TO: DANA RICHARSON, DEPUTY DIRECTOR, LEGISLATIVE AFFAIRS
FROM: DAVID JARVIS, FISCAL ANALYST, UNIVERSITY FINANCE
SUBJECT: THIRD PARTY FINANCIAL AID DISBURSEMENT FIRMS PROPOSED REGULATIONS AND COMPARISON TO HB 2832A
DATE: MAY 20, 2015

This document is intended to briefly summarize the proposed rules relating to third party financial disbursement firms (such as HigherOne), their status, the potential timeline and how this impacts/does not impact HB 2832 in this year's legislature.

Background:

For the past several years, the Consumer Financial Protection Bureau (CFPB) has been looking into issues relating to third-party handlers of student aid funds. Starting in 2013 and particularly following a GAO report published in February 2014 that was heavily critical of the practices of these companies (http://www.gao.gov/products/GAO-14-91) the CFPB along with the US Department of Education began a process to create new rules and propose new legislation to address some of the problems outlined in the GAO report[1]. They particularly focused on ATM access, so-called swipe fees and publication of the contracts/opportunities for students to opt out of these contracts.

Pursuant to this process, Secretary Duncan convened a negotiating committee consisting of representatives from institutions, financial aid administrators, HigherOne and related companies and many others. Following several negotiated rulemaking sessions, the US Department of Education issued proposed regulations on May 18, 2015. The proposed regulations are described later and are viewable at: https://www.federalregister.gov/articles/2015/05/18/2015-11917/program-integrity-and-improvement

Timeline:

May 18, 2015-Proposed regulations published in the federal register
July 2, 2015-Comment deadline.
Late 2015-Agency responds to comments and issues updated rule if appropriate to respond to comments.
Early to mid-2016-Final rule takes effect baring any legislative, executive or judicial action.[2]

[1] There was also a separate regulatory effort relating to PLUS loans that is already underway.
[2] The banking industry has already expressed intent to file a lawsuit over these proposed rules, arguing that the Department of Education lacks the authority to implement them. http://thehill.com/regulation/242221-education-department-rule-targets-student-bank-accounts

The Rules:

The proposed rules do several things and I will briefly summarize the most important ones:

1. Requires institutions to initiate a "student choice" process that allows them to opt out of the university's contracted plan with a third party financial institution that disburses student aid funds. That process must include a list of options presented to the student in a "neutral manner", beginning with the student's current bank account.
2. Requires consent from a student or parent before an institution sends a card to a student linking a student's ID card with their financial aid payments (such as what HigherOne currently issues).
3. Bars fees based on transfer of funds to an alternate banking institution than the one chosen by the school.
4. Requires that no-fee ATMs be made more readily available.
5. Bars "swipe" fees and overdraft fees.
6. Requires institutions to publish these contracts.
7. Requires institutions to regularly review these contracts and evaluate them in "light of the best financial interests of students."

How This Does and Does Not Conflict/Compliment HB 2832A:

This section will briefly describe each of the above regulations and how they do not or no not reflect similar provisions in HB 2832A. It will also add those things that HB 2832 does but the regulations do not and vice versa.

Regulatory Provisions Similar to HB 2832:

1. Bars on fees made on transfer of funds to other institutions by electronic or paper means Section 2(2)(B) of HB 2832A.
2. Bar on swipe fees. Section 2(2)(c) of HB 2832A.
3. Require publication of contracts. Section 2(3) of HB 2832A.
4. Although not directly on point, Section (2)(1) of HB 2832A requires that institutions consider CFPB or US Department of Education rules such as these proposed rules.

Additional Regulations in the Proposed Rules not in HB 2832A:

1. Requiring publication of a list of alternative accounts a student can choose from.
2. Requiring consent to send a card linking a student ID card with financial aid payment.
3. Requiring additional efforts to provide no-fee ATMs.
4. Bar on overdraft fees.

5. Requires creation of institutional review processes relating to these contracts.

Additional Regulations in HB 2832A that are not in the proposed rules:

1. Ban on revenue sharing. Section (2)(2)(a) of HB 2832A.
2. Ban on inactivity fees. Section (2)(2)(d) of HB 2832A.
3. Creation of a private right of action by the student against the third party financial firm. Section 3 of HB 2832A.