



New Financial Reform Law Affects Education Community

On 21 July 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act or the Act). In addition to its sweeping reforms to the financial services industry, the Dodd-Frank Act affects the higher education community in three key ways. First, the jurisdiction of the new Consumer Financial Protection Bureau (CFPB) created by the Act specifically extends to any person or entity that offers “private education loans.” Second, the law imposes new restrictions on the interchange fees that payment card networks may charge to merchants — including universities — in debit card transactions. Third, payment card networks will no longer be able to impose certain restrictions on universities regarding establishing minimum or maximum transaction amounts as a condition for accepting credit cards for payment, and regarding offering discounts for payment by cash rather than by credit card.

Private Education Loan Oversight of the Consumer Financial Protection Bureau

The Dodd-Frank Act creates the CFPB, which will be housed within the Federal Reserve System. The CFPB will have the authority to issue and enforce regulations protecting consumers from abuses in connection with the provision of consumer financial products and services. Its jurisdiction will cover numerous entities, including entities that are not depository institutions if they fit into certain categories. One category includes entities that offer “private education loans,” as defined in the Truth in Lending Act (TILA) and its implementing Regulation Z.

The law itself does not exempt any educational institutions from coverage. However, the law does provide the CFPB with the authority to exempt certain classes of persons or classes of consumer financial products from coverage by regulation. Thus, the universe of entities that will be covered by CFPB jurisdiction will not be clear until the CFPB issues these final rules, which must take place no later than one year after enactment of the Dodd-Frank Act.

Entities that are covered by CFPB jurisdiction will be subject to the CFPB’s supervision and examination for compliance with federal consumer financial laws and regulations. In addition to enforcing compliance with existing consumer financial laws such as TILA, the Equal Credit Opportunity Act, and the Fair Credit Reporting Act, the CFPB will have the authority to prohibit by regulation unfair, deceptive, or abusive acts or practices under federal law in connection with any transaction with, or offering to, a consumer involving a consumer financial product or service. The CFPB will conduct periodic examinations of the entities under its jurisdiction to assess compliance and to detect and assess risks to consumers and to the markets for consumer financial products and services.

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Section 1035 of the Dodd-Frank Act also establishes a Private Education Loan Ombudsman within the CFPB. In accordance with regulations to be issued by the CFPB, the Ombudsman will seek to resolve informally complaints from private education loan borrowers. In resolving complaints, the Ombudsman is authorized to collaborate with a variety of participants in private education loan programs, including the U.S. Department of Education, institutions of higher education, lenders, loan servicers, and guaranty agencies.

Debit Card Interchange Fees

The Dodd-Frank Act addresses excessive fees charged by payment card networks to merchants accepting the networks' cards. The new law requires the Federal Reserve to issue rules to ensure that debit card interchange fees charged to debit-card-accepting merchants are reasonable and proportional to the cost of processing those transactions. (Provisions that would have applied equally to credit cards were not included in the final version of the bill.) The Federal Reserve has leeway to determine whether fees are reasonable and proportional. The rules must be issued in final form no later than 9 months after the date of enactment of the law.

Credit and Debit Card Network Policies

Universities will now be able to set minimum or maximum transaction amounts for which they will accept credit cards for payment. Under the Dodd-Frank Act, card networks will no longer be able to prohibit any merchant — including universities — from setting *minimum* transaction amounts for use of credit cards, subject to certain limitations, including a requirement that the minimum transaction amount be no greater than \$10.00. Additionally, card networks also may not prohibit any “institution of higher education” or “Federal agency” from setting *maximum* transaction amounts for use of credit cards. Card networks will retain the ability to prohibit merchants other than higher education institutions or Federal agencies from setting maximum transaction amounts.

Additionally, card networks may not prohibit merchants — including universities — from offering discounts as incentives for using a given form of payment. In other words, universities may, for instance, charge a higher amount for a transaction in which a credit or debit card, rather than cash, is used as payment. However, the lower price must be presented to consumers as a discount from the higher price, which must be presented as the “regular” price. The Act does not explicitly address whether this provision is meant to preempt state laws that prohibit the charging of convenience fees or surcharges on credit card transactions.

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