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NAFCU | Your Direct Connection to Education, Advocacy & Advancement

July 2, 2015

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

RE: Comments on Proposed Rulemaking for amending Student Assistance
General Provisions of the Higher Education Act

Dear Ms. Gaina:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I am writing to you regarding the proposed rulemaking on student accounts in receipt of Title IV Higher Education Act (HEA) program funds. NAFCU appreciates the Department of Education's (DOE) initiative in this rulemaking and we appreciate the opportunity to provide comments on this proposal. While NAFCU generally supports this proposal, we have a few concerns about some aspects of the regulation as proposed which are discussed in more detail below.

General Comments

We understand that the DOE has been studying practices in the student lending market that it believes are harmful to consumers. In the preamble to the newly proposed regulations, the DOE outlines several factors over the past decade that have significantly impacted the landscape of how financial products and services are marketed and offered on college campuses. In particular, the DOE suggests that this proposed regulation is in response to what the DOE calls a "proliferation of agreements between postsecondary institutions and financial account providers." While NAFCU and our members firmly believe that students should have access to transparent information about a variety of safe and vital financial services, we are concerned that some aspects of the DOE proposal may negatively harm the ability of well-regulated credit unions to serve this important student demographic.

Students need access to safe and reliable financial services more than most since they often have no prior banking experience or a credit history. As not-for-profit, member-focused financial institutions, credit unions are uniquely situated to meet the needs of student consumers, since credit unions have a long track record of providing exemplary financial services at low fees and competitive rates. In particular, many credit unions have been

formed by students and alumni of a university for the specific purpose of meeting the financial needs of those students and alumni, regardless of that person's income or credit history. Such credit unions guarantee that students and alumni will have access to safe and effective financial services from an insured depository financial institution. Credit unions are member owned, not for profit organizations that have the specified mission of meeting the credit and savings needs of consumers, who are members of a particular association or local community.

New Definitions for Credit Unions

In the proposal, the DOE expands its current regulations to explicitly cover the activities of credit unions. Specifically, the proposal adds the term "financial institution" and to define it as "a bank, savings association, credit union, or any other person or entity that directly or indirectly holds a financial account belonging to a student or parent." Furthermore, the term "depository account" is amended to expand the current definition from just an account held at a "bank," to now include credit unions as well as other depository institutions. NAFCU and our members appreciate that the DOE recognizes the important role that credit unions play in providing financial services to students on college campuses by redefining its current definitions. However, NAFCU would caution the DOE in future regulations to consider the unique business model of credit unions as member-owned cooperatives. The not-for-profit structure of credit unions allows each institution to pass their earnings directly to their student members – not stockholders – in the form of lower interest rates and fees.

Required NCUA Insurance Coverage

The proposal requires a college or university that receives Title IV funds in trust for a student beneficiary from the DOE to maintain those funds in an insured depository account, specifically the account must be insured by the FDIC or NCUA. NAFCU and our members, who are all federally-insured by the NCUA, support the inclusion of this language to ensure that student scholarship funds will not be put at undue risk of loss.

Regulating Tier 1 and Tier 2 Arrangements

Under the current regulations, the DOE allows students to provide bank account information or open an account at a credit union or bank of their choosing as long as this does not delay disbursement of Title IV program funds to students. The DOE is now proposing more stringent requirements on the ability of educational institutions to steer students and their parents toward specific credit unions or other financial institutions.

The proposal categorizes the educational institution's contractual relationship with certain third party providers as either Tier 1 (T1) or Tier 2 (T2). Of particular concern for credit unions is the DOE's proposed treatment of T2 agreements. The proposal defines a T2 arrangement as when an institution has a contract directly with a credit union or other financial institution that offers financial accounts, under which financial accounts are

offered and marketed directly to students or their parents. NAFCU and our members believe that this definition of a T2 agreement is overly broad. Many credit unions have contracts with a university as a landlord-tenant relationship in order to maintain a branch on campus to better serve students. These contractual agreements do not imply that the university has a preference or will pressure students into opening an account with a certain financial institution. NAFCU strongly urges the DOE to reconsider its definition of T2 to exclude contractual agreements that are solely for the purpose of renting space or providing an ATM on the university campus.

Furthermore, NAFCU is concerned about the DOE's overly broad definition of direct marketing to students on campus. Under the proposal, when there is a T2 agreement with a credit union, a financial account is considered "directly marketed to students and their parents" when the financial account or access device is co-branded with the institution's name, logo, mascot, or other affiliation. While NAFCU and our members acknowledge the concern that students should have a clear choice about the financial institution that holds their money, we are concerned that the DOE proposal will negatively impact credit unions chartered specifically for the purpose of serving the students and alumni of an educational institution.

Credit unions are member owned, not for profit organizations, generally managed by a volunteer Board of Directors that have the mission of meeting the credit and savings needs of its membership base. In particular, many credit unions have been formed by students and alumni for the specific purpose of meeting the financial needs of those students and alumni of a particular university. Such credit unions guarantee that students and alumni will have access to safe and effective financial services, regardless of that person's income or credit history. Although these credit unions bear the university name or logo is not indicative of a steering agreement with the university. NAFCU strongly urges the DOE to revise its definition of "directly market[ing] to students and their parents," to provide an exception for credit unions chartered by and for the students and alumni of a university.

Preserving Transparency in Student Choice & Limiting Fees on Student Accounts

Currently, educational institutions are allowed to pay Title IV program funds directly to a student or parent by depositing the excess credit balance of funds directly into the student or parent's credit union or bank account. For an account offered pursuant to a T1 or T2 arrangement, under the new proposal, the educational institution must establish a selection process under which the student or parent chooses one of several options for receiving those payments. This proposal seeks to prohibit educational institutions from steering students and their parents into using financial accounts that the college has an existing contractual relationship with. Again, NAFCU and our members strongly support information sharing and transparency to students and their parents prior to opening a credit union or bank account. However, we are concerned that the definition of a T1 and T2 arrangement improperly covers contractual agreements with a university that are in no way related to steering students into particular products or services. The proposal mandates that the school must ensure that the student has convenient access to a credit union branch or

ATM of any financial institution that it recommends so that the student does not incur a cost in making a cash withdrawal. This puts credit unions in a difficult situation, since they are required to open branches and ATMs on or near campus to serve students, but then they are penalized for entering into contracts to rent space on campus by becoming a T2 institution.

Under the current rules, if a school assists the student or parent in opening a credit union or bank account, the school must ensure that there is no cost associated with opening the account or with receiving any type of debit card, stored-value card, or other type of ATM card. Additionally, the proposal requires that an institution must list and identify the major features and commonly assessed fees associated with all accounts offered pursuant to a T1 or T2 arrangement. The new proposal would maintain the existing requirements, but also limits the ability of a credit union to charge certain standard account related fees, such as charge overdraft fees, point of sale transaction fees, and ATM access fees, within 30 days of a student receiving Title IV funds in his or her account. NAFCU is extremely concerned that the DOE will take such a broad interpretation of determining that a school "assisted" in opening a student account at a credit union, merely because the school includes the name of the credit union in a list of possible financial institutions that a student can choose from. Such an over-broad interpretation would make credit unions wary of having their information included in such pamphlets from the university, even though the credit union could be the most beneficial financial service provider for the student.

Conclusion

NAFCU appreciates the opportunity to share our thoughts on the proposed amendments to the agency's student assistance rules related to the disbursement of Title IV, HEA funds. We look forward to continuing to work with the Department of Education to address more ways that credit unions and other financial institutions are able to safely and effectively meet the financial needs of college students throughout the country. Should you have any questions or would like to discuss these issues further, please feel free to contact me at ksubramanian@nafcu.org or (703) 842-2212.

Sincerely,



Kavitha Subramanian
Regulatory Affairs Counsel