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DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840-AD14

[Docket ID ED-2015-OPE-0020]

Final Format and Summary of Responses to Request for Information Regarding Disclosures for Student Financial Accounts; Announcement of Applicable Dates

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Responses to Request for Information.

SUMMARY: On May 9, 2017, the Department of Education (Department) published in the Federal Register a Request for Information (RFI) to solicit ideas and information related to the major features and types of commonly assessed fees that postsecondary institutions (institutions) must disclose under Department regulations with regard to each of the institution's Tier 1 (T1) or Tier 2 (T2) arrangements. The Department announces the final format for these disclosures. To allow institutions sufficient time to adopt the final format, if they elect to do so, the Department is allowing additional time--until January 1, 2018--for institutions to comply with the applicable disclosure requirements.

DATES: The Department is allowing additional time--until January 1, 2018--for institutions to comply with the requirements in 34 CFR 668.164(d)(4)(i)(B)(2).

FOR FURTHER INFORMATION CONTACT: Ashley Higgins, U.S. Department of Education, 400 Maryland Avenue, SW., room 6W234, Washington, DC 20202. Telephone: (202) 453-6097 or by email: Ashley.Higgins@ed.gov.

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SUPPLEMENTARY INFORMATION: The Secretary received 10 written responses to the RFI and is using this feedback to announce the final format, content, and update requirements that institutions may choose to follow to satisfy the requirements of § 668.164(d)(4)(i)(B)(2) with respect to the major features and assessed fees associated with their T1 and T2 arrangements. The Secretary thanks the commenters for their suggestions to improve the information presented to students. Furthermore, due to the delay in releasing the final format and update requirements, we are allowing institutions additional time--until January 1, 2018--to comply with the requirements in § 668.164(d)(4)(i)(B)(2).

We also remind institutions that the Consumer Financial Protection Bureau’s (CFPB's) short-form template was not drafted to implement the Department's cash management regulations; accordingly, institutions using that template should not regard it as authorizing T1 or T2 arrangements that impose any fees otherwise prohibited under § 668.164(e) or (f), as applicable.

<u>Analysis of Comments and Changes</u>: An analysis of the comments and of any changes to the format, content, and update requirements since publication of the RFI follows.

<u>General Comments</u>

<u>Comments</u>: Several commenters suggested that the disclosure should read “ask your school (or school's business office) about other ways to receive federal student aid” instead of “ask the financial aid office about other ways to receive your money.” The commenters indicated that this is because the financial aid office is not responsible for disbursing aid.

<u>Discussion</u>: We thank the commenters for noting this distinction. While we do not intend to change the wording of the message on the example disclosure, we note that an institution is free to replace the wording “the financial aid office” with more appropriate contact information, as

long as the contact information provided corresponds to someone directly employed by the school.

Changes: None.

Comments: One commenter indicated that simply stating that students have other ways to receive their money at the top of the form is insufficient and that the examples of a paper check and direct deposit should also be included in the example disclosure. The commenter also suggested that more specific contact information for the institution be included in the statement and that the language be bolded.

Discussion: We note that, under § 668.164(d)(4)(i)(B)(2), the institution is required to list the major features and commonly assessed fees associated with each T1 and T2 account as part of the selection menu. Section 668.164(d)(4)(i)(A)(2) requires that the student's options for receiving direct payments are described and presented in a clear, fact-based, and neutral manner. Section 668.164(d)(4)(i)(B)(1) requires that institutions must present prominently as the first option, the ability to receive student aid funds via direct deposit to a preexisting financial account belonging to the student. Because all of these items are required to be a part of the selection menu, we believe it is unnecessary to add them to the disclosures. We do not believe that more specific contact information for an institution is necessary, since it is highly likely that the student will be able to find such information on their own once they understand which office they need to speak to within their institution. We also do not believe it is necessary to bold the message at the top of the disclosures because the format makes the relevant information sufficiently clear.

Changes: None.

Comments: Several commenters expressed concerns that having institutions maintain the account disclosures in their selection menus will be administratively burdensome and instead suggested that it would be less burdensome to simply include a link to the disclosures in the selection menu. One commenter noted that there is a risk that schools will lack the capacity to update their disclosures in a timely manner should the fee schedule change. That same commenter also pointed out that, should students choose to open a bank account through the selection process, they will be directed to a disclosure page during the account-opening process.

Discussion: We disagree with the commenter. Under § 668.164(d)(4)(i)(B)(2), an institution must list the major features and commonly assessed fees associated with each T1 and T2 account as part of the selection menu (80 FR 67125, 67160). We believe that this approach is a more effective way of delivering important consumer information at the time a choice is being made, rather than simply including a link to a set of disclosures. Therefore, we require the disclosures to be visible within the selection menu.

Changes: None.

Comments: One commenter took issue with the phrase "[y]our funds are/are not eligible for Federal Deposit Insurance Corporation/National Credit Union Administration (FDIC or NCUA) insurance," included on the disclosure. The commenter indicated that such a statement is incomplete, and could put institutions and financial account providers at risk since there are limits to FDIC and NCUA coverage, using the example that funds are only insured up to a certain amount and there are certain other limitations.

Discussion: We disagree that including a binary indicator of whether an account carries FDIC or NCUA insurance creates risk for either an institution or its partner financial account provider. The extent to which such coverage insures an accountholder's funds is immaterial to whether such coverage exists. In the RFI, we proposed that this statement be included because some types of accounts, especially prepaid accounts, do not have any FDIC or NCUA insurance. We continue to believe that this information is critical for students prior to opening an account and believe its inclusion will not create confusion for students or risk to institutions and financial account providers. However, we are clarifying the disclosure language by replacing the phrase "funds are/are not" and with "account is/is not."

Changes: We are removing the phrase "funds are/are not" from the section of the disclosures addressing FDIC and NCUA insurance and replacing it with "account is/is not."

Comments: Several commenters suggested that the Department place more emphasis on overdraft fees, with some asking that overdraft fees be included in the top-line disclosure items. Some commenters also suggested the use of bold font for a proposed top-line overdraft disclosure. One commenter argued that this will help students who may be comparing fees between two programs if a campus offers both T1 and T2 accounts. One commenter also argued that giving more prominence to overdraft fees is important, since data show that students remain particularly vulnerable to incurring overdraft fees. Another commenter suggested that the statement on overdrafts be more expansive, arguing that a more prominent display of these fees will help institutions to compare financial programs in connection with their contracting decisions. Another commenter suggested that the disclosures include a statement that overdraft features are optional on T2 accounts, stating that accountholders who choose overdraft features are more likely to incur high fees.

Discussion: In the process of drafting the RFI, we considered including overdraft fees as a top-line disclosure item. However, we determined that it would be unnecessary to include overdraft fees in such a manner because financial account providers under T1 arrangements are unable to charge such fees and because, in the event that they are charged by T2 providers, they would almost certainly be included in the additional two fees listed in the disclosures. However, after reviewing the comments, we are concerned that this approach may result in a disclosure that unintentionally downplays a fee that is not only typically expensive compared to other fees that students may be charged, but can quickly compound itself when an account is in a negative balance. We are persuaded by the comments arguing that overdraft fees should result in a more prominent display on the disclosures. We also agree that such a placement may help students who are comparing two different types of accounts, even if the fee is not charged. However, we decline to add a statement that overdraft features are optional as we believe it may confuse students. We also believe that bold font for the top-line item is unnecessary, given its already prominent placement in the revised disclosure template.

Changes: We have added “overdraft” fees as a top-line disclosure item. Financial account providers operating under T1 arrangements (and any other account providers that do not charge an overdraft fee) can simply place an “N/A” in that box. As a result of this change, we have also removed the language that states “[y]ou may be offered overdraft features. Fees could apply. *OR* No overdraft/credit feature” from the disclosures.

Comments: A few commenters stated that institutions should also disclose the number and location of surcharge-free ATMs.

Discussion: While we thank the commenters for their interest in making sure that students are well informed about their account options, we disagree. The short-form disclosures are meant to be easily understandable by students, and adding the number and locations of each networked ATM is likely to greatly increase the length and complexity of the disclosures. We are also concerned that adding this feature may increase the burden on institutions and financial account providers without a commensurate benefit to students.

Changes: None.

Comments: One commenter suggested including money transfer or account closing fees associated with a student account, stating that this could disproportionally impact students who are dissatisfied with their accounts.

Discussion: The disclosures cannot capture every fee charged by a financial institution, and the fees specifically identified by the commenter have not been a significant source of complaint during or since the rulemaking. However, should any money transfer or account closing fee result in a significant share of revenue for a financial institution, this will be captured in the section listing additional fees. Because of this, we believe that it is unnecessary to add these types of fees to the disclosures.

Changes: None.

Comments: One commenter suggested removing some of the top-line disclosure items and replacing them with the high-revenue fees listed later in the disclosures, arguing that because some of these fees have been disallowed through regulation, they should not be included in the short-form disclosures.

Discussion: We disagree. Leaving fees that have been disallowed by regulation, such as overdraft fees for T1 accounts, in the short-form disclosures allows students to more easily compare T1 and T2 accounts with other bank accounts.

Changes: None.

Comments: In the RFI, we asked commenters to tell us whether there is a preferred start date for the requirement to include the two additional fee types that generated the highest revenue from account holders during the previous 24 months. One commenter responded that there is no need to delay the disclosure of the high-revenue fees and that financial account providers can furnish this information as soon as they begin using the disclosure template.

Discussion: We agree with the commenter. If an institution chooses to use this format, it must include all required elements no later than January 1, 2018 (or earlier at the institution's discretion). Because this was a requirement already proposed as part of the RFI, we are not making any changes as a result of this comment.

Changes: None.

Comments: One commenter suggested that account providers include the average or median annual cost for students who choose a particular financial account in the disclosures.

Discussion: Sections 668.164(e)(2)(vii)(B) and (f)(4)(iv)(B) already provide for the release of the average and median costs incurred by students who choose to use an account offered under a T1 or T2 arrangement. We do not believe that the value of adding this item to the template outweighs the costs of requiring institutions to meet duplicative requirements and of making the template more complicated.

Changes: None.

Comments: One commenter suggested that the form should include the relationship between the institution and financial account provider.

Discussion: Sections 668.164(e)(2)(vi), (e)(2)(vii)(A), (f)(4)(iii)(A), and (f)(4)(iv)(A) already provide for the release of the complete contract between the parties and information regarding the total consideration for the most recently completed award year, monetary and nonmonetary, paid or received by the parties under the terms of the contract. We do not believe that the value of adding this item to the template outweighs the costs of requiring institutions to meet duplicative requirements and of making the template more complicated.

Changes: None.

Comments: One commenter suggested that we add a statement to the disclosures to clarify that the fee schedule only applies as long as the account holders are enrolled students at the institution at which they initially opened the financial account.

Discussion: We thank the commenter for the suggestion. However, the disclosure describes only fees and other information for enrolled students, so we do not believe this additional statement provides necessary information.

Changes: None.

Comments: Several commenters suggested using the format developed by the Pew Charitable Trusts for bank accounts, while using the proposed format only for prepaid accounts. Commenters argued that since this format has already been widely adopted by banks, it would be easy for institutions to comply with the regulations. Commenters also expressed their belief that the proposed disclosure format is more appropriate for standard checking accounts. One commenter stated that it may be confusing for students if the disclosures use terms common to prepaid cards to describe checking accounts.

Discussion: We agree with the commenter that the format developed by the Pew Charitable Trusts may be an appropriate format to use within the student choice menu. Nothing in the format set forth in this document prevents institutions from using these types of disclosures if they wish. However, institutions that choose to use Pew’s format must ensure that they comply with the additional specific requirements for accounts offered under T1 and T2 arrangements. For example, under § 668.164(d)(4)(i)(A)(1) schools must include a written statement that students do not have to accept the account and may recommend that students ask about other ways to receive their Federal student aid. Another example is the requirement that, for accounts offered under T1 arrangements, the institution must also state that a student accountholder may access his or her title IV, HEA program funds in whole or in part up to the account balance via domestic withdrawals and transfers free of charge, during the student's entire period of enrollment following the date that such title IV, HEA program funds are deposited or transferred to the financial account, as required under § 668.164(e)(2)(v)(C).

Changes: None.

Comments: Several commenters requested a delay of the deadline for compliance. Suggested dates included December 31, 2017, and January 1, 2018.

Discussion: We agree with the commenters that July 1, 2017, is impracticable for institutions to adapt their selection menu to include this format. As a result, the Secretary is allowing additional time--until January 1, 2018--for institutions to comply with the requirements in

§ 668.164(d)(4)(i)(B)(2) regarding disclosures of an account’s fees and major features.

Changes: Institutions now have until January 1, 2018, to include in their selection menu the disclosures regarding major features and fees required by § 668.164(d)(4)(i)(B)(2), whether through use of the disclosure template described in this document or in another manner.

Final Format of the Disclosures: The final suggested format of the disclosures is as follows:

You do not need this account to receive your Federal student aid.
Ask the financial aid office about other ways to receive your money.

Monthly fee	Per purchase	ATM withdrawal	Cash reload	Overdraft
$0	**$0**	**$0** in-network **$1.95***out-of-network	**N/A**	**N/A**

ATM balance inquiry (in-network or out-of-network)	$0 or $1.95*
Customer service (automated or live agent)	$0 or $1.95 per call
Inactivity	$0

The financial institution offering this account charges # other types of fees.
Here are some of them:

[Additional fee type]	$1.00*
[Additional fee type]	$3.00

* This fee can be lower depending on how and where this card is used.

Your account is/is not eligible for FDIC or NCUA insurance.

Find details and conditions for all fees and services in the terms and conditions of the account [link].

Description

- The institution’s disclosures must list the following fees: Periodic fees, per purchase fees (including point-of-sale fees), ATM withdrawal fees, cash reload fees, overdraft fees, ATM balance inquiry fees, customer service fees, and inactivity fees. These fees are referred to as “static fees” because all institutions using the Secretary’s format must list these fees in the disclosures, even if the amount of the fee is zero or the fee relates to a feature that is not offered as part of the specific account. In cases where the amount of any fee could vary, the disclosures must show the highest amount the account provider may charge for that fee, followed by a symbol, such as an asterisk, linked to a statement explaining that the fee could be lower depending on how and where the account is used. The asterisk would be included, for example, if point-of-sale fees differ depending on whether the cardholder is required to provide a PIN or signature. In cases where a static fee is not imposed, the institution may demonstrate that the fee is not applicable by placing “N/A” or an equivalent designation in the appropriate field.

- The disclosures must include the number of fee types the accountholder may be charged under the specific account program, excluding those fees that are either disclosed on the form or in close proximity as described below.

- The disclosures must also list the two additional fee types, if any, that generated the highest revenue from account holders during the previous 24 months excluding static fees, any purchase price, any activation fees and any fee types that generated less than five percent of the total revenue from accountholders, as well as the amounts of such additional fees. The two additional fee types would be determined for the specific financial account program or across programs with the same fee schedule. Institutions must ensure that the financial account provider reviews their fee revenue periodically and that they assist the institution in updating the disclosures if needed.

- The disclosures must include statements regarding FDIC/NCUA insurance and a link to the terms and conditions of the account.

- The disclosures must include a written statement that students do not have to accept the account offered under a T1 or T2 arrangement and may recommend that students ask about other ways to receive their Federal student aid.

- In close proximity to the disclosures, though not necessarily within the disclosures, the institution must disclose the financial account provider's name; the name of the account; for T2 accounts, any purchase price for the account (such as a fee for acquiring an access device or a replacement for an access device); and any fee for activating the account. If the financial account is a T1 account, the institution must also use this space to disclose that a student account holder may access his or her title IV, HEA program funds in part and in full up to the account balance via domestic withdrawals and transfers free of charge, during the student's entire period of enrollment following the date that such title IV, HEA program funds are deposited or transferred to the financial account, as required under § 668.164(e)(2)(v)(C). We also remind institutions that T1 accounts may not charge fees for opening or activating the financial account or initially receiving or activating an access device, nor for overdrafts or fees assessed on point-of-sale transactions.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

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Dated: July 13, 2017.

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Betsy DeVos,
Secretary of Education.

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