



March 30, 2015

Via Electronic Delivery

Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street, N.W.
Washington, D.C. 20552

Re: Docket No.: CFPB-2015-0001, Document Number: 2015-01492

Dear Ms. Jackson,

The American Bankers Association (ABA)¹ and the Consumer Bankers Association (CBA)² (collectively “the Associations”) submit this letter in response to the Consumer Financial Protection Bureau’s (Bureau) Request for Information (RFI)³ regarding its model Safe Student Account Scorecard (Scorecard). The Associations appreciate the opportunity to share our comments and to work with the Bureau on this issue.

Pursuant to the RFI, the Bureau seeks information on its model “Scorecard” - a tool for colleges and universities to solicit information on the fees and features of financial products before selecting financial institution partners. The Bureau indicates that it is intended to enable colleges and universities to evaluate the costs and benefits of financial products based on a variety of different factors including fees, product features, sales and marketing practices, and how much financial institutions earn for each account opened. We understand that use of the Scorecard is intended to be entirely voluntary.

The Associations strongly support transparency and strong protections for consumers when using any financial service and will continue to work with the Bureau to achieve that goal. However, the proposed Scorecard appears singularly focused on driving colleges and universities into limiting insured depository institutions to offering a particular type of deposit program with

¹ The American Bankers Association is the voice of the nation’s \$15 trillion banking industry, which is composed of

² The Consumer Bankers Association is the only national financial trade group focused exclusively on retail banking and personal financial services—banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members include the nation’s largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the total assets of depository institutions.

³ 80 FR 4255

restricted features to students. We simply do not believe that this one-size-fits-all approach will achieve the stated objectives of the Bureau to enable colleges and universities across the nation to evaluate fairly and adequately the variety of deposit products and services that prospective insured depository institutions could offer students. This approach assumes that all students are the same and should be receiving the same type of deposit product. We believe that universities and colleges should seek to enter into relationships with financial institutions that are able to offer an array of financial products that meet the diverse needs of their students.

We also believe that the current format of the draft Scorecard will do little to advance the ability of colleges and universities to understand and compare financial product offerings or improve students' access to bank products or assist them in selecting services meeting their particular needs. As discussed in detail below, the Associations believe the goal of providing greater transparency for both schools and students can be better approached with a revised "scorecard" or document that provides meaningful comparisons of financial products and services in a clear fashion, free from the defects that undermine the effectiveness of the proposed Scorecard.

Discussion

Introduction

Today's university and college students benefit from the availability of a broad array of financial products. They have access to products offered as part of a financial institution's everyday suite of products made generally available to the public and also special stand-alone products designed to meet the unique needs of younger customers and students. Such stand-alone products may include: checking accounts for which monthly fees and minimum balance requirements can be waived, low-cost "prepaid" cards, and limited purpose accounts that can be connected to a parent's account. In addition, financial institutions may also make arrangements with educational institutions to install ATMs and/or branches on or near campuses to provide convenient access to products and support services and to market their products on campus.

Other student-oriented products include those provided pursuant to a formal agreement between a financial institution and a university or college – affinity products. These products may be offered under exclusive or non-exclusive arrangements. Complete exclusivity between a bank and an educational institution is rare and limited exclusivity is far more common (e.g. branding, greater convenience). Under these formal agreements, students are offered the option to choose an affinity product but are not obligated to accept the offer or use the account.

The Associations' members offer competitively priced bank products designed to provide safe, expedited, and convenient access to funds for students. Reports from both *ConsumerReports*⁴ and the U.S. Government Accounting Office (GAO)⁵ confirm that campus

⁴*ConsumerReports* - Campus Banking Products: College Students Face Hurdles to Accessing Clear Information and Accounts that Meet Their Needs - August 2014. See http://consumersunion.org/wp-content/uploads/2014/08/Campus_banking_products_report.pdf

accounts usually have lower costs than non-campus accounts and that students do better with campus accounts than non-campus accounts. In its August 2014 report, *ConsumerReports* found that most of the campus accounts it reviewed are available for low or no fees.⁶ Specifically, *ConsumerReports* found that the vast majority of banks charged no monthly fees, regardless of account balance. This compares to the standard \$6 to \$12 monthly fees imposed for general accounts according to the GAO report, which *ConsumerReports* cited for other purposes.⁷ *Consumer Reports* also found that campus accounts were more likely to offer at least some free out-of-network ATM withdrawals than non-campus products.⁸

Additionally, the GAO found that most of the campus account fees reviewed in its 2014 report generally were not higher, and in some cases were lower, than those associated with a selection of basic or student checking accounts at national banks. In particular, campus accounts generally did not have monthly maintenance fees, while the non-campus accounts typically did.⁹

We also believe that it is important to recognize critical distinctions between products offered to students by heavily regulated depository institutions (e.g. banks and credit unions) and those products offered by entities that are not regularly examined and often rely on short-term business models designed to produce short-term revenues. Our members' goal is to foster long-term relationships with students that will continue to grow and meet the expanding financial needs of the customer long after graduation day. Thus, it is in the best interest of depository institutions to ensure student customers have a positive experience. In contrast with depository institutions, those entities offering short-term products often lack the ability or desire to foster long-term relationships that continue post-graduation and often employ business models that maximize the more immediate revenues from student customers.

Achieving Improved Transparency

As proposed, the Scorecard appears to be more of an attempt to direct colleges and universities to demand that insured depository institutions offer a particular deposit account with the same terms and conditions to students, rather than a document that assists colleges and universities in evaluating the diverse fees and terms of deposit accounts offered by insured depository institutions competing to offer banking services on campus. Moreover, the proposed Scorecard is confusing and fails to capture the wide array of financial service products students want and have available and is therefore ineffective in achieving the stated goal. A more streamlined, less prescriptive version of the scorecard could be more likely to provide greater

⁵ GAO - COLLEGE DEBIT CARDS: Actions Needed to Address ATM Access, Student Choice, and Transparency. See <http://www.gao.gov/assets/670/660919.pdf>

⁶ *ConsumerReports*, pages 11, 12

⁷ GAO report, page 47

⁸ *ConsumerReports*, pages 11, 12

⁹ GAO report, page 18

utility to education institutions without creating overly simplified misrepresentations of product offerings.

Colleges and universities develop relationships with financial institutions primarily through two competitive processes – public request for proposals (RFP) or direct solicitation by a financial institution. However, a majority of today’s relationships are initiated through the RFP process, which solicits competitive bids for institutions and their constituencies. RFPs and their results are often public record. Both processes are often administered through an educational institution’s procurement office. Contrary to the implication in the RFI, these offices are staffed with experienced professionals with the knowledge necessary to understand and negotiate the details of such agreements.

The stated intent of the Scorecard is to help guide “responsible” educational institutions through this procurement process when seeking partnerships with financial institutions for campus products and services. To support its goal of improving transparency, the Bureau has provided its suggested Scorecard with a series of questions for the educational institutions to pose to interested financial institutions. Among them are questions related to the Bureau-designed and very specific “safe account” (an account in large part modeled after the FDIC Safe Account model, an account designed to “help meet the needs of the underserved and low-and moderate-income consumers”¹⁰), which asks for account fees and features, marketing plans, disclosures, ATM access and fees, and fraud and error resolution protections.

The Associations strongly believe that while a Scorecard may be in concept a potentially useful tool in some cases, as proposed it misses the mark of materially improving transparency. We would encourage the Bureau to adjust its approach in a way that could more likely provide useful information to educational institutions seeking and comparing potential financial service partners. Accordingly, we recommend that the Bureau jettison the Scorecard approach and instead provide colleges and universities more flexible tools for evaluating the fees and terms offered by various deposit accounts. These materials should recognize the valid and valuable account variations students and educational institutions want and that financial institutions make available. They should also reflect the market reality that students and parents make their own choices on a wide variety of factors, only some of which may be captured by any comparison shopping tool.

A primary problem is that the proposal advocates for a one-size-fits-all account, a derivative of a plan specifically designed for the “underserved and low-and moderate income” consumers, which does not reflect the diverse characteristics, needs, and demands of the entire student population. First, by attempting to design and promote a limited account or focus attention on limited features, the proposed Scorecard undercuts the ability of banks to provide accounts tailored to the full and evolving character of students’ needs. This approach fails to recognize the robust and ever-changing demands of student consumers and the corresponding diversity of financial products, undermining the strong consumer choice and product innovation that has been the hallmark of the marketplace. Many financial products available in the market today may not easily fit into the Bureau-defined categorization of a “safe account” but

¹⁰ FDIC Model Safe Accounts Pilot: Final Report, April 2012. See <https://www.fdic.gov/consumers/template/SafeAccountsFinalReport.pdf>

nonetheless are high quality, low-price financial products that are desirable, valuable, and beneficial to students.

Second, though Scorecard is characterized as “voluntary,” the Bureau’s proposal would effectively mandate a “plain vanilla” product that “responsible” college and university leadership would be expected to use. This would seem to be contrary to Congressional intent that the Bureau not get into the business of designing financial products, let alone pushing them on providers and customers. An earlier version of the House bill that created the Bureau included a requirement that the Bureau create standardized, “safe” “plain vanilla” products that depository institutions would have to offer.”¹¹ However, after lengthy debate, that provision was deleted from subsequent versions of the House bill and not included in the final Dodd-Frank Wall Street Reform and Consumer Protection Act. In other words, Congress specifically considered and rejected the notion that the Bureau should design or require standard products. Had it intended to empower the Bureau to mandate or even just encourage plain vanilla products, Congress would have provided for that result in the final bill.

Third, the Scorecard undervalues the full range of benefits that flow from relationships between schools and financial institutions. School decisions regarding providers of financial products and services should not be based solely on fees and plain vanilla features the Bureau has decided are most relevant, as students enjoy other important benefits from such relationships (*e.g.* financial education, convenience, availability of branches and ATMs, ability to accommodate innovations, adaptability to issues of diversity, etc.). Steering educational institutions into making a decision based solely on the proposed Scorecard, including the proposed plain vanilla account, only serves to deprive students of the benefits of diverse product attributes generated by a competitive and innovative market.

We urge the Bureau to reconsider its approach to the suggested Scorecard by providing a more simplified, straightforward, and flexible tool that balances the importance of transparency with the need to preserve and promote the availability of products with a broad range of features that meet the diverse needs of today’s student consumers. Our specific concerns and recommendations are outlined more fully in the below analysis.

Section by Section Analysis

Section 1 – Safe Account Features – Questions 1 and 2

The first section lists various “Safe Account features” that must be provided without charge and requests that respondent’s identify any fees for such features. It also asks the respondent whether it will waive students’ monthly maintenance fees and, if not, to describe such fees and any circumstances under which they would be waived. The Associations urge the

¹¹ See [H.R. 3126](#) originally introduced in the House on July 8, 2009, by Congressman Barney Frank (D-MA), Chairman of the House Financial Services Committee. § 136 (b) provides: “Offering Standard Consumer Financial Products or Services (1) In general – The Agency may prescribe regulations or issue guidance regarding the offer of a standard consumer financial product or service at or before the time an alternative consumer financial product or service is offered to a consumer including . . . (B) providing the consumer with a meaningful opportunity to decline to obtain the standard consumer product or service.”

Bureau to consider instead employing an approach that provides a simple listing of all fees that apply, with any applicable explanations of how fees can be waived. We believe this approach emphasizes the desired cost-transparency that facilitates informed consumer choice without using de facto price-controls to constrain product design and features as well as consumer choice.

Question 1 asks whether the product meets the Bureau's "Safe Student Account features." It then lists seven features that must be provided for free, including 2 free money orders or "e-checks" per month. Institutions may not charge for paying overdrafts or for returning items due to insufficient funds.¹² Imposing a single fee, even if nominal or modest, for the pre-determined features disqualifies an account as a model account. This simplistic view ignores the fact that there may be accounts for which a fee may be charged for one of the features listed in the model account, but not charged for some other, unlisted feature that may be important to the student population. This overly simplistic categorization of what constitutes a "safe account" will provide an incomplete and misleading view of products and choices that do not easily fit into the suggested format. By preloading the qualifying answers for fees charged under Question 1 (e.g. "free"), the Bureau is providing de facto price controls to achieve a plain-vanilla product and disfavor other products that offer other valuable features important to student customers and that provide many of the features listed at low cost (including where such costs may be easily avoidable by the student or waived by the financial provider).

Question 2 blurs any meaningful comparison of accounts, as it prompts a provider to disclose a critical fee that is separate from the ones listed in Question 1, that is, any monthly maintenance fee. It also asks how any such fee may be waived. This question only adds to the confusion of what constitutes a "safe account." For example, an account that does not charge a monthly maintenance fee, but imposes on a rare occasion a small fee for one of the specific features listed under Question 1, is not a qualified account under the proposal. Yet such accounts would be cheaper than an account that imposes no fee for a feature listed in Question 1 but charges a high monthly fee, identifying it as a qualifying account. This would mean a less costly account falls outside the definition of a "safe account" while a more costly account falls within the definition.

The form itself makes comparison even more difficult for educational institutions. Providing a table listing fees with a pre-determined, completed "fee" column and then asking financial institutions to list separately any fees that may be imposed for those very same features, makes comparisons unnecessarily complicated and difficult. As stated above, separating the maintenance fee, a critical fee, from these other fees further complicates any comparison.

The use of the word "free" in any of the qualifying answers indicates that this is what the fee *should be* in the view of the Bureau and any institution that uses the Scorecard. Any product that falls outside this narrow definition is, by implication, an unsafe account which responsible educational institutions would steer away from. Additionally, prompting providers to explain a fee that is not "free" is effectively an inappropriate soft price control. Discussing the reasoning for fees would provide no more value for schools or students than would requiring any other

¹² As noted, the model account is based on the FDIC's Safe Account model, an account designed to "help meet the needs of the underserved and low-and moderate-income consumers."

providers of services to schools or students to explain their price structures. Educational institutions need not know the business policy for why a fee is charged, only that a fee, if any, applies and whether or not it can be waived and how. As previously noted, by making assumptions of what the cost of a safe account should be and requiring significant disclosures for any departure, the Bureau is essentially encouraging financial services providers to offer similar, plain vanilla products, an effective means of asserting government price controls.

We believe that rather than dictate the fees and features of an account, which stymies competition and choice, the Bureau should facilitate comparison and encourage competition by providing a question that asks for the amount of fees on key features. If there is no fee applied to a particular feature (*e.g.* direct deposit), it should be listed as “\$0” or not listed at all. In addition, if fees may be waived, those circumstances should be explained.

To this point, typical financial service providers already provide educational institutions detailed descriptions of product offerings in a convenient, easy to use one-page summary that lists all product fees and features. Many of these disclosure forms are modeled in a fashion that provides a straight-forward listing of fees and features without preloading what a particular charge should be. This format also allows for providers to list appropriate waivers of fees where applicable.

Section 2 – Additional Features and Non-Standard Fees - Questions 3 to 5

The second section asks for details about fees charged for various features and services. Rather than asking for a list of all fees, it awkwardly and somewhat arbitrarily segregates fees.

The Associations believe that listing a fee as “non-standard” imposes a pre-engineered outcome, substituting the Bureau’s judgment for the student consumer’s demonstrated preference for a broad variety of accounts with a diverse configuration of features, services, and corresponding fees and fee waivers. We believe that student consumers, armed with clear, meaningful information are best equipped to judge whether a particular account with a particular array of features and fees terms is appropriate for their needs. The Bureau provides no basis for imposing a severe limitation on consumer choice or for its characterization of fees as “standard” or “non-standard,” and we do not believe that the list accurately characterizes “non-standard” fees, which evolve over time. In addition, this section of the Scorecard does not take into account the desirable situation when valuable new features, for which there may be a fee, are added. A format that segregates some fees from others and gives the impression that certain fees, labeled as “non-standard,” are inappropriate and deserve additional, more stringent consideration assumes that educational institutions cannot judge what is best for their students and sets in stone what a one-time, one-size-fits-all view of what a model account is. Again, a more useful model would simply ask for providers to list all fees and a description of what they are and how they might be avoided and allow the school, rather than the Bureau, to make the judgment about the account.

Section 3 – Marketing Practices – Question 6

The third section asks about the financial institution's marketing practices and its ability to adhere to specified guidelines. These guidelines include informing students of the terms and conditions of the account "before an account is created" (as already required by federal law) and providing materials in "an objective and neutral manner." Financial institutions already present users of their products and services with complete and clear disclosures of terms and conditions. Indeed, all bank-offered products are subject to a host of federal and state statutes that provide effective and meaningful disclosure of account terms, most notably, the Electronic Funds Transfer Act (EFTA),¹³ the Truth in Savings Act (TISA),¹⁴ the Expedited Funds Availability Act (EFAA),¹⁵ and the Higher Education Act,¹⁶ among others. Our members are also highly supervised depository institutions. As such, their products are overseen and examined by a number of regulatory agencies, including the Bureau, to ensure products comply with consumer protection laws. Given the comprehensive account-opening disclosures that heavily regulated depository institutions already provide to student consumers, this aspect of the Scorecard is not only unnecessary but raises significant risk of compliance ambiguity for such institutions by layering sub-regulatory guidance on top of existing regulatory requirements.

Additionally, the third bullet point under Questions 6 requires a student's written, affirmative consent before an *un-activated* access device is provided. Many schools provide student ID cards that may be linked to an access device *if – and only if -- the student chooses to activate the access device*. We do not see student ID cards with a magnetic stripe as "access devices" when there is no account associated with them. It is entirely up to the student whether or not to activate the access device – neither the school nor the financial institutions can activate the device on the student's behalf. Students are not required to activate an access device or accept an access device that is already activated. All un-activated access devices simply act as regular ID cards. Students that choose not to activate the account access features have no reason to take time to provide written, affirmative consent to receive an un-activated device. As a practical matter, this written consent requirement would require schools to offer two different types of ID cards, leading to increased costs and complexity for educational institutions, and reduced convenience for students.

This section also requires that financial institutions be transparent about any relationship with the school and references the *Contract transparency requirements* in the fifth section, which is discussed below.

Section 4 – Supplemental Information Regarding Student Accounts – Questions 7 to 10

The fourth section (questions 7-10) asks the respondent to provide supplemental information on various "core features" of financial accounts offered to students, such as details on access to regional/national networks of surcharge-free ATMs and the number of surcharge-

¹³ 15 U.S.C. 1693 et seq.

¹⁴ 12 U.S.C. 4301 et seq.

¹⁵ 12 U.S.C. 40

¹⁶ 20 U.S.C. 1001 et seq.

free ATMS that would be in close proximity to campus locations. Financial institutions routinely provide this information to educational institutions through the RFP or other decision-making process which require detailed descriptions of branch and ATM availability (surcharge-fee or other) and the availability of customer support services. The Associations believe that this section of the Scorecard should provide an opportunity to provide a full description of ATM-access without limiting or prescribing the terms of such arrangements.

Section 5 -- Contract Transparency Requirements

The final section of the Scorecard, Contract Transparency Requirements, requires financial institutions to disclose publicly the agreement between the financial institution and the educational institution. Specifically, the financial institution must post on its website (“e.g., any public website where students can obtain information about an account and an online portal through which students may sign up for an account”) the agreement, including information about revenue sharing and royalties. Finally, financial institutions must provide to the educational institution an annual summary of fees. The fee report must describe the fees charged, the number of student account holders in the previous year, the average and median fees paid by student account holders per year, the three most frequently incurred fees per year, and the average and median fees paid by a student for each fee imposed.

The Associations support improved transparency that is meaningful. However, we believe posting long, complicated legal documents on an issuer’s website that have little to do with the products in question will not promote greater transparency. First, students and parents are unlikely to be interested in visiting a financial institution’s website to get an understanding of arrangements made between schools and financial institutions. Second, requiring a financial institution to disclose the specifics of royalty payments is inconsequential to student choice. Students do not select an account based on the amount of royalties the educational institution receives through its relationship with a financial institution. Students make decisions based on the services and features available with a product and what they pay to receive those services and features. The value of requiring disclosure of long, complicated legal documents on the websites of financial institutions unlikely to be accessed by students and/or parents seems at least highly questionable, if not problematic, given the compliance and operational burden and cost associated with providing this new disclosure. Information that is relevant to student decisions can already be obtained more easily and in a digestible, clear form by briefly comparing prices online or directly at bank offices. Providing business information in this context seems to be related to some other agenda and is unrelated to ensuring that students have the information they need to choose a financial product.

Instead of posting complicated agreements that will provide little or no value to any interested party and are unlikely to be read, the Associations suggest an alternative approach that will offer students and parents the necessary information they need to make informed choices. In order to make students aware of the existence of a relationship (the goal of transparency), a simple, clear statement of the fact that a relationship exists and that the school receives payment from the financial institution would provide students and parents with the information they need in an unambiguous but much more effective, digestible way. Many educational institutions and financial institutions already disclose this information in such a manner.

The final section also requires financial institutions to provide schools with an annual summary describing the fees charged to account holders subject to an agreement, as well as details on the frequency of specific fees. Financial institutions would find it extremely difficult or impossible to provide the requested data, because many deposit accounts that students open are the standard deposit accounts offered generally to the public. Accounts opened by students cannot be separately identified and tracked because it is not possible to definitely identify which accountholders are “students or which educational institutions student account holders attend. For example, students frequently alternate between enrolled and non-enrolled status, and also permanently transition away from school due to graduation or other reasons. Tracking based on use of campus-based products (*e.g.* to the extent such products are not generally available to the public and recorded on the bank’s system of record in segregated fashion) would also be difficult since faculty and staff can also utilize campus products and services. The only way to know with certainty whether an accountholder is an active student is for the educational institution to provide and maintain an up-to-date list for data-matching to the financial institution. Schools often do not share this information for good and obvious reasons (*e.g.* student privacy).

Conclusion

The Associations support the Bureau’s goal of promoting adequate and appropriate transparency for consumers using financial services or products. However, the current format of the proposed Scorecard will do little to enhance transparency among educational institutions and students. Indeed both content and structure will impede rather than enhance comparisons among financial institution proposals. In addition, the Scorecard is laden with price control implications that are unnecessary, will limit choice, and are contrary to Congressional intent.

The Associations believe the goal of providing greater transparency for both schools and students can be accomplished with a simplified, straightforward, and flexible program that facilitates disclosure of all applicable features and associated fees without pre-ordained qualitative assessments of account attributes. Such an approach equips the school and the student consumer to evaluate desired account features tailored to the student’s best interests while preserving and promoting the availability of products with a broad range of features that meet the diverse and evolving needs of student consumers.

Sincerely,



David Pommerehn
VP & Senior Counsel
Consumer Bankers Association



Nessa Feddis
SVP & Deputy Chief Counsel
American Bankers Association