

Congress of the United States

Washington, DC 20515

July 30, 2018

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary DeVos:

We write to seek clarification and information from the U.S. Department of Education (“Department”) regarding the proposed Payment Card Program Pilot that would disburse student financial aid for non-tuition expenses through a prepaid card product.¹ We have concerns about the project and how it will affect 17 million students who borrow loans every year. In order to protect the best interest of students, we believe it is critical that Congress participate in discussions and activities to ensure the quality of services provided to these student borrowers.

As you know, students currently receive any remaining federal aid after tuition and fees have been paid via check, direct deposit, or a debit card issued by the college. The Department implemented regulations in 2016 containing important student protections.² The regulations limited fees, mandated colleges to provide access to in-network ATMs, and prohibited institutions from requiring prepaid cards in order to receive federal financial aid, among other improvements. Since 2016, we have not seen evidence that the current disbursement system is failing students. Therefore, we worry that the creation of this pilot program is a solution to a nonexistent problem.

In November 2017, Dr. A. Wayne Johnson, Federal Student Aid’s former Chief Operating Officer, first announced the idea of the prepaid debit card. He said that the payment card would be a “line of sight on how, when, and where the [financial aid] money is used.”³ The pre-solicitation notice goes a step further and states that the program “would possess the ability to restrict the types of products and services/and or merchants that the Customer could acquire or have access to using the physical card or mobile app.” The program’s intent to monitor transactions and approve only certain payments could disproportionately impact the financial autonomy of low-income students who depend on federal student loans to complete college. Contradicting his prior statements and the notice, Dr. Johnson later stated that FSA does not plan

¹ Federal Business Opportunities. (2018, Jan 19). Federal Student Aid Next Gen Payment Card Program Pilot. Solicitation Number: EDFSA18PaymentCard. Retrieved from https://www.fbo.gov/index?s=opportunity&mode=form&id=caac84c91dc25bb98a5504a3045991cb&tab=core&_cview=0

² Program Integrity and Improvement. 34 CFR Part 668 (2015). Retrieved from <https://ifap.ed.gov/fregisters/attachments/FR103015FinalRuleProgramIntegrityandImprovement.pdf>

³ U.S. Department of Education, Federal Student Aid. [FSACommunications]. (2017, December 18). *2017 FSA Training Conference GS 4: Keynote Address – Federal Student Aid’s Chief Operating Officer, Dr. A. Wayne Johnson*. [Video file]. Retrieved from <https://www.youtube.com/watch?v=5bE3ucnxQp8&feature=youtu.be&t=38m33s>

on placing restrictions.⁴ We have serious reservations about restricting access to goods and services available to students seeking a higher education, most of whom balance work and family obligations.

We are also worried about student data privacy and the Department's authority to use that data to market other financial services and products to students. Although the pre-solicitation notice states that the program would require the contractor to abide by privacy rules, the notice lacks any explanation on which rules apply. Further, while the notice stipulates that students must consent before privileged data can be shared, we stress that it must be communicated to students clearly and effectively each time their personal information is being requested by or shared with any source. The solicitation does not explicitly prohibit the sale of student data once the student has consented. We believe the federal government should not sell data in order to make money off of a tool meant to disburse student aid.

Finally, we are concerned about how the Payment Card Program pilot will be evaluated. The pre-solicitation notice states that the Department intends to expand the payment card to pre-college and post-graduate students "upon satisfactory determination of [pilot program] success." However, the notice provides no information on what classifies as satisfactory success, which metrics will be used to measure the success, or how the program will be evaluated. Without clear, quantifiable objectives and a rigorous evaluation for determining the success of the program, the pilot program is ineffectual.

In light of these concerns, we would appreciate your answers to the following questions prior to the solicitation release:

1. Please explain the Department's express statutory authority to conduct its own payment card program. What section of the Higher Education Act defines the Department's regulatory authority to disburse credit balances, for both Title IV and non-Title IV funds as described in the pre-solicitation notice, through its own payment card program?
2. Since the cash management regulations went into effect in July 2016, have student financial accounts offered by third party servicers maintained reasonable fees consistent with or below market rates? Please describe the due diligence the Department has conducted in this area and explain why the Department feels compelled to start its own pilot program.
3. Is the Department anticipating selecting a single vendor or multiple vendors to participate in the payment card pilot program?
4. What is the Department's position on providing an implicit endorsement of one or several financial institutions that will be used to disburse student aid funds?
5. What steps will the Department take to ensure that a student does not feel required or pressured to establish a payment card account under this pilot program? What steps will the Department take to make students aware of the range of cash disbursement options available to them?

⁴ Kreighbaum, A. (2018, Jan 25). Questions About Student aid Debit Card. Inside Higher Ed. Retrieved from <https://www.insidehighered.com/news/2018/01/25/consumer-groups-scrutinize-prepaid-student-aid-card-program>

6. Given the fact that the proposed payment card program is an interchange-only model, how does the Department envision the vendor maintaining a financially sustainable model given the prohibition on account fees, institutional charges for the service, and the prohibition on interchange revenue for on-campus transactions?
7. How does the Department envision the vendor modifying the interchange rate within the payment network for individual merchants given the fact that financial institutions do not control how the rates are set or charged? Has the Department considered the fact that payment networks do not allow financial institutions to set rates for individual merchants or merchant categories?
8. If the payment card accounts are not financially viable, does the Department anticipate the vendor recouping losses through the cross-selling of other financial products? If cross-selling is allowed, please provide detailed information on data restrictions and consumer protections the Department would impose. If selling is not allowed, will the Department explicitly state this in the solicitation?
9. How will FSA ensure that the card provider will clearly notify students when their data is requested and allow them to actively give or deny their consent? Will students be notified every time a new entity has requested access to their information?
10. How does the Department anticipate the vendor handling compliance with applicable laws and regulations that may prohibit restricting purchases at certain merchants and/or on certain products?
11. The pre-solicitation notice requires the contractor to abide by "Privacy Rules." Which privacy rules does this include? How does the Department intend to enforce these rules through the pilot program?
12. As it relates to real-time transaction alerts, does the Department anticipate the vendor freezing a transaction during the authorization process and requiring the account holder to authorize continuation of the transaction? If so, how does the Department envision the account holder authorizing continuation of the transaction (e.g., via the app, by responding to a text message, receiving an email, etc.)?
13. How does the Department anticipate receiving student and credit balance information, if at all? Would participating institutions be required to transmit student and credit balance information directly to the Department, which would in turn submit the data to the vendor or would schools directly communicate the student and credit balance information to the vendor? Please explain the process.
14. Will the Department collect, maintain, or have access to student-level data for pilot program participants? If so, please list all the data pieces that the Department will be able to collect, maintain, or access.
15. What data will the Department monitor, regardless of whether the data is at a student-level or in aggregate form? How does the Department want to use that data?
16. Would the proposed payment card program require the vendor to offer and manage a menu of disbursement options or will the payment card be the default option? If the vendor is required to manage a full-service disbursement program, which includes disbursements via ACH and paper check, how will the Department compensate the

vendor for all the costs associated with handling all non-card disbursements without charging institutions or students a fee?

17. Does the Department expect the vendor to disburse non-Title IV funds as part of the payment card program? Please explain the process.

18. How will the Department determine the success of the Payment Card Program Pilot? What metrics and methodology will the Department use to evaluate the program? Will the program be evaluated by an independent company or will staff at the Department be responsible for evaluating the program?

Thank you for your prompt attention to this issue and our questions.

Sincerely,



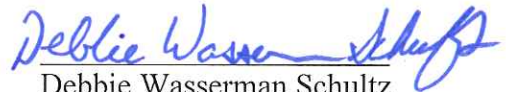
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Chairman
Subcommittee on Higher Education
and Workforce Development



Susan Davis
Ranking Member
Subcommittee on Higher Education
and Workforce Development



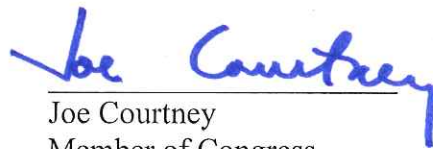
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