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NATIONAL ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS
★ FROM THE OFFICE OF THE PRESIDENT AND CEO ★

Docket No. R1353
Attn: Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave. NW
Washington, DC 20551

Ms. Johnson –

I am writing on behalf of the National Association of Student Financial Aid Administrators, the National Association of College and University Business Officers, the American Council on Education, the Coalition of Higher Education Assistance Organizations, and the National Association of Independent Colleges and Universities to offer our comments on the Federal Reserve's proposed amendments to Regulation Z (Truth in Lending), Docket No. R-1353.

Together, our associations represent more than 3,000 colleges and universities from around the country, serving millions of students every year. Our members include presidents, financial aid administrators, business officers, bursars, and other administrators from all types and sizes of institutions. The representatives from our associations have also served on Department of Education negotiated rulemaking committees that dealt with Truth in Lending Act issues. Our intent is to ensure that the provisions of the Higher Education Opportunity Act (HEOA) are implemented in a practical way that will most benefit students.

We hope that the following comments will be considered thoughtfully and thoroughly with students' best interests in mind. Our goal is to avoid unnecessary burden on institutions while mitigating any unintended consequences from these proposed regulations that could inadvertently harm the students we serve.

If you have further questions, please contact Justin Draeger, Vice President of Public Policy, Advocacy, and Research at the National Association of Student Financial Aid Administrators (NASFAA) at 202.785.6960 who can direct you to the appropriate association representative.

Sincerely,

Dr. Philip R. Day, Jr.
NASFAA President and CEO

American Council on Education (ACE)
Coalition of Higher Education Assistance Organizations (COHEAO)
National Association of Independent Colleges and Universities (NAICU)
National Association of College and University Business Officers (NACUBO)

Opening Doors of Educational Opportunity

Section 226.37 Special Disclosure Requirements for Private Education Loans

We recommend that several categories of loans be excluded from the definition of private education loan. The additional administrative burden of covering these loans does not provide commensurate benefits to students. For example, these benefits are often offered to students upfront - not as loans - because they offer significant benefits to students. In addition, they are not marketed to students like traditional loan products. Instead, they are offered or awarded to students as part of a financial aid package or tuition payment option to help fill gaps in funding when they have already reached federal borrowing limits, but still have unmet need. Schools use these loans in the aid awarding process to reduce or eliminate remaining need and to provide borrowers an alternative to costlier private loan options.

Other requirements, like self-certification, are redundant or nonsensical since the schools would be asking students to self-certify information the school itself already has.

The duplicative and nonsensical nature of these categories of loans will add significant administrative burdens to schools with little to no added benefits to students. The additional disclosure requirements would add a new layer of requirements, for students and schools, over and above those that are already met, and could delay or prevent students from receiving the funds they need. The resources schools will spend on meeting these requirements for these categories of loans or payment plans would be better spent counseling and working with students to help them find the resources they need to cover their educational costs.

Exempt federal loans. Current regulations already exempt “loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965.” But there are other forms of federal loans—such as title VII and title VIII of the Public Health Service Act—that are equally as beneficial to students and should not be subject to TILA requirements since they are federal loans. The Department of Education recently reinforced this idea when it decided to use language to exempt these other forms of federal loans from the definition of preferred lender arrangements during negotiated rulemaking. We recommend that 226.37(b)(5)(i) be modified to read:

Is not made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 <u>or loans made under title VII or title VIII of the Public Health Service Act.</u>

Exempt institutional loans. Many schools offer institutional loans with more favorable terms than other private, alternative loans available in the market. Because they are institutional loans, schools closely monitor the types and amounts of aid students are using to ensure they maximize other, more beneficial forms before using private student loans, which generally carry higher interest rates and fewer repayment benefits.

The Federal Reserve’s proposed definition of a private education loan would clearly include institutional loans and would require them to be subject to TILA disclosure requirements, even when the loans have terms and conditions that are equal to or better than federal loans. Requiring schools with these loans to comply with TILA will put an enormous amount of unnecessary administrative burden on schools. More importantly, this will lead to even greater confusion among students who will be inundated with disclosures for loans that will be far better than other private, alternative loans.

Institutional loans take many forms. At some schools, institutional loans are often funded through numerous separate endowed loans [programs], sometimes with unique requirements or terms set by the donor. A large university may administer more than one hundred such funds. Other institutional loans are funded though institutional resources to provide additional support for students who do not receive sufficient support from other aid sources. These loans are seldom marketed to students, but are usually offered through the student aid award process to those the institution believes are most in need.

We would like to be clear that we are seeking an exemption only for those institutional loans that carry terms and conditions that are at least as good as their federal counterparts. To ensure exemption of only institutional loans with certain terms or conditions that are comparable or better than federal loans we recommend that 226.37(b)(5) be modified to exclude institutional loans that meet certain minimum requirements such as:

- An interest rate capped at a rate no greater than an unsubsidized Stafford loan (currently fixed at 6.8 percent);
- No up-front or hidden fees;
- No requirement to pay loan principal until the student ceases to be enrolled at least half-time;
- No interest capitalization while enrolled; and
- No prepayment penalty

We propose that 226.37(b)(5) be modified to read: <u>Does not include loans made by a covered institution that is funded by the covered institution's own funds or funded by donor-directed contributions, with an interest rate capped at a rate no greater than an unsubsidized Stafford loan; no up-front or hidden fees; no requirement to pay on loan principal until the student ceases to be enrolled at least half-time, no interest capitalization while enrolled, and no prepayment penalty."</u>

Other coverage issues

Tuition Payment Plans. Tuition payment plans are offered by many colleges and universities to help students and families pay for college costs without resorting to loans. We do not believe that these plans constitute loans, but as there has been considerable discussion recently about whether they might be covered, greater clarity about the applicability of Reg Z to such plans would be helpful.

Tuition payment plans are set up in several different ways but with many commonalities. A tuition payment plan allows the student to spread out payment of amounts due to the institution over a specific number of payments, generally timed so that the receivable is paid in full before the end of the period of enrollment.

Often, several payments are due before the start of the enrollment period. So, for instance, a student with an estimated balance due of $8,000 for fall term may begin paying 1/5 of that amount ($1,600) in June, and continue to make monthly payments of the same amount through October, when the bill for fall will be satisfied in full. (A continuing student is likely to then begin payments on spring term.) Plan enrollment may

also be open to students later in the process, so that those who are having trouble meeting the payment deadline can sign up for the extended payment plan and avoid being de-registered for classes.
Other factors that distinguish these plans include the following.

Some institutions offer a tuition payment plan run by the institution, while many others contract with a servicer to manage the plan, send invoices, collect payments, etc. In all cases, to our knowledge, the receivable (the student account balance) is held by the institution and the servicer acts as the institution's agent. A few institutions may offer students a choice of several plans.

Many plans charge a fee to enroll in the plan, generally in the range of $25 - $50, but as high as $100 for an annual plan. The enrollment fee may be charged once, covering many terms, or separately for each term in which the plan is used. A few plans may charge interest on the overdue balance, late fees, or penalties on missed payments.

Enrollment in the plan may be set up by the term, the year, or for a longer period. Typically, the number of payments per term bill will be between 3 and 5, or 6 to 10 payments over a year. A few plans may go year-round.

Some institutions may have students or parents who sign up for a tuition payment plan sign a promissory note acknowledging their obligation to the institution to make it easier to collect the debt from those who do not follow through on the terms of the payment plan or declare bankruptcy. Many plans terminate those who fail to make scheduled payments and return the accounts to the institution's normal billing cycle.

Short-term or Emergency Loans. Many colleges and universities operate loan funds designed to provide short-term or emergency loans to students to cover a variety of immediate needs (car repairs, unexpected medical expense, travel home due to an emergency, textbook costs pending receipt of other aid). These generally have no or extremely low interest rates and must be repaid within a short period of time, usually in one to three payments. We believe that such loans would fall under the existing exemption for loans with less than four scheduled payments.

These loans may be considered advances against expected late-arriving aid or other resource. The school might require a promissory note or simply an authorization to repay the short-term loan out of anticipated aid funds when they arrive.

Section 226.39(a) – Limitations on private educational loans: Co-branding prohibited
The Federal Reserve proposes regulations that would prohibit a creditor from using the name, emblem, mascot, or logo of a covered educational institution, or other words, pictures, or symbols identified with a covered educational institution, in the marketing of private education loans in a way that implies that the covered school endorses the creditor's loans, unless the school and the creditor have entered into a preferred lender arrangement. While we support the Federal Reserve's proposed safe harbor to allow lenders to use the name of the institution if necessary to provide useful information to the institution's students, we have two concerns with this provision.

First, if institutional loans are included in the definition of private education loan, or for any covered institutional loans, the creditor and the institution are the same entity. Certainly a school should not be prohibited from using its own name, emblem, mascot, or logo when providing information about its own institutional loan. Therefore we seek an exception to this proposed regulation for loans made by an institution.

Second, we object to the Federal Reserve's proposal to ignore the statutory ban on co-branding in cases of a preferred lender arrangement. This would be in direct contradiction to statutory intent, Department of Education regulations, and the desire of most colleges and universities. Even if an institution enters into a specific agreement with a preferred lender, the institution is unlikely to want the lender to use its name in marketing materials over which it has no control. Under regulations that will be proposed by the Department of Education shortly, an institution may not allow a lender in a preferred lender arrangement to co-brand its loans. Furthermore, under those same proposed rules, an institution can be determined to be party to a preferred lender arrangement quite easily without having any direct relationship or agreement with a lender. Simply providing a list to students of the 10 lenders used most frequently by its students last year would be enough, if the list did not include every lender who provided a loan to one of its students. We believe the better course is to prohibit co-branding by using an institution's name and symbols unless the institution is party to the loan.

Section 226.39(e) – Limitations on private educational loans: Self-certification form

The Federal Reserve proposes that creditors obtain from the consumer a self-certification developed by the Secretary of Education under section 155 of the Higher Education act of 1965, signed by the consumer before consummating the private education loan.

As stated previously, this provision is nonsensical in situations where the school is the creditor making loans from its own funds or from donor-directed contributions. Requiring schools to give a student a self-certification form, and then requiring the student to turn that self-certification form right back to the school creates additional burdens for both the school and the student. Schools could still provide the student with a simple disclosure that lists the data elements required by statute.

We also seek an exception to the self-certification form for schools that are already providing direct certifications to lenders. Currently, if a private educational loan certification request is sent to a school by a lender, the school provides the information that would be required by the self-certification form, as well as additional information such as the student's enrollment status and anticipated graduation date. Since this information is already being provided directly from the school to lenders, there is no need to provide another form for a student to certify the same information. As suggested above, the school could provide a notice to the student advising the student that it has certified a private education loan as requested by Lender X for y amount, and providing the statutory disclosures.

For schools that currently certify thousands of private loans each year through a streamlined process directly to a lender, introducing a self-certification form would be extremely burdensome, less reliable, duplicative, and more error-prone. The likelihood of error as the data goes from school, to student, to lender, is increased, thereby creating conflicts that need further resolution. It seems clear that Congressional intent was to introduce a self-certification form for direct-to-consumer (DTC) loans, where the school is not involved, to prevent excessive borrowing or borrowing that precludes non-loan assistance.

We request that the self-certification form only be required for DTC loans where the school is not already certifying the loan.

We feel strongly that federal regulations – even when they emanate from different federal agencies – should not be contradictory. We urge you to yield to the approach that will be reflected in the regulations on this topic that the Department of Education is about to issue.

Section 226.38(a)(1)(i) Content of disclosures, Application or solicitation, Interest Rates

The Federal Reserve proposes rules that would require creditors to disclose the interest rate or range of interest rates applicable to the loan at the time of application. If the rate will depend on a later determination of the borrower's creditworthiness, the creditor must also include a statement that the rate will depend on the consumer's creditworthiness and "other factors, if applicable."

We believe that students deserve to know exactly what factors will be used in determining their interest rate. Private education loan interest rates may depend on myriad factors and increasing transparency in this area will be beneficial to students and schools that are trying to understand the rates at which lenders offer loans at differing schools. Without disclosing the weight lenders attribute to different criteria, we believe lenders should be required to list the criteria that will be considered in determining borrowers' interest rates. Given advancing technology, providing the additional criteria should not pose an undue burden on creditors.

Section 226.38(a)(6) Content of disclosures, Application or solicitation, Alternatives to Private Education Loans

The Federal Reserve proposes regulations that would require a statement that the consumer may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965, as well as the applicable interest rates for those loan programs. To implement this provision, the Federal Reserve proposes to label the relevant section of its model form "Federal Loan Alternatives" as opposed to requiring creditors to state that federal loans may be obtained in lieu of or in addition to private education loans.

While we appreciate the Federal Reserve's concern about overloading consumers with information, we believe that these disclosures should clearly state that students may qualify for Federal financial assistance and should encourage students to use all available title IV aid before using private education loans. Several studies have shown that despite our best efforts, many students turn to private educational loans before using other, less expensive forms of financial assistance. In "Who Borrows Private Loans" (2007), ACE found that in the 2005-06 academic year, one out of five undergraduate private loan borrowers did not first take advantage of federal student loans. We believe that it is vital that borrowers be told in clear language that they should be examining federal student aid, including loans, before turning to private educational loans.

In addition, proposed comment 38(a)(6)(ii)-1 would explain that the disclosure must list the address of an appropriate U.S. Department of Education Web site such as http://federalstudentaid.ed.gov. While that Web address would take borrowers to the main Federal Student Aid Gateway, we recommend that the disclosures use http://federalstudentaid.ed.gov/federalaidfirst/index.html, a Web site set up by the Department of Education specifically promoting the use of federal student aid before turning to private student loans. Creditors should be required to use the most up-to-date Web address offered by the Department of Education on this matter.

Section 226.38 (b)(1) Content of disclosures, Approval disclosures, Interest Rate

Under proposed rules, creditors would be required to disclose whether the interest rate is variable or fixed. If the interest rate is variable, comment 38(a)(1)(iii)-2 would require the creditor to disclose (1) the maximum allowable increase during a single time period, or the lack of such a limit, and (2) the maximum allowable interest rate over the life of the loan, or the lack of a maximum rate.

Listing the maximum allowable interest rate on a variable loan is important, but of equal importance is giving borrowers a realistic look at the rate they can expect to pay. Therefore, we feel it is also important for creditors to disclose the weighted average rate borrowers currently receive on their loans.
Many lenders may use “teaser” rates to entice consumers to use their product. Some teaser rates increase over a period of time while others are dependent on certain borrower behaviors (e.g., requiring a predefined number of on-time payments). But the number of borrowers that qualify for these teaser rates is questionable. Requiring lenders to disclose the weighted average interest rate borrowers receive will give borrowers a realistic depiction of the rate they can expect to receive.

Section 226.38 (b)(2) Content of disclosures, Approval disclosures, Fees and Default or Late Payment Costs

The proposed rules would require an itemization of the fees or range of fees required “to obtain” the private educational loan as well as fees or adjustments due to “defaults or late payments.” However, some lenders charge fees for borrowers to request deferments, forbearances, or other services. Allowing lenders to skip this disclosure could open a doorway for increases in deferment and forbearance fees. To promote full disclosure to borrowers, creditors should be required to disclose *all* fees, no matter when they are charged.

Section 226.17(a)(2) General disclosure requirements

The Federal Reserve proposes to use its authority to except private education loans from the requirement that the annual percentage rate (APR) and finance charge be more prominent than any other disclosure, except the creditor's identity. Instead, the proposed rules would require the finance charge to be more prominent than APR on creditor disclosures.

Requiring an APR gives borrowers an idea of the overall cost of a loan. Since an APR is just an annualized interest rate, they are often very close to the finance charge. But APRs are different than finance charges because they help borrowers compare overall costs of a loan. We recommend that the Federal Reserve maintain the APR and finance charge in equal proportions.

Section 226.38(b)(3)(vi) Content of disclosures, Approval disclosures, Bankruptcy

The proposed rules would require the creditor to disclose at the time of loan approval that if the consumer files for bankruptcy, the consumer may still be required to pay back the loan. We urge you to include this statement into 226.38(a), during application or solicitation. The fact that private education loans are generally not dischargeable in bankruptcy is inconsistent with other forms of private credit. This is one of the dangers of private student loans and consumers should have that information disclosed as early as possible, preferably before they apply for the loan.

Section 226.39(f) Limitations on private educational loans: Provision of information by preferred lenders

The Federal Reserve proposes that by January 1 each year, a creditor must provide an institution with which it has a preferred lender arrangement the following information for loans it will make the following year:

- Interest rate information
- Fees and default or late payment costs
- Repayment terms
- Eligibility requirements

The Federal Reserve proposes that lenders not provide schools with cost estimates [226.38(a)(4)] because "educational institutions can perform their own calculations of the total cost of the creditors' loans." These can be complex calculations, especially given the myriad variations between different variables that make up the cost of a loan. We recommend that creditors be required to provide cost estimates as well as the other criteria outlined in 226.39(f).