

Comments of
The Institute for College Access & Success
National Consumer Law Center (on behalf of its low-income clients)
U.S. Public Interest Research Groups
United States Students Association

and

Americans for Fairness in Lending
Campus Progress Action
Consumer Action
Consumer Federation of America
Greenlining Institute
National Consumers League
Public Advocates Inc.

Regarding

Notice of Proposed Rulemaking for amending Regulation Z,
which implements the Truth in Lending Act (TILA),
as required in Title X of the Higher Education Opportunity Act (HEOA)

Federal Reserve System
12 CFR Part 226

Docket No. R-1353

These comments are submitted by the Institute for College Access & Success, National Consumer Law Center (on behalf of its low-income clients), U.S. Public Interest Research Groups, and United States Students Association, and endorsed by Americans for Fairness in Lending, Campus Progress Action, Consumer Action, Consumer Federation of America, Greenlining Institute, National Consumers League, and Public Advocates. A list of organizational descriptions is available in Appendix A. All of the listed groups have a collective interest in ensuring fairness for consumers with regard to the financial information, products, and protections related to higher education opportunity and affordability.

These comments are filed in response to the Board of Governors of the Federal Reserve System's March 24, 2009 Notice of Proposed Rulemaking (March 2009 NPRM) on changes to the Truth in Lending Act (TILA) affecting private education loans. We appreciate the Board's efforts to improve disclosures for students and families considering private loans. We believe that regulations on private education loans should protect students and their families seeking to pay for higher education and ensure that they have all the information required to make informed decisions. Given the number of likely issues the Board will be confronted with, we would like to highlight the issues we are particularly concerned about:

- Changing the information and order of the boxes at the top of disclosures
- Setting a maximum interest rate
- Requiring final disclosures and cancellation rights for co-borrowers
- Providing additional disclosures at repayment
- Defining "acceptance" for the timing of final disclosures
- Adding information about the availability and terms of federal loans
- Strengthening the rules governing the marketing relationships between creditors and schools
- Ensuring that prospective borrowers receive adequate disclosures by phone

Thank you for your consideration and please feel free to contact us if you would like to discuss any of these issues further.

Sincerely,

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I. Format of All Disclosures

A. The Board Should Require Disclosure of the APR, not Interest Rate, in the Box at the Top of the Disclosures

The Truth in Lending Act (TILA) was originally passed to promote informed consumer shopping and a level playing field for lenders. A bedrock TILA principle is the standardized disclosure of the cost of credit, most simply through the annual percentage rate (APR) and the finance charges upon which the APR is based. The logic is that interest rates alone do not reflect the full cost of credit, given the additional fees charged in connection with credit. The APR is the only figure that combines fees associated with the loan, and interest, expressed as a percentage.

We agree with the Board's decision to include the usual "TILA box" at the top of the disclosures, but strongly object to the use of the interest rate rather than the APR in that box. Without appropriate disclosure of the APR, the borrower is unable to compare credit terms offered by other lenders and a central purpose of TILA is defeated. Making the interest rate the central focus of the disclosure not only prevents effective comparison shopping, but could encourage imposition of higher fees since fees are not reflected in interest rates. To date, in public comments, many creditors have expressed agreement with consumer groups on this issue. Although far from perfect, using the APR at the top is a more effective way of addressing concerns about excessively high origination and other fees.¹

The Board's decision to disclose the interest rate rather than the APR at the top of the disclosures was apparently based in large part on confusion expressed by 20 students and parents in the Board's consumer research and testing. In its report, Rockbridge Associates notes that "a few" of the 20 consumers in the evaluation groups wondered why the APR was lower than the bottom of the interest rate range provided on the Application and Solicitation Disclosure. However, according to the report, "this was not a common question as many did not notice the difference."² This is a very shaky basis for such a significant change, especially in light of more comprehensive studies which have shown that consumers understand the APR and use it to shop for closed-end credit.³ For example, a Federal Reserve Board study in 2000 found that 91% of the population was "aware" of the APR.⁴ Another study found that more than 70% of the population reported using the APR to shop for closed-end credit.⁵

In general, we urge the Board to consider the profound limitations of the consumer testing panel utilized during the development of the proposed disclosures and regulations. The sample size of 20 participants is unreliable for drawing representative responses and the

¹ The Board noted that addressing abusive fees was a primary purpose of the new law. 74 Fed. Reg. 12464, 12476 (March 24, 2009).

² Rockbridge Associates, "Consumer Research and Testing for Private Education Loans: Report of Findings" at 31.

³ See generally Elizabeth Renuart and Diane E. Thompson, "The Truth, the Whole Truth, and Nothing but the Truth: Fulfilling the Promise of Truth in Lending", 25 Yale J. on Reg. 181, 217-218 (Summer 2008) (Noting these studies).

⁴ Thomas A. Durkin, "Credit Cards: Use and Consumer Attitudes, 1970-2000", Fed. Reg. Bull. 623, 631 (Sept. 2000), available at: <http://www.federalreserve.gov/pubs/bulletin/2000/0900lead.pdf>.

⁵ Jinkook Lee and Jeanne M. Hogarth, "The Price of Money: Consumers' Understanding of APRs and Contract Interest Rates", 18 J. Pub. Pol'y and Marketing 66, 74 (1999).

demographic composition of the group did not contain significant representation of the most vulnerable prospective borrowers.

In other circumstances where consumers could be confused, such as about the difference between the amount financed and principal, the Board retained the standard practice of disclosing the amount financed in the “TILA box.” Presumably, this was a recognition of the critical importance of using a consistent disclosure format for different types of credit. We recommend that the Board take the same consistent approach with respect to the APR.

Since the Higher Education Opportunity Act (HEOA) also requires disclosure of the interest rate, and it is an important piece of information in itself, we recommend that the interest rate be disclosed elsewhere. An appropriate place to disclose the interest rate is in the section titled “Your Rate is Variable” in the approval and final disclosures. Both the initial and maximum rates should be disclosed in this section. If the Board adopts this suggestion, we recommend that the APR box at the top be consistent with the TILA disclosures for other types of credit and that it include a statement that the APR is the cost of your loan as a yearly rate. In the lower section where the interest rate is disclosed, the Board should include a statement that the interest rate may be lower than the APR if you are charged certain fees to get the loan. This will help consumers understand why there may be a difference between the interest rate and APR.

If the Board chooses to retain its current format, we recommend that the lower section with the APR include an explanation that the APR may be higher than the interest rate if you are charged certain fees to get the loan.

B. Keep Boxes in the Same Order as Other TILA Disclosures

The Board requested comment about whether it should maintain a uniform order for the disclosures or adopt the altered order in the proposed forms. We strongly urge the Board to maintain a uniform order for private loan disclosures.

There is a logical reason why all other TILA disclosures provide information first about the APR followed by the finance charge, amount financed, and total of payments. After disclosure of the most important term, the APR, the consumer can then see that the finance charge plus the amount financed equals the total of payments. It is unclear why the proposed private student loan disclosures use a different order, starting with amount financed and followed by interest rate, finance charge, and total of payments. The usual order should be followed so that students and parents can easily compare private loans with other sources of credit, including home equity and other loans.

C. Availability of Federal Loan Alternatives

Proposed comment § 226.38(a)(6)(ii)-1 includes a reference to the web address of the Department of Education as “federalstudentaid.ed.gov”. For simplification and clarity, the web address should be changed to “studentloans.gov”.

The disclosure in the right column under the “Federal Loan Alternatives” section should also inform consumers that all federal aid requires submission of the Free Application for Federal Student Aid (FAFSA), available at “fafsa.gov” or by contacting a school or the Department. The toll-free telephone number for the Department (1-800-4-FED-AID) should also be included because not all households have access to the internet or a person to advise them. The new disclosure for Federal loan eligibility should read: “You may qualify for Federal education loans. If you have not yet submitted a Free Application for Federal Student Aid (FAFSA), please visit www.fafsa.gov, call 1-800-4-FED-AID, or contact your school’s financial aid office.

The chart for “Federal Loan Alternatives” currently omits reference to the availability of Graduate PLUS loans. We recommend adding “and graduate or professional students” to “for Parents” under the bold “PLUS” header. This is especially important because the Graduate PLUS program is a fairly new source of financing for graduate and professional education.

Rockbridge Associates notes that some families may incorrectly believe that their income is too high to qualify for federal loans.⁶ Despite the small sample size of the consumer testing panel, this is, in fact, a common misperception among families. The “Federal Loan Alternatives” section should include a statement about eligibility based on income and/or credit, such as, “Federal loans are available to students and families at all income levels.”

The absence of a “Sample Total Paid” column on the “Federal Loan Alternatives” table on the Application and Solicitation disclosure makes understanding the total estimated cost of federal loans extremely difficult for consumers. The addition of a “Sample Total Paid” column, as used in the “Repayment Options & Sample Costs” table, and using the same sample amounts, would greatly assist consumers in comparing federal loans with the given sample private loan.

Individuals in the consumer testing panel indicated that receiving notification about the availability of federal loans seemed redundant for final disclosures. However, these individuals had the benefit of reviewing the final disclosure alongside the application and solicitation, and approval disclosures during testing. Consumers will not receive all three required disclosures within the same shortened timeframe that the testing panel participants had during review of the sample disclosures. Consumers should still receive a disclosure about the availability of federal loans in the final disclosure because their decision-making may have changed between the time they initially apply for a loan and consummate the transaction. If the Board requires the federal loan disclosure in the final disclosure, Congress’ intent that all consumers receive such notification would be successfully established.

D. Require Disclosure of the Itemization of the Amount Financed

We support the Board’s proposal to require creditors to disclose the itemization of the amount financed in approval and final disclosures. As with other types of credit, this list should include all of the required disclosures in Reg. Z §226.18(c).

⁶ Rockbridge Associates, “Consumer Research and Testing for Private Education Loans: Report of Findings” at pg. 11.

In addition, we support the Board’s decision to require inclusion of the principal loan amount in the itemization of amount financed as long as it is separately labeled and it is clear that it is not a fee. The rest of the list should contain all items that are included in the amount financed plus the prepaid finance charge, separately labeled. It is important to include the prepaid finance charge in this list even though it is computed as part of the finance charge, not the amount financed. This is similar to practices for other types of credit. We also support the Board’s decision to require creditors to list each fee separately. This is critical to help consumers understand both the range and cost of fees assessed.

In order to communicate this information as clearly as possible, we recommend that the principal amount be listed and labeled as “Principal” followed by the amount of prepaid finance charges, separately labeled as such. A separate itemization of prepaid finance charges should be included in the “Other Fees” table. The total amount financed should be listed last in the itemization of amount financed, with a descriptive list of all charges. The itemization of amount financed table should be organized as follows: “Principal” (with the amount listed) – “Prepaid Finance Charges” (with the amount listed) = “Amount Financed” (followed by a descriptive list of charges).

II. Content of Disclosures

A. Specify the Calculation Assumptions for Variable Rate APRs

The vast majority of private education loans have variable rates, yet the Board is not clear about the method creditors must use to calculate the APR for variable rate loans. We recommend that the Board apply the assumptions creditors use when calculating variable rates for other types of credit to private educational loans as well. Specifically, we are referring to the provisions in the Official Staff Commentary, §226.17(c)(1)-(8), which set forth the assumptions to be used when calculating the disclosed APR in variable rate transactions.

Although these assumptions are far from perfect, they do give consumers more accurate information about variable rates and help prevent creditors’ misleading use of teaser rates to disclose artificially low rates. For example, a creditor that uses a teaser rate must disclose a single, composite APR that reflects both the initial teaser rate for as long as it is applied *and* the rate that would have applied initially under the contract for the remainder of the loan term.⁷ The assumptions also apply to circumstances where the loan contains a rate or payment cap that would prevent the initial rate or payment from changing at the time of the first adjustment to the rate determined by the index at consummation. In these cases, the effect of the cap must be reflected in the disclosures.⁸

⁷ Official Staff Commentary §226.17(c)(1)-(8) and -(10).

⁸ Id. at §226.17(c)(1)-10iii.

B. Require Creditors to Set and Disclose a Maximum Rate

Instead of allowing lenders to use a 21% hypothetical maximum interest rate, we urge the Board to adopt the approach that applies to variable rate mortgage transactions. Reg. Z § 226.30(a) requires these creditors to disclose the maximum interest rate that may be imposed during the term of the obligation. As with mortgages, we understand that the Board will not set the maximum rate. This determination is within the creditor's discretion and subject to any applicable limits such as state or federal usury caps. However, the Board should require that a cap be set and disclosed, as is necessary to achieve Congress' goal to give consumers information about the maximum cost of credit. It would also be consistent with mortgage variable rate disclosure rules.

If the Board chooses not to require lenders to set a maximum interest rate, we recommend that the Board select a higher hypothetical limit that more closely approximates typical small loan law caps. We recommend 36%, the median limit in states that have such laws.⁹ This limit would apply only in states where there are no other applicable interest rate caps. In these circumstances, creditors can theoretically charge rates in any amount. Although the proposed disclosure accurately explains that there is no limit in these cases, the 21% example is deceptively low. In states with usury limits, the hypothetical maximum rate set by the Board will not apply, but rather creditors will state the actual rate that applies in those states.

C. Disclosure of Bankruptcy Limitation

We agree with the Board's decision to provide a general "warning" about bankruptcy limitations. Providing more specific information could easily lead a creditor to describe consumer bankruptcy rights inaccurately. We recommend that the proposed warning language be included with the application/solicitation disclosures as well. It is important for borrowers to have information about bankruptcy limitations as early in the process as possible.

D. Payment Deferral Options

We recommend that the Board allow creditors to modify the total cost disclosure if the creditor knows a consumer's specific situation under § 226.38(a)(4). The Board's proposed use of a two-year deferral period for enrollment situations that are not traditional four-year terms is acceptable, but we recommend that the Board allow lenders to modify the disclosure for specific educational programs that are generally of a fixed length, such as three years for law school or four years for medical school. Both of these rules should result in more accurate information being disclosed to the consumer.

E. Self-Certification Requirements

Creditors should be required to obtain the self-certification form from all consumers of the loan, including the student and any co-borrowers. The potential for fraud and irresponsible

⁹ Uriah King & Leslie Parrish, Center for Responsible Lending, *Springing the Debt Trap: Rate Caps are Only Proven Payday Lending Reform* (2007), available at <http://www.responsiblelending.org/payday-lending/research-analysis/springing-the-debt-trap.pdf>.

lending practices is heightened if co-borrowers are not required to be informed of the provided in the self-certification form disclosures, including the cost of attendance, the student's other financial aid assistance, and the availability of lower, less risky federal loans. We concur with the Board's decision to allow creditors to obtain the self-certification form either directly from the consumer or from the covered educational institution responsible for providing the form to the consumer.

III. Timing of Disclosures

A. Adequate Phone Disclosures

Consumers who seek private education loans over the telephone should receive oral application disclosures comparable to the written disclosures that they would otherwise receive. Consumers who utilize lender call centers when seeking private educational loans should be as informed as possible about the terms of the loan product. Creditors should be required to provide all of the disclosures mandated in the private student loan application and solicitation provision for any oral application or solicitation. In addition, the Board requested comment on whether written approval disclosures should still be mailed within three days. We concur with the Board on this matter.

B. Define "Acceptance"

The final disclosures must be provided to the consumer after the consumer accepts the loan and at least three business days prior to disbursement. For the sake of clarity, we recommend that the Board define "acceptance" as the date the consumer signs the loan. This definition leaves little room for interpretation and is easily measured. A clear, objective definition is necessary to ensure that both creditor and consumer understand when the three day clock begins to run.

C. Require Additional Disclosures at Repayment

We urge the Board to reconsider its decision not to require additional disclosures at repayment. We commend the Board for eliminating the current special rules for interim student credit extensions¹⁰ and replacing them with new requirements that will provide better and earlier disclosures. Under the proposed regulations, borrowers will receive disclosures at a number of important points, including at application, approval, and prior to consummation. However, the new regime eliminates one important aspect of the previous system. Previously, creditors were only required to make complete disclosures at the time the creditor and consumer agreed on the repayment schedule for the total obligation. We believe that this is still an important reference point for disclosures, since it is the time when in-school deferments are over and the borrower and lender have specific information about the *actual* repayment period.

We urge the Board to require creditors to provide information about loan terms prior to initial repayment. This would be required in addition to the other disclosures in cases where the key terms at repayment differ from those in the final disclosures. The disclosures at repayment

¹⁰ Reg. Z, 12 C.F.R. §226.17(i).

could be given to borrowers 30 days prior to the first payment date, possibly combined with an initial billing statement. This is uniquely important in the student loan context, since in most cases borrowers do not begin regular payments until after they have completed their educations.

D. The Proposed Definition of “Contemporaneously with Consummation” is Helpful

Final disclosures must be given contemporaneously with the consummation of the private loan. We concur with the Board’s proposed requirement in §226.37(d)(3) for the timing of final disclosures to occur after the consumer accepts the loan and at least three days before disbursement rather than contemporaneously with consummation as specified in HEOA. As long as “acceptance” is clearly defined as the date the consumer signs the loan, the proposed definition will ensure that both creditors and consumers understand when the three-day clock begins to run.

IV. Cancellation Rights for Co-Borrowers

We strongly recommend that lenders be required to give the final disclosure of a loan to co-borrowers in addition to primary borrowers. A large and growing percentage of private student loans have co-borrowers. In the current troubled economy, creditors are even more likely to require a co-borrower. For example, in a December 2008 investor conference call, the largest private student lender, Sallie Mae, noted that 70% of the company’s private loans at that time had co-signers. The company stated a goal of 90% co-signed loans for the future.¹¹ Because the stakes are so high, the rules should ensure that co-borrowers receive accurate information about their obligations.

Furthermore, co-borrowers should have the same right as primary obligors to cancel the loan transaction by midnight on the third business day following receipt of the final disclosures. The extension of a cancellation right to co-borrowers makes sense and conforms to the TILA rescission right which extends to consumers with ownership interests or those who are subject to the security interest.¹²

With respect to the proposed cancellation rights, we support the use of the more precise definition of “business day” in §226.2(a)(6). We also support the Board’s decision to allow consumers until midnight on the third business day to cancel the obligation.¹³ This is critical because the three-day period is short and consumers should have the maximum time to exercise their rights. Further, it may be difficult for a consumer to contact the lender during regular business hours. Given the many methods for communication in modern society, especially electronic communications, it is unnecessarily punitive to restrict consumers to the old-fashioned definition of business hours. This interpretation is also consistent with the rules in the mortgage

¹¹ Student Lending Analytics summarized the December 10, 2008 conference call at: http://studentlendinganalytics.typepad.com/student_lending_analytics/2008/12/sallie-mae-at-goldman-sachs-investor-conference.html.

¹² Reg. Z 12 C.F.R. §§226.15(a)(1)(i), 226.15(b) (notice of right to rescind), 226.23(a), 226.23(b).

¹³ §226.39(d).

context where the consumer may exercise the right to rescind until midnight of the third business day following various triggering events.¹⁴

V. Co-Branding and Preferred Lender Issues

Title X of the HEOA contains new proposals to restrict the usage of co-branding significantly on private educational loans. This is a process whereby an institution of higher education allows its emblem, mascot, or other pictures or symbols to be used by a creditor as a way of marketing private educational loans to students. As several incidents over the past several years have demonstrated, the usage of co-branding can lead to significant confusion among students, especially those at for-profit trade schools, who may believe that a loan from a private creditor is actually endorsed, if not disbursed by, their institution. This lack of clear understanding may have an effect on students' borrowing decisions, leading them to take out larger private educational loans than they may otherwise have considered.

The language of the HEOA is unequivocal about the prohibition on co-branding, but as noted by the Board, the conference report is more lenient. It allows for credit unions that share the name of a covered educational institution to use the credit union's name on marketing materials without it being considered co-branding. The Board is proposing to adopt this safe harbor, which we agree is reasonable. Credit unions sharing the name of a covered educational institution should, however, still have to disclose that their private loans are not made or endorsed by a school. This is important for ensuring that students are aware that similarity in name does not mean the credit union and institution are the same.

The Board is proposing that other lenders could satisfy the co-branding prohibition so long as they provided a disclosure stating that loan products are not endorsed by a specific institution. This could lead to confusion for borrowers, who may approach private education loans with the strong and reasonable assumption that, as in other types of marketing, the appearance of an individual or symbol on a product or as part of a commercial represents an endorsement. Because of this, we recommend that the Board follow the legislative language of the co-branding prohibition and not include this safe harbor.

The Board cites the need for a co-branding safe harbor for instances when it would be appropriate for a lender to use the name of a covered educational institution. The image below is a screenshot of a welcome screen for a major lender. As the circled text shows, the prominence of the welcome could be confusing to borrowers, who may then view this as an institutional endorsement of the lender's products.

¹⁴ Reg. Z §226.15(a)(3).



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Additional Notice: Applicable fees for Federal Stafford Loans include a 1.00% Federal Origination Fee (1.50% 07/01/07 - 06/30/08), and a Federal Default Fee of up to 1.00%. Federal PLUS Loans are subject to a 3.00% Federal Origination Fee and a Federal Default Fee of up to 1.00%.

If the Board does decide to include a safe harbor provision for co-branding, we request that it engage in extensive consumer testing to determine which disclosures clearly indicate non-endorsement. These tests should determine if the presence of any symbol, picture, or other clear co-branding indicator automatically appears to be endorsement in the mind of a student. We recommend that one potential phrasing of the disclosure be: “[Name of creditor]’s loans are not endorsed by or affiliated with ANY college or other educational institution.”

In terms of the clarification of the term “marketing” as used in proposed § 226.39, we are in favor of the Board’s decision to use “advertisements” as that term is defined in Regulation Z. 12 CFR 226.2(a)(2). Given the importance of clear disclosures, we recommend that as many materials as possible be covered.

The Board is also proposing that companies on an institution’s preferred lender list should not be subject to a non-endorsement disclosure because being selected for that list indicates endorsement. As a solution, the Board suggests that lenders on a preferred lender list must provide a disclosure stating that their loan products are not made by the referenced institution. In order to ensure that borrowers are aware that institutional endorsement does not guarantee the best terms and conditions, we recommend that such disclosure be structured as follows: “This loan is being offered by [Name of creditor], a company that has no affiliation with the school. [Name of creditor]’s loan products have been selected by [name of institution] to appear on a preferred lender list, a document which contains several other creditors. Placement on this list in no way guarantees the best terms for borrowers.”

VI. Scope and Coverage Issues

A. Multi-Purpose Loans

We support the Board's decision to cover multi-purpose loans and consolidation loans. We believe that the rules give creditors too much room to evade the requirements. Proposed comment 37(b)(5)-2 clarifies that if the consumer expressly indicates on the application that the proceeds of the loan will be used to pay for postsecondary educational expenses, the creditor must comply with the education loan disclosure requirements for approval and final disclosures. However, creditors are not required to solicit this information. The Board merely states that creditors extending multi-purpose loans have the discretion to use a check box or purpose line to determine whether a consumer plans to use the proceeds, at least in part, to fund education expenses. This is an incentive for creditors to adopt a "don't ask, don't tell" policy. Instead, we recommend that creditors be *required* to include a check box or purpose line on all credit applications or otherwise require consumers to indicate whether they are considering using any proceeds to fund education expenses. As the Board has already provided, if a consumer indicates that this is the case, creditors must make the appropriate private education loan disclosures.

Consumers taking out multi-purpose loans should know all of the details of the cost of the loan *and* the information about the availability and terms of federal loans. For example, parents who are fully informed about their options may prefer a federal parent PLUS loan to a home equity loan or other type of credit. The proposed disclosures are targeted at this audience. It should not be an extra burden to creditors since they can include the check box or purpose line as a matter of course in all credit applications.

We do not believe that multi-purpose creditors should be exempted from any disclosures other than the application disclosures. We also agree with the Board's decision to require disclosures based on the entire amount of the loan, even if only part is intended for educational expenses.

In addition, it is critical that the Board clarify in the Commentary that the provision of disclosures for the full amount of multi-purpose loan does not convert the loan into a "qualified education loan" as defined in the I.R.S. Code, 11 U.S.C. §523(a)(8). Only indebtedness incurred by the taxpayer *solely* to pay qualified higher education expenses meets this definition. The Treasury Department regulations explain that a mixed-use loan is not a qualified education loan.¹⁵ This clarification is essential to affirm that borrowers with multi-purpose loans are not subject to the heightened bankruptcy dischargeability standards. It is not necessary to distinguish which part of the loan was used for educational purposes. As long as only part of the loan is used for these purposes, it should not be considered a "qualified education loan" for I.R.S. and bankruptcy purposes.

¹⁵ 26 C.F.R. §1.221-1(e)(4). Example 6.

B. Creditor Coverage Issues

We agree with the Board's proposed use of the existing TILA definition of "creditor" to define a "private educational lender." Thus, all creditors, including depository institutions and federal credit unions will be required to make private education disclosures if they extended consumer credit more than 25 times in the preceding calendar year. We recommend that the Board refrain from providing any exceptions under the existing definition of "creditor." For example, many covered educational institutions extend credit in the form of institutional loans that have previously been subject to TILA. We recommend that the Board explicitly include education institutions under the definition of creditor for the purposes of Regulation Z.

Finally, because the existing definition of creditor requires that a lender extend credit in the preceding calendar year, an unknown number of consumers with newly established lenders will not be guaranteed important disclosures that inform them of the key terms of their loan. We recommend that the Board require compliance from any new creditor that intends from its inception to "regularly extend credit" as defined in the regulations.

C. Definition of Covered Educational Institution

We support the Board's decision to include a broad range of schools in the definition of covered educational institution. The Board requested comment on whether the proposal may have missed some institutions. To ensure that the most vulnerable students are protected, we recommend amending §226.37(b)(2) to cover all institutions without regard to the accreditation *or* licensing status of the school. Most unlicensed schools are unaccredited, but there may be some that slip through the cracks.

Appendix A

Organizational Descriptions

The Institute for College Access & Success is an independent, nonprofit organization that works to make higher education more available and affordable for people of all backgrounds. By conducting and supporting nonpartisan research, analysis, and advocacy, the Institute aims to improve the processes and public policies that can pave the way to successful educational outcomes for students and for society. The Project on Student Debt is an initiative of the Institute.

The National Consumer Law Center, Inc. (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. NCLC works with thousands of legal services, government and private attorneys, as well as community groups and organizations that represent low-income and elderly individuals on consumer issues. NCLC publishes and annually supplements practice treatises which describe the law currently applicable to all types of consumer transactions, including Student Loan Law (3d ed. 2006 and Supp.). NCLC's Student Loan Borrower Assistance Project (www.studentloanborrowerassistance.org) provides information about student loan rights and responsibilities for borrowers and advocates.

The U.S. Public Interest Research Group serves as the federal advocacy office and federation of the nonprofit and non-partisan state Public Interest Research Groups. The PIRGs have a longstanding interest in ensuring a fair financial marketplace for their one million members and other consumers.

The United States Student Association, the country's oldest and largest national student-led organization, is dedicated to training, organizing, and developing a base of student leaders who are utilizing those skills to engage in expanding access to higher education and advancing the broader movement for social justice.

Americans for Fairness in Lending is working to reform the lending industry to protect Americans' financial assets.

Campus Progress Action is a non-partisan organization that works to help young people to make their voices heard on issues that matter. It engages in education, advocacy, organizing, and communications work on key policy issues of importance to young people.

Consumer Action, founded in 1971, is a national nonprofit education and advocacy organization engaged in financial literacy and consumer protection.

Consumer Federation of America is an advocacy, research, education, and service organization working to advance pro-consumer policy on a variety of issues before Congress, the White House, federal and state regulatory agencies, state legislatures, and the courts. Its staff

works with public officials to promote beneficial policies, to oppose harmful policies, and to ensure a balanced debate on important issues in which consumers have a stake.

The Greenlining Institute is a national policy, organizing, and leadership institute working for racial and economic justice.

The National Consumers League is a private, nonprofit advocacy group representing consumers on marketplace and workplace issues.

Public Advocates Inc. is a nonprofit law firm and advocacy organization that challenges the systemic causes of poverty and racial discrimination by strengthening community voices in public policy and achieving tangible legal victories advancing education, housing, transit and economic justice.