American Council on Education™
Leadership and Advocacy

One Dupont Circle NW
Washington, DC 20036
202 939 9300
acenet.edu

July 2, 2015

Jean-Didier Gaina
US Department of Education
1990 K Street, NW, Room 8055
Washington, D.C. 20006

Re: Department of Education; Notice of Proposed Rulemaking [Docket ID: ED-2015-OPE-0020]

Dear Mr. Gaina:

On behalf of undersigned associations listed below, I write to offer comments on the Notice of Proposed Rulemaking (NPRM) published in the Federal Register on May 18, 2015, Docket ID: ED-2015-OPE-0020. As the representatives of the colleges and universities that will be directly impacted by the proposed rule, we have several concerns with the proposal as written.

Our concerns reflect the importance our members place on their relationships with their students. Students and taxpayers place a great deal of responsibility in the hands of institutions to administer federal financial aid funds, and we take that responsibility very seriously. We therefore appreciate the Department's efforts to ensure that students' financial interests are well protected, and we offer our comments in the spirit of strengthening this rule and improving service to students.

While the bulk of the proposed rule addresses technical and "back office" financial aid operations at colleges and universities, there are larger issues embodied in the rule that affect the ways our member institutions interact with their students.

Among these issues is the proposed §668.164(d)(3), which would allow the Department of Education to pay Title IV credit balance refunds directly to students using a method established or authorized by the Secretary and published in the Federal Register. This proposed change is dangerously broad, and, if implemented, would significantly alter the on-campus administration of the federal student aid programs. It would end the long-standing practice that a trusted third party—an accountable postsecondary institution approved by the Department—independently manage the exchange of taxpayer-provided funds between the government and a student receiving Title IV assistance. Indeed, for that very reason the Department ended its practice of making direct disbursements of Pell grant funds to students more than thirty years go. Any such proposal today should be subject to negotiated rulemaking, as well as the opportunity for public review and comment.

We agree that a "Tier 1" arrangement constitutes a relationship with a third-party servicer for the purpose of the on-campus administration of the Title IV programs, and is thus subject to the Department's regulatory preferences. However, the Department's proposed treatment of "Tier 2" arrangements is simply regulatory overreach. In proposed §668.164(f)(2) it has staked its right to regulate college or university agreements with financial institutions on the tenuous notion that a student might deposit her Title IV credit balance in an account associated with such an arrangement. The Department's assertion that it can regulate Tier 2 arrangements akin to those with third-party servicers if just one student enrolled during the previous year at the institution received a Title IV credit balance—irrespective of whether the student actually deposited those funds in an account associated with such an arrangement—is an absurd threshold and shows no effort to balance regulatory burden with intended benefits, and should be eliminated in the final rule.

The proposed rule would eliminate the current provision at §668.164(c)(3) that allows an institution to "establish a policy requiring its students to provide bank account information or open an account" as long as this does not delay disbursement of Title IV funds. If a student fails to comply with the institution's policy, the school still needs to cut a check within the 14-day time period for paying Title IV credit balances. However, proposed §668.164(d)(4)(i)(B)(4) would require institutions to "include issuing a check as an option for a student or parent to receive payments."

Our members believe that Title IV disbursements made by electronic funds transfer (EFT) are safer, cheaper, and faster than issuing paper checks. Indeed this proposal is contrary to the federal government's increasing use of direct deposits, debit cards, stored value cards, and other means of paying federal benefits that are not paper checks. In fact, virtually all monthly Social Security benefits are paid this way. However there is one exception: the Social Security Administration continues to send paper checks to persons born before May 2, 1921. The better policy option for Title IV is to retain current §668.164(c)(3).

Proposed §668.164(c)(2) addresses the business practices of those institutions that include the cost of books and supplies in the amount of tuition and fees charged to students. These institutions would be required to disclose separately the amounts for tuition and fees and the costs for books and supplies. Institutions would also be required to explain to their students why the institution's choice to bill in this way is in the student's best financial interest.

We find it curious that the Department would include a disclosure requirement in a regulation that governs the manner in which colleges and universities manage Title IV funds on campus given that disclosure requirements for institutional and financial assistance information reside in Subpart D of the Student Assistance General Provisions. Further, it appears that this proposal is largely based on a single instance of litigation by a state attorney general related to a single institution's overcharging its students for required instructional materials. Finally, and more importantly, this proposal violates the plain language of section 133(i) of the Higher Education Act, which bans the Department from regulating section 133, including disclosures with respect to the purchase of course materials. This provision should be eliminated in the final rule.

Proposed §668.162 appears to require institutions not under the advance payment method to request reimbursement from the Secretary only after all Title IV program funds have been disbursed, including amounts not used for allowable charges and paid to students. Such Title IV credit balances are effectively direct payments by the Secretary to students. Institutions have no claim on these funds; they merely facilitate these cash transfers. With respect to Title IV credit balances, we fail to see a government interest that needs further protection, and the existing 14-day rule is sufficient to protect the interests of students.

Finally, proposed §668.164(e)(2)(iii)(B)(4) would require institutions to ensure that both the student and parent would not incur any charge imposed by the institution, its third-party servicer, or the affiliated financial institution for 30 days after a Title IV credit balance disbursement is deposited in the account. This absence of any near-term restriction on student or parent behavior means they could wire transfer money, overdraw their accounts, and more with impunity. It is difficult to imagine any financial institution would associate itself with a third-party servicer that is subject to this condition of participation. Institutions would be forced to find other—and likely less efficient ways—to manage their Title IV credit balance payments.

Thank you for the opportunity to comment on this NPRM and we appreciate your attention to our concerns.

Sincerely,

Molly Corbett Broad
President

On behalf of:

American Association of Community Colleges
American Association of Collegiate Registrars and Admissions Officers
American Council on Education
Association of American Universities
Association of Community College Trustees
Association of Governing Boards of Universities and Colleges
Association of Jesuit Colleges and Universities
National Association of Independent Colleges and Universities
National Association of Student Financial Aid Administrators
UNCF