of the terms of the agreement would be more a more direct and responsible approach to consumer education and offer a greater understanding of the arrangement to students and families than posting the whole agreement online.

We encourage transparency when institutions enter into agreements with banks and third-party servicers that involve student financial accounts. In our 2012 guidance, we recommended that colleges and universities "publicly disclose the terms of any agreements with third parties issuing debit cards to students." Looking beyond just debit cards and credit balance refunds, sharing the terms of agreements is a message to students, families, and the public that institutions are entering these contracts with students' needs in mind. However, publicly posting an entire contract would do little to help students and consumers and, frankly, would probably ensure that they were not read or understood by these constituencies. These agreements are often complex, lengthy, and include provisions outside the scope of student banking. For instance, a number of schools have negotiated favorable account terms for students by including them in much larger contracts for the many of the school's banking needs and various ancillary agreements. These documents can exceed 50 pages or more.

End-of-Year Disclosure of Account Fees (§668.164(e)(2)(v)(B)&(C) and (f)(4)(iii)(B)&(C))
There are a number of procedural hurdles that would make it difficult, if not impossible, for schools to comply with the proposed requirements for institutions with T1 and T2 arrangements to post on their websites—and submit to ED—the number of students with accounts under the agreement, and the median and mean of fees paid by account holders during the previous year.

The first difficulty would be defining "financial accounts under the contract." Many arrangements with financial institutions do not restrict individuals affiliated with the college or university to a particular type of account or even limit the arrangement to newly opened accounts. A student might arrive on campus with an existing account with the same financial institution and ask that it be linked to his or her ID card. While the school may have analyzed the terms of a bank's "student account" when choosing to enter into the agreement, it does not restrict the ability of students or parents to choose another option.

Second, in order to calculate the number of students and parents holding these accounts at any time during the year, as well as the median and mean of fees paid annually, the financial institution would have to know which account holders were students. Under T2 arrangements, faculty and staff are frequently eligible for personal financial accounts as well and may also utilize the convenience of linking their college ID to the account. Directory information alone would not be enough to verify that an account holder was a student at the institution, absent some unique identifier such as a social security number that could be used to crosswalk the data (which neither party should share with the other). A bank might only know that an account holder was a student at one point in time: if the individual opening the account self-identified as a student. And the bank would only know that an individual was no longer a student if the individual notified it. Determining which accounts were held by parents borrowing PLUS loans would be even more challenging.

Best Financial Interests of Students (§668.164(e)(2)(vii) and §668.164(f)(4)(vii))
NACUBO encourages its members to keep students' interests at the forefront, making business decisions to enhance services available to students—and not at their expense. When a school enters into an agreement with a third-party servicer or a bank, or renews an existing agreement, business office staff carefully reviews the terms of the contract. The approach proposed by ED, unfortunately, could be difficult for colleges and universities.

Sections 668.164(e)(2)(vii) and 668.164(f)(4)(vii) would require schools to ensure that the terms of the financial accounts offered pursuant to T1 or T2 arrangements are "not inconsistent with the best financial interests of the students and parents opening them." To do this, schools would have to conduct periodic reviews to determine that the fees imposed are not excessive in light of prevailing market rates. Additionally, the agreements between schools and servicers under T1 and T2 arrangements would have to include a clause allowing schools to terminate the agreement based on complaints from students and parents or by determination of the school that the fees assessed under the arrangement were excessive.

The proposed language does not specify how often these reviews would have to occur. Prevailing market rates are unlikely to change very quickly, so we believe an interval of two to three years is not unreasonable. ED should not overregulate this process. Banking products are diverse because the population has myriad financial needs and circumstances. Different student bodies have varying needs and preferences and not all college students are young consumers. Student demographics show that "traditional" students, those 18–22 years old, are a declining proportion of college students; those over 24 or financially independent from their parents are fast becoming the majority population of college students. While schools should be expected to negotiate contracts in the best interest of their student population, ED should avoid creating the perception that students are a one-size fits all population and thus creating a liability for institutions.

We agree with ED that colleges and universities should include cancellation clauses in T1 or T2 agreements, so that if problems arise with the level of service provided, student complaints, or changes to the fee structure the contract can be renegotiated or cancelled. Many higher education institutions already do so.

Provisions for Books and Supplies (§668.164(m))
NACUBO was surprised to note that a significant change was made to paragraph (m) but not mentioned in the preamble to the NPRM. We are concerned that, due to this oversight, many interested parties may not have noticed the proposed expansion of the requirement to provide a way for students to get their books in the first week of a period from Pell grant recipients to all Title IV-eligible students and therefore did not have a chance to offer comments on this. This is a significant change to this mandate. We do not object to the change because we believe that many institutions already extend their programs to most students.

Institutions have raised questions about whether first-time students who are subject to the 30-day delayed disbursement requirement for Direct loans would be included or excluded under this provision. NACUBO's understanding would be that such students would not meet the requirement in (m)(1)(i) that the institution could have disbursed the Title IV funds 10 days before the beginning of the payment period, and therefore would not be covered. If ED decides to go ahead with this change in the final rules, despite the lack of notice, it should clarify that point.