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WELLS
FARGO

Via E-mail: regs.comments@federalreserve.gov

May 26, 2009

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1353

Dear Ms. Johnson,

This Letter is written in response to the request of the Board of Governors of the Federal Reserve System for comments on the proposed regulation implementing Title X of the Higher Education Opportunity Act (HEOA ("Proposed Rule"). The Proposed Rule amends Regulation Z by adding new disclosure content, delivery, and timing requirements for creditors making "private education loans".

Wells Fargo & Company is a diversified financial services company with $1.3 trillion in assets providing banking, consumer finance, mortgage, insurance, and investment services from more than 11,000 stores as well as through the Internet and other distribution channels across the United States. Wells Fargo has been providing financial solutions to help families and students pay for college for over 40 years. As a result, we have a keen interest in the Board's rulemaking under Title X of the HEOA and very much appreciate the opportunity to comment on the Proposed Rule.

The Proposed Rule demonstrates that the Board carefully considered the perspectives of many stakeholders. In large measure, the proposal effectively balances the need for meaningful and understandable consumer notice with flexible and workable implementation requirements. We commend the Board for providing safe-harbor model disclosures with the Proposed Rule. Overall, the model disclosures present the significant number of new notices required by the HEOA in a clear and readable manner.

Wells Fargo is a member of the Consumer Bankers Association ("CBA") as well as the American Bankers Association ("ABA"). We have participated in the development of the joint comment letter that is being submitted by the CBA and ABA (the "Joint Letter"), reviewed the final Joint Letter, and concur with the positions set out in that letter.

In addition, we wish to highlight certain issues of particular significance to Wells Fargo:

1. Interest Rate Prominence in Lieu of APR Prominence

While the HEOA requires a disclosure of the interest rate in addition to the APR, the Proposed Rule would require the APR to be given less prominence than the interest rate. We urge the Board to revise this approach and to require in the final rule that APR be given prominence that is equal to or greater than the interest rate. The APR is superior to any other data-point or disclosure item in conveying to the consumer the total cost of credit associated with a particular private education loan product. It is critically important for any disclosure regime, especially one serving inexperienced consumers, to provide clarity and transparency concerning the true cost of credit and to facilitate effective comparison of loan offers.

Giving prominence to the interest rate will not serve the best interests of consumers. Since the interest rate is only one part of the overall cost of a private education loan, it is misleading to students and families to focus attention on interest rate as the primary indicator of the cost of credit. Making the interest rate more prominent than the APR may also encourage other practices (e.g. teaser rates, emphasis on loan fees, interest capitalization frequency) that increase the true cost of credit but that will not be reflected in the interest rate. Emphasis on interest rate could cause consumers to unknowingly choose more expensive loan products, which would in turn unnecessarily increase overall debt burden and contribute to negative repayment performance.

The APR, on the other hand, by combining upfront fees and other costs of credit with a loan's interest costs over the life of the loan and expressing them as a yearly percentage, provides a clearer picture of the actual and total cost of borrowing in connection with a particular loan product. The APR disclosure has a long-standing and proven track-record in providing cost transparency to consumers. It is vital that Regulation Z continues to treat private education loan consumers like all other credit consumers who enjoy the benefit of cost transparency facilitated by prominent APR disclosure.

In addition to providing a better reflection of the true cost of borrowing than interest rates alone, the APR is also an effective benchmark for comparing loan offers. By including all interest rate charges and upfront fees that impact the overall cost of borrowing, the APR provides consumers the best tool available for undertaking an "apples-to-apples" comparison of the total costs of competing private education loan products. Emphasizing interest rate fails to facilitate meaningful comparison shopping because it distorts the overall cost of credit by drawing attention to a single cost factor. APR prominence serves the best interest of the consumer and achieves the HEOA objective of promoting meaningful comparison shopping because the APR provides the most comprehensive cost information -- in a unified view - - to the consumer.

2. Approval

We wish to emphasize our support of requiring Approval Disclosures to be provided at the time a conditional loan approval is communicated to the consumer. Conditional approvals are commonplace for private education loans and provided at a point in the application process that maximizes the consumer's opportunity to compare competing loan offers. Final loan approval typically cannot occur until very late in the loan origination process given the high incidence of changes to loan terms driven by school-initiated modifications to loan amount and disbursement dates, often-times within days of the scheduled loan disbursement date. Providing Approval Disclosures at the end of the typical loan origination cycle, i.e., close in time to the start of classes, would constrain rather than promote comparison shopping of loan offers.

In order to communicate a loan approval with conditions at a point in time that affords consumers a meaningful opportunity to compare loan offers, the Board's final rule must recognize the need for creditors to adjust or withdraw loan offers based on whether the consumer meets such conditions. As the Joint Letter states, private education loan offers are conditioned on a range of standard underwriting requirements (e.g., proof of income, receipt of a school certification) and in all cases are subject to other legal duties that a creditor must observe in the loan origination/approval process (e.g., Patriot Act/CIP clearance). We believe it is in the best interests of consumers, and consistent with responsible lending and safety and soundness principles, to allow creditors to adjust or withdraw loan offers after providing the Approval Disclosures when consumers do not satisfy such loan conditions or fail to continue to meet eligibility criteria that determined the original approved loan offer.

For example, a creditor should be clearly authorized to *withdraw loan offers* based on evidence obtained after providing the Approval Disclosures (i) of fraud or identity theft in the loan application, or (ii) that the consumer is no longer eligible for the loan, such as documentation showing the consumer is no longer enrolled at school (or has enrolled at a different school), withdrawal by the co-signer from the application, receipt of further financial aid that eliminates the need for the loan, the death of the consumer or bankruptcy filing affecting the consumer, or evidence that the consumer no longer meets applicable underwriting criteria (e.g. credit criteria). Creditors should also not be precluded from prudently responding to additional factors discovered after providing the Approval Disclosures, such as BSA/AML/OFAC red flags or Patriot Act/CIP changes with respect to a consumer, that would ordinarily result in withdrawal of the loan offer.

Additionally, creditors should also be able to *change the original loan offer* based on certain events/circumstances that occur after providing the Approval Disclosures, including by way of example (i) receipt of information from the school, provided in the form of an original or revised school certification (for school-certified loans), or through other communications from the school (e.g. letters, phone calls, online account entries, etc.), (ii) changes to information originally provided by the school (e.g. revised disbursement dates, loan amount, year in school), (iii) changes to the consumer's (or co-signers') income, or (iv) changes to the consumer's overall credit (to the extent such changes mean the consumer no longer satisfies the credit underwriting requirements for such loan product). In each such case, adjusting the loan amount assures that students and families only borrow the amount needed to cover educational costs and it recognizes safety and soundness principles requiring prudent and responsible management of lending risks.

We urge the Board to state in the final rule that a creditor who, after providing the Approval Disclosures, becomes aware of information supporting a good faith belief that a consumer is not eligible (or, no longer eligible) for the loan, in whole or in part, can cancel or change the loan offer, as applicable, before disbursing the loan proceeds. We further request that the Board provide non-exhaustive examples, including those described above and in the Joint Letter, to illustrate the types of evidence, events, and circumstances that provide a basis for such action by the creditor. Outside of instances where the credit becomes aware of aware of information supporting a good faith belief that a consumer is not eligible (or, no longer eligible) for the loan, we recognize the obligation of creditors to keep the original loan offer open without change (except for changes necessitated by a change in an applicable variable rate index or changes initiated by the consumer) for the 30-day acceptance period.

Lastly, we specifically support the changes that the Joint Letter proposes to Forms H-19 and H-22. Such changes provide effective notice of creditor-specific conditions, and conditions applicable to creditors generally, that could lead to a change or withdrawal of the loan offer and do not create a basis for creditors to arbitrarily withdraw or adjust loan offers if the consumer continues to meet pre-established loan conditions and underwriting criteria and passes other legal/regulatory filters that creditors must apply to every private education loan transaction.

3. Changes Based on Information from the School

We concur with the Joint Letter that receipt of information from the school (e.g., in the form of the original and/or a revised school certification) after the Approval Disclosures are provided[1] creates unique and independent grounds for adjusting or withdrawing loan offers. For example, the school certification is a critical component of a school-certified private education loan that drives the amount of the loan and timing of loan funding. The school certification is material to the loan transaction, and yet it is completely outside the control of the creditor. Similarly, information communicated by the school to the creditor outside of a formal loan certification process concerning loan amount, desired disbursement date, the student's year in school, and other related information, is material to the loan transaction and not within the creditor's control. As a result, the final rule should explicitly permit changes to, or withdrawal of, the loan offer based on information from the school after the Approval Disclosures are provided.

Moreover, changes to loan offers that are predicated on actions taken by the school to provide new or revised information should not trigger a new set of Approval Disclosures to the consumer. Schools need flexibility and broad discretion to communicate with creditors as frequently as needed about loan amount adjustments for each student, and that ongoing flow of information through the certification process or otherwise assures that students receive - - and creditors lend - - only the loan proceeds necessary to meet educational expenses. Requiring a new set of Approval Disclosures each time the school communicates new information (e.g. a revised loan amount) could seriously delay the delivery of loan funds to the school and consequently chill the flow of adjusted loan information from the school to the creditor during and after the 30-day acceptance period. We believe that by removing the need for new Approval Disclosures when information from the school changes the loan offer, the Board supports a process that promotes the value of the school as a control point for helping assure appropriate borrowing levels while preserving the consumer's ability to make informed credit decisions. Where loan offers change based on information from the school, student borrowers are adequately protected by the full and complete loan information provided with the new Final Disclosures, including most importantly the right to cancel the loan before it is disbursed. Consumers will have fair notice of the actual and final loan terms and adequate opportunity to reject the loan before funding if it is not

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[1] As noted in our comments under "Section 2 Approval", the Approval Disclosures should be provided at the time a conditional loan approval is communicated to the consumer.

acceptable as revised.[2]

As a result, we support and reinforce the Joint Letter in strongly urging the Board to state in the final rule that a change to the loan offer based on information from the school (e.g. loan amount, disbursement date, year in school, and adjustments to such items and other changes) after the Approval Disclosures have been provided does not (i) require the creditor to provide revised Approval Disclosures, (ii) result in a new 30-day acceptance period, and (iii) require the applicant to accept the revised loan offer.

4. Estimates and Redisclosure

For the reasons stated in the Joint Letter, Wells Fargo requests that the final rule clarify that creditors can use estimated information in Approval Disclosures based on the best information reasonably available. It is important that the final rule generally recognize that when estimates are used in Approval Disclosures based on information outside the creditor's control, and new information becomes available that makes the estimate more accurate before the Final Disclosure is provided, that event would not be a prohibited change in terms and would not require new Approval Disclosures or a new 30-day period, or require the consumer to accept the revised loan offer. Examples of best available information supporting use of estimated disclosures include information from a holder of a loan being paid-off through a consolidation loan, the school (which can provide estimated disbursement dates), or even the student who provides an estimated graduation date on her loan application.

Assuming that the Board recognizes communication of conditional approval as the event triggering the Approval Disclosures, we request that the Board delete the proposed language for Approval Disclosures in Section 226.17(e) so it is clear that (i) creditors do not incur liability for providing estimates in the Approval Disclosures following established TILA rules, and (ii) ordinary TILA rules concerning "subsequent events" apply.

5. Private Education Loan – Definition

Title X of the HEOA defines "private education loan" as a loan issued "expressly" for qualified higher education expenses. The HEOA and the legislative history is void of any reference to multipurpose loans, and we believe that evidences Congressional intent to focus on loans marketed and held out solely for purposes of covering qualified higher education expenses. As a result, we strongly support the Joint Letter recommendation to remove the phrase, "in whole or in part" from the definition of "private education loan".

By applying most of the new disclosure requirements to closed-end loans that may be used for multiple purposes that include, but are not limited to, educational expenses (i.e., general installment loans), the Proposed Rule imposes significant operational and compliance difficulties on banks who operate an education loan business and general installment loan businesses (which, in every case we are aware, are operated as independent businesses). The Wells Fargo systems that process general installment loans do not also process student loans and therefore do not have the operational infrastructure to support

[2] In fact, like many creditors, Wells Fargo has traditionally provided a clear opportunity after loan disbursement for the consumer to return loan funds without penalty or assessment of charges.

the new disclosure requirements nor facilitate the new consumer "acceptance" and "cancellation" rights. Not only would it be unduly burdensome to require that such infrastructure be built for the general installment loan systems, but imposing such requirements will result in bifurcated processes and operations for such loan types, i.e., one set of processes and systems capabilities will need to support general installment loans used for educational costs and another set will apply to all other general installment loans. The cost and administrative complexity of imposing the acceptance and cancellation periods on some but not all general installment loans outweighs the benefits to consumers who would typically seek a general installment loan for education purposes (i.e., such individuals tend to be more sophisticated consumers, such as parents or guardians, borrowing on behalf of a dependent student).

Under the Proposed Rule, if an applicant indicates that any portion of a general installment loan might be used to cover education expenses, a creditor will have to comply with elaborate new requirements for the entire loan or face TILA liability. Applying the full-breath of specialized student lending rules to general installment loans, and having to build and maintain different systems and operations to support loans that are used "in part" for educational expenses, raises administrative and compliance burdens, and risks of TILA liability, that could constrain the overall availability of general installment loans.

For these reasons, and the more detailed rationale provided in the Joint Letter, we concur with the CBA and ABA in urging the Board to delete the phrase "in whole or in part" from the definition of "private education loan" in the final rule and to clarify in the Staff Commentary that the definition only covers loans marketed and held out as student or education loans and not general purpose consumer loans.

6. Self-Certification

For the reasons cited in the Joint Letter, we request that the final rule eliminate the borrower self-certification requirement for "school-certified" loans and allow the creditor to provide the self-certification form to consumers with respect to non-school-certified loans. In the alternative, we request that the final rule (i) allow the school to certify to the creditor that the borrower completed and signed the borrower self-certification form, and (ii) state that the creditor's collection of such a certification satisfies the creditor's obligation to collect the signed borrower self-certification form. If the Board chooses the alternative approach, we ask the Board to clarify that the creditor may present the self-certification to the student to accommodate schools that do not wish to provide such certification and to provide an effective option for loans that are not "school-certified".

7. Effective Date

Wells Fargo strongly urges the Board to provide creditors the maximum period supported by the HEOA for complying with the Board's regulations (i.e., to extend the time necessary to comply if permitted by the HEOA or to publish at the time that will maximize the allowable time for institutions to put the new procedures in place by February 14, 2010).

We also want to emphasize our strong support for the transition rules set forth in the Joint Letter related to "pipeline loans". The final rule should be mandatory for applications received after the effective date and optional for applications that have not been disbursed by the effective date. The overall complexity of implementing the disclosure requirements is compounded significantly by phasing in the requirements in a piecemeal fashion for loans that have not been disbursed by the effective date. Creditors should have the option, but not the requirement, to implement early compliance for "pipeline loans".

Wells Fargo very much appreciates the opportunity to provide comments in connection with the Proposed Rule. We urge full consideration of the comments provided herein and in the Joint Letter and we will be happy to discuss the issues in more detail. Please contact the undersigned at 651-205-9643 to discuss any concerns addressed or questions raised by this letter.

Sincerely,

Tom Levandowski

Tom P. Levandowski
Senior Counsel, Wells Fargo Law Department