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

Docket No. R-1353 -- Citigroup Inc.'s Comments on the Board's proposal to amend Regulation Z following the passage of the Higher Education Opportunity Act

Dear Ms. Johnson,

Citigroup Inc., on behalf of itself and its subsidiaries Citibank, N.A. and The Student Loan Corporation, appreciate this opportunity to comment on the proposal by the Federal Reserve Board (the "Board") to amend Regulation Z and implement Title X of the Higher Education Opportunity Act ("HEOA"). The provisions of Title X amend the disclosure and timing requirements for creditors making private education loans ("private student loans"), defined in HEOA as loans made expressly for postsecondary education expenses, but excluding open-end credit, real estate secured loans, and loans made, insured, or guaranteed by the federal government under Title IV of the Higher Education Act of 1965.

Section I of this letter discusses our six principle areas of concern: (1) approval disclosures -- §226.38(b); (2) the definition of private education loan -- §226.37(b)(5)(ii); (3) self-certification; (4) estimates and re-disclosure -- 226.37(e); (5) the effective date -- HEOA §1003; and (6) the transition rules. Section II contains our comments and concerns on other areas of the proposal.

I. PRINCIPAL AREAS OF CONCERN

A. Approval disclosures -- §226.38(b)

1. In general

The proposal's treatment of approval disclosures is problematic in light of the way that student loans actually get made. Students and parents usually apply for education funding well prior to the start date of school attendance periods and, in many cases, prior to the time a school will have issued an "award letter" to enrolled students (the award letter being a statement of the cost of education and financial aid which may be available). A typical example would be a student or parent applying for a loan in May or June in preparation for an August-September school start date. At the time of application in May or June, neither the applicant(s) nor the lender will know the final loan amount. Rather, the final loan amount is not determined until autumn after the school certifies (a) the student's enrollment and (b) that the loan amount is within the defined "cost of attendance." This approach is utilized by student loan companies as a safety and soundness control to make sure that the full loan amount is needed for educational purposes.

In this context, borrowers apply for education loans with only basic information, and lenders can only approve those applications with numerous conditions (e.g., subject to certification by the school of enrollment and loan amount, verification of income, and AML/KYC requirements, to name a few). In fact, what many lenders have done at the time of application is simply to perform a review of the applicant's credit history and to provide the applicant(s) a conditional approval. An analogy can be made to a pre-approved mortgage application in which the final loan amount and interest rate may be unknown at the time of application or until after a purchase contract is signed and a real estate appraisal is completed.

2. Conditional approval

We believe that flexibility and utility of the 38(b) Approval Disclosures would best be served by the Board simply providing that the 38(b) disclosures may be subject to conditions. Specifically, we recommend that the term "approval of a student loan application" used in the amendment to Section 128 of TILA mean an approval which could be conditional upon underwriting and documentation requirements.

As an alternative to our recommended approach, the Board could exclude such conditional approvals from the obligation of providing the 38(b) disclosures until such time as a true approval is issued by the lender. Under this alternative, the Board could determine that a conditional approval subject to underwriting and documentation requirements is not an approval for which 38(b) Approval Disclosures are required.

If neither of these alternatives is adopted, then a lender might be obligated to issue a 38(b) disclosure at such an early stage in the loan process that the lender would not be able to include the conditions discussed above in Section 1, such as making the loan subject to certification by the school of enrollment and loan amount, verification of income, and AML/KYC requirements. We believe that this could raise safety and soundness issues.

In addition, if the term in the proposed regulations of "any approval" includes these conditional approvals, lenders will likely stop issuing them which would create undo confusion and anxiety among student loan borrowers as they search for private educational loan funding. Student loan borrowers will not be well served if they shop for private education loans but are precluded from comparing conditional approvals among different lenders. The purpose of the 30-day window for acceptance is to permit the consumer to shop for alternatives, and we believe it is important to encourage shopping for loan terms.

3. **<u>Change in terms -- §128 (e)(2)(ii) of TILA</u>**

If the Board adopts our first recommendation and the conditional approval is the "approval" event for purposes of the Approval Disclosure, it would also be necessary for the Board to clarify that changes made following the Approval Disclosure, but pursuant to the articulated conditions, constitute a permissible basis for declining the loan and/or making a counteroffer to the consumer. In general, the failure of a standard underwriting condition, such as an inability to verify an applicant's income, would result in the withdrawal (or decline) of a loan; or in some cases, such as a discrepancy between the stated income on the application and the validated income, in a counteroffer for a different loan amount or different terms. The counteroffer would require an additional 30-day period, as would an approval of a new application. The decline would generate an adverse action communication under Regulation B.

4. **<u>School certification exception</u>**

As the discussion in Section 1 above illustrates, the schools typically provide important information to the lender. Such information can be provided in the form of the original or a revised school certification, or through other communications from the school (<u>e.g.</u>, letters, phone calls, online account entries, etc.). For the reasons discussed below, the final rule should explicitly permit changes resulting from information provided by the school (<u>e.g.</u>, loan amount, disbursement date, year in school, and adjustments to such items and other changes) without triggering new Approval Disclosures or constituting adverse action under Regulation B.

School certification of the loan amount is a requirement for many private education lenders. The "amount certified" is generally calculated as the cost of education less other financial aid. Simply put, it is the amount needed by the borrower while still meeting the definition of education debt. School certification is a highly significant factor in the lending decision. The school is uniquely positioned to determine the precise amount that the creditor can and should be lending; and conversely the amount the student should be borrowing (defined more specifically as the "cost of attendance" determined by the school (see 20 USC 1087II) less other financial aid—thus meeting the Internal Revenue Code §221 definition of "qualified higher education debt"). By certifying the loan amount, the school ensures that students do not borrow more than absolutely necessary. This serves an important public policy goal with respect to students' debt levels as well providing lenders an assurance that the loan amount is truly for educational purposes.

It is quite common for the applicant to request an amount that is more than the school later certifies. Schools often submit revised certifications due to subsequent events (<u>e.g.</u>, the student obtaining an additional scholarship). If the amount is less than the amount previously requested or certified, the creditor must reduce the loan amount and change other terms that are related to the loan amount in order to ensure that it is only lending what will be considered "qualified higher education debt" (see Internal Revenue Code §221). These changes are important both to prevent the student from excessive and unnecessary borrowing and for safe and sound banking. Yet it is a common occurrence that the amount requested by the student-applicant will vary from the certified amount, and the school certification, or a revised certification, occurs so late in the process that it would be an impossible burden on students and creditors unless: (a) creditors may condition the terms of their approvals on the school certification(s); (b) creditors may change the loan amount and terms accordingly based on final certification; and (c) the changes do not trigger a new Approval Disclosure and an additional 30-day shopping period.

No new 30-day acceptance period should be required because, as stated above, school certification may not occur until late in the loan process and the consumer will have received an approval that was explicitly contingent upon school certification. The borrower will still be protected because the final 38(c) disclosure will provide the final exact numbers, and the consumer will be given an additional three business days in which to rescind. Moreover, reducing the loan amount to reflect the school certification is arguably beneficial to the consumer because it limits what the consumer is borrowing to only the absolutely necessary amount.

5. **Model form -- Appendix H Form H-22**

In light of our previous recommendation that a "conditional approval" function as an approval for purposes of the regulatory timing requirement, we also recommend that the Board:

(a) modify form H-22 to call it "Private Education Loan Conditional Approval";

(b) amend the text to reflect the conditional nature of the approval (Specifically, we recommend that something like the following language be included on the form as examples of model conditional language that would be acceptable on the Approval Disclosure form:

> Our approval of your application is subject to:
>
> (1) our verification of the information provided on or in connection with your application and that there have been no material changes prior to disbursement of your loan; and
> (2) information provided by your school, if applicable, and any changes to such information,
> (3) submission of any additional documents listed with this approval, and
> (4) such other conditions or requirements that arise under applicable law.);

(c) revise accordingly the current language in the "Next Steps and Terms of Acceptance" section indicating that the loan offer cannot change;

(d) amend the regulation to clarify that disclosures regarding conditions relevant to the approval may be made separately or together with the segregated disclosures; and

(e) amend the regulation to clarify that disclosures regarding conditions relevant to the approval may be made separately or together with the segregated disclosures.

B. <u>Definition of private education loan -- §226.37(b)(5)(ii)</u>

The Board has requested comments regarding the disclosures for loans in which only portions may be used for postsecondary education purposes. Significantly, the definition of "private education loan" contained in §140(a)(7) of TILA means a loan that "(ii) is issued expressly for postsecondary educational expenses to a borrower...". We believe that the term "expressly" should be limited to those lending programs which are principally engaged in the education lending business. To include, as suggested by the proposed comments to 37(b)(5)(ii), that the "purpose line or box" on a loan application should be determinative of a "mixed use private education loan," would not only be unduly administratively burdensome to lenders but could also create significant confusion.

For example, if a purpose box on a simple unsecured bank installment loan application made at a bank branch office is marked "home improvement and daughter Jane's school expenses," the lender would be at a quandary whether or not to treat this as an application for a private education loan. On the one hand, the applicant did not state the magic term "postsecondary expenses." On the other hand, the lender may have an implied duty to inquire further as to the specific use intended by the applicant.

Moreover, the postsecondary education lending business is quite specialized with lenders, or lending units of larger institutions, focused on the higher education loan market. In fiscal year 2008, such specialized lenders made approximately $80 billion in federally-insured student loans and approximately $20 billion in private education loans annually. To inadvertently draw non-education lenders into this regulatory scheme exposes such lenders to substantial risks, and would appear to be unwarranted in light of the fact that there is essentially no history of abuse of non-education general loan products in education financing. The proposed application and disclosure processes could create duties and obligations, including significantly enhanced TILA liability that are inappropriate for situations in which a borrower may, or may not, identify the purpose of a loan in sufficient detail for a non-education lender to determine if the application relates, in whole or part, to "postsecondary education expenses."

Accordingly, we believe that so-called "mixed use" loans should not be included within the definition of private education loan, unless the lender intentionally includes them with its postsecondary education lending program. We recommend that education lenders be given leeway to include "mixed use" loans, including "gray area" loans such as bar study and medical residency loans, within the private education loan application, disclosure, and disbursement scheme provided by the proposed regulations. Such lenders should, assuming that they opt to include mixed use or other education loans within the disclosure scheme provided by the proposed regulations, also be deemed to have accepted the extended liability provided by the amendments to §130(a) of TILA.

Including multi-purpose general installment loans also creates a significant burden for schools in establishing preferred lender lists for private education loans. The HEOA and the Secretary of Education's proposed implementing regulations, obligate each school to provide detailed information on the private education loan offerings from each lender it recommends. It would be extremely burdensome for schools to gather information about all of the multi-purpose loans used "in part" for higher education expenses from each preferred lender, as that would involve collecting information from numerous and disparate operational units within a bank who do not ordinarily interact in any respect with schools. A school could rarely be confident it has obtained all necessary information about each multi-use loan available through a "preferred lender" that falls under the definition of "private education loan," or relevant modifications over time to such multi-use loans. We believe that the overriding focus on "preferred lender lists" under the HEOA informs the meaning of "expressly" and clearly points to loan products that a school can readily identify and track as education loans and meaningfully disclose to its students.

Therefore, we believe that the word "expressly" in the HEOA definition was intended to include loans specifically marketed as student or education loans and not general purpose consumer loans. Accordingly, we recommend that the Board delete the phrase "in whole or in part" from the definition of "private education loan" and clarify in the Staff Commentary that private education loans include only those that are marketed for use in paying higher education expenses.

C. Self-certification

As we discussed above in Section A, many student loans are "school-certified," meaning that the creditor requires from the school in written or electronic form, as a condition of making the loan, a certification of the student's enrollment in the institution as well as certification of the student's need for the requested loan amount. In the case of such "school-certified loans," the self-certification requirement set forth in HEOA and the proposed regulations will often duplicate the certifications that are provided to the creditor by the school. Accordingly, for such loans, the HEOA self-certification requirement would be redundant, unnecessary and burdensome to all the parties. To address this problem, we recommend that the Board adopt one of the two alternative suggestions discussed below.

We believe the best approach would be for the Board to use the authority granted by TILA to eliminate the self-certification requirement for "school certified loans." For this purpose, a school certified loan could be defined as, "any loan where the creditor requires from the school in written or electronic form, as a condition of making the loan, a certification of the student's enrollment in the institution as well as certification of the student's need for the requested loan amount."

We believe that the compliance burden created by requiring self-certification for school certified loans is significant enough to invoke the exception or exemption authority, as the Board has done in several other instances in the proposed regulations. Moreover, by securing a school certification the creditor facilitates the important public policy objective of assuring proper loan amounts, which parallels the focus on preventing over-borrowing in the self-certification process. As such, eliminating the self-certification requirement for "school certified loans" removes an unnecessary burden for schools and consumers while preserving the desired public policy outcome of responsible lending and borrowing.

Consistent with the above approach, we also recommend that the Board clarify for loans that do not involve a school-certification that the self-certification form may be presented to the student by the creditor. HEOA requires the school to make the self-certification form available to the borrower upon request and states that the creditor may receive the self-certification form from either the student or the school. However, the Proposal does not specify whether the creditor may *also* provide the form for the student to complete and submit. In the case where the student has not obtained the form from the school, the creditor should be able to expedite the application process by providing the form as part of the application for the student to complete.

If the Board does not choose to eliminate the self-certification requirement for school certified loans, another acceptable alternative would be for the Board to permit the school to certify to the creditor that the consumer has completed and signed the self-certification. Schools often certify to lenders electronically, which may make it difficult for the school to convey to the creditor the self-certification form, as signed by the consumer. If the school is certifying to the creditor anyway, it is unnecessary to require the school or the consumer also to physically or electronically convey the self-certification to the creditor. Instead, we recommend that, if the school has obtained the self-certification from the applicant, the school should then be permitted to certify compliance directly to the creditor. The Board could provide model language for the school to use in order to certify that the applicant had signed a self-certification.

In summary, 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.

D. Estimates and re-disclosure -- §226.37(e)

Proposed section 226.37(e) states that, if any information required to make the disclosure is unknown to the creditor, the creditor must make the disclosure based on the best information reasonably available, and state clearly that the disclosure is an estimate. There are occasions when it is necessary to provide estimated disclosures at Approval, as permitted by Regulation Z, based on the best information reasonably available. Accordingly, we believe that the regulation should clarify that, as a general rule, if (a) estimates are used in Approval Disclosures based on information from a source other than the applicant(s) and (b) new information becomes available that corrects the estimate before the Final Disclosure is provided, then making changes to the loan terms based on that new information would not be a prohibited change in terms and would not require a new Approval Disclosure, a new acceptance or a new 30-day period.

To illustrate the application of this general rule, we further recommend that the Board provide the following two examples, as illustrations only, and not as an exhaustive list:

1. Loan Disbursement Date. Unique to private educational loans is the need for the creditor to estimate the APR based on the loan disbursement date provided by the consumer in the application. The estimate is made necessary because the disbursement date is determined by the school, rather than the creditor. If a new disclosure and a new 30-day window were triggered by a change in the APR (resulting from a change in the disbursement date by the school) when the actual disbursement date is established, the date would immediately move back an additional 30 days, and the whole process would begin again. In any case, the impact on the APR of these disbursement date changes would be small, and would not affect the more prominent interest rate disclosure at all.

2. Consolidation Loan Amounts. In the case of consolidation loans, the creditor may not know the requested loan amount until very late in the application process and therefore would be required to base much of the information in the Approval Disclosures on estimates. Therefore, we recommend that the Board acknowledge that the principal amount and related terms in the Approval Disclosure for consolidation loans may need to be estimates. Again, for the reasons stated above, it should also be made clear that the creditor need not re-disclose the Approval Disclosure, triggering an additional 30 day acceptance period, when the creditor gets the final payoff amounts from the lenders of the underlying loans. It would be of no value to the consumer, and would be a potentially time consuming a wasteful process, if the disclosure must be repeated.

E. Effective date -- HEOA §1003

The regulations drafted by the Board are to have an effective date no later than six months after they are issued. However, the HEOA provisions will be effective on the earlier of (a) the date on which the Board's regulations become effective or (b) 18 months after enactment of HEOA. Therefore, the latest possible date the regulation could become effective is February 14, 2010. The Board solicits comment on whether a shorter implementation date is appropriate.

We strongly urge the Board to allow the greatest possible time to permit creditors to begin complying with the regulation. The changes that will be necessary will involve a major operational and technological undertaking, requiring the development of new forms, new software, new training developed and instituted, and a host of related concerns addressed. If the time necessary to comply cannot be extended, we urge the Board to publish at the time that will maximize the allowable time for institutions to put the new procedures in place by February 14, 2010.

F. Transition rules

On the effective date of the new rules, lenders will have applications in process that have been approved but not yet consummated. We request that the Board allow lenders the option to disclose to these applicants based on either the application received date or based on the effective date of the new disclosure rules.

Because the consummation disclosure is compliant with both the new TILA §§18 and 38, a lender would be in compliance by providing the 38(c) Consummation Disclosure, even though, at the time the borrower applied, the borrower would have received applicable TILA disclosures such as disclosures required by §226.24. Given that the new consummation disclosure encompasses the requirements of both sections, a lender should be deemed in compliance by providing either disclosure for loans approved but not yet consummated on the effective date of the new rules. Failure to give the application and Approval Disclosures required under 38 (a) and (b) for loans that were approved but not consummated prior to effective date of the new rules should not be deemed a violation of TILA if the lender has given the final 38(c) Consummation Disclosures.

With respect to loans that are in the pipeline during the transition period, we request that the Board adopt clear transition rules that minimize the cost and burdens, and limit the confusion, of the transition. Specifically, we recommend that the new rules be mandatory for applications received after the effective date and optional for applications that have not been consummated by the effective date. It may be necessary, as creditors begin to shift to new forms and new procedures, for customers in the pipeline who may have been initiated under the old system to receive an Approval disclosure or a Final disclosure under the new system. If this is not permissible, all creditors would have to maintain parallel systems during the transition period, at great cost.

II. ADDITIONAL COMMENTS AND CONCERNS

A. Definition of business day/timing of disclosures -- §226.2(a)(6)

Proposed section 226.2(a)(6) contains two definitions of business day for use in different contexts. The Board is proposing employing the "more precise" definition—that is, all calendar days except Sundays and specified legal public holidays—in providing presumptions of when consumers receive mailed disclosures, and for measuring the period during which consumer have a right to cancel a private education loans.

We recommend the use of the more general definition (a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions) instead. Most creditors do not have systems for disbursing funds operational on Saturdays, and the use of the proposed definition—which automatically includes Saturday as a business day will create problems. Because of the seasonal nature of the education loan business, loans are generally disbursed in a very short time during the late summer. If the proposed definition is employed, creditors would be in jeopardy of missing the 3-day delivery deadline for the disclosures.

B. Telephone applications -- §226.37(d)

1. Denied applications

In lieu of providing disclosures on or with any application or solicitation, the Board is proposing to give the creditor several options in the case of certain telephone applications or solicitations. As proposed, the creditor may, at its option, disclose the information in section 226.38(a) orally, or, "the creditor must provide the disclosure or place them in the mail no later than three business days after the consumer requests the credit." This is a reasonable approach to the treatment of telephone applications, and—subject to our comment below about who initiates the call— we support the Board's exercise of its authority to provide these alternatives.

We believe that clarification is needed to address the circumstance in which a telephone application is denied within three business days of the telephone call. In that situation, the application disclosures should not be required. Without such an exception, the consumer would be provided with an application disclosure contemporaneously with an adverse action notice. We believe this would cause undue confusion (the consumer will be left wondering whether or not the loan has been denied) and would serve no useful purpose.

Our recommendation should be viewed as analogous to the Board's proposal (which we support) to permit the creditor to mail the 38(b) Approval Disclosures within three business days, rather than providing the unnecessary Application disclosures, if the loan has been approved. As noted in the supplementary information, in such a case "the application disclosure requirements would not provide a meaningful benefit to consumers in the form of useful information or protection." The same would be true on the flip side, if the loan is promptly denied.

2. Applications initiated by the consumer

As proposed, the exception permitting oral disclosures during telephone applications or solicitations, or mailed within three business days thereafter, applies only to telephone applications "initiated by the creditor." It is not clear why the Board chose to limit the scope of this exception, but we strongly recommend that the limitation be removed.

We believe the majority of telephone applications for private education loans are actually initiated by the *consumer*, not the creditor. Students who are in need of postsecondary educational loans reach out to creditors to obtain financing. Often that is done by phone. There is no reason to treat an application that is taken over the phone differently if the phone call was initiated by the consumer.

More importantly, the inability to employ one or both of the enumerated exceptions in section 226.37(d)(ii) would make compliance with the requirements of the regulation virtually impossible in the case of most telephone applications, and would be a severe hindrance to both creditors and consumers. For example, because there is no means to allow disclosure in the event that a lender accepts an application by phone from the consumer, a lender might be required to send a pdf of the lengthy disclosures to the customer during the phone call which would be a practically impossible procedure to comply with.

3. "As applicable" -- §226.38

Proposed comment 38-1 states that disclosures required under section 226.38 need to be provided only as applicable, except where it specifically states otherwise. The example provided in the Commentary is that the disclosure of the availability of federal student loans in 38(a) and (b) disclosures is not required for consolidation loans, where the disclosure is inapplicable. We recommend that the Board provide in this Commentary section a more thorough *nonexclusive* list of disclosures that do not need to be provided because they would be inapplicable in certain cases.

The Board has stated in the section-by-section analysis under section 226.39(e) that the disclosure regarding the self-certification form in section 226.38(a)(8) need not be provided for consolidation loans nor for loans to students attending covered educational institutions that do not meet the definition of institution of higher education. This should be made explicit in the Commentary.

We have previously discussed that "mixed-use" and "gray area" loans may not "qualified higher education debt" for tax purposes. However, we suggested that educational lenders which voluntarily include such mixed-use or gray area loans be allowed to follow the disclosure scheme provided for educational loans because of the nexus of such loans (e.g., bar study and medical residency) to the remainder of a student's educational loans. Nevertheless, because there is no school involvement at all in mixed-use and gray area loans, we believe that the self-certification disclosure is wholly inappropriate for such loans even if the lender generally follows the disclosure scheme provided for educational loans.

C. Interest rates -- §226.38(a)(1)

1. Rates on web sites

The proposal states that rates disclosed must be the rates that are "actually offered by the creditor" and the Board has sensibly proposed a number of situations in which the rate being provided can be one employed in the not too distant past (e.g., on printed or emailed disclosures). However, the proposed rule for web site disclosures is that the rate must be the one actually offered "when viewed by the public." We believe that this proposed rule for web site disclosures could create serious compliance problems for creditors.

Although rates can change frequently, properly controlled systems (e.g., those available on a lender's websites) cannot make the change so promptly that it is concurrent with the actual change in the rate being offered. As a result, there will be times, during a transition between offered rates, that the rate "being viewed" on the web will no longer be the current rate. The problem is similar to the situations creditors face with disclosures that are delivered in electronic form or by printed means, and a similar solution would be appropriate (that is, that the rate needs to be one that has been offered within the previous 30 or 60 days). An alternative approach would be to require that it be stated as "good as of" a particular date, with a means of contacting the creditor to determine the current rate.

2. Borrower benefits

We request that the Board clarify that "borrower benefits" (i.e., lower rates provided based on repayment performance) should not be the basis on which rates are permitted to be disclosed. It is our experience that consumer qualification for the benefits is not universal, and the disclosure of the lower rate, which assumes that the benefit has been provided is both inappropriate and could be misleading.

D. Payment deferral options -- §226.38(a)(3)(ii)

As proposed, the Application or Solicitation Disclosure must include information related to the options offered by the creditor to the consumer to defer payments during the life of the loan. Most creditors offer deferment and forbearance options that are substantially similar to the options available on federally insured loans. Some apply during a student's enrolled period (i.e., the in-school payment deferred period(s)) and others apply only during the repayment period, making any kind of comprehensive description of such options extremely difficult given the space on the proposed model disclosure forms.

We recommend that the payment deferral options required to be listed be limited to those available while the student is enrolled and exclude any forbearance options that are offered by the Lender once the loan enters repayment. By doing so, the deferral descriptions would match the estimated repayment schedule given on the model disclosure form H-22.

We further recommend that the Board clarify the required details for the Application Disclosure and the Approval Disclosure (in addition to information included in the table in the model form). Specifically, we recommend that the disclosures be limited to: (a) length of maximum initial in-school deferment period for the loan program; (b) enrollment requirements for maintaining chosen deferment options; and (c) an instruction to consult the credit agreement or promissory note for further details. This will help to prevent a lengthy and complex list of options that would otherwise be provided.

E. <u>Maximum interest rate -- §226.38(b)(3)(vii) and (viii); and (c)(iii)</u>

The proposal would require that, in the Approval and Final disclosures, the creditor must disclose an estimate of the total amount for repayment at the maximum possible rate of interest. If the maximum rate cannot be determined, the creditor must use an assumed rate of 21 percent. The same assumptions are required when providing the maximum monthly payments. According to the Board, a maximum rate would include a legal limit in the nature of a usury or rate ceiling under state or federal statutes or regulations. Thus, the 21 percent assumption would be required where the legal agreement between the parties does not specify a maximum rate, and there is no applicable usury limit on the rate. The Board solicits comment on whether a specific maximum rate assumption should be used, and, if so, if it should be 21 percent.

We recommend that if (a) the creditor is in a state with no usury limit and (b) the borrower credit agreement or promissory note does not specify a maximum rate, then the Board require the assumption of a percentage as determined by the Board. To facilitate this and ensure that creditors employ the same assumption, we recommend that the Board publish the rate that should be used in these circumstances, and that 21 percent is an appropriate rate at the current time. Of course, the Board should retain the flexibility to adjust that rate if conditions were to materially change.

F. <u>Co-Branding and Promissory Note -- §226.39(a)</u>

The Board has made clear that the promissory note is subject to the co-branding restrictions. This would require additional disclosures in the note because nearly all student loan promissory notes list the name of the student's school. We recommend that the Board clarify that the use of the school name in congregated loan information in the promissory note, in a font no more conspicuous than other information displayed on the same page, is not potentially misleading and does not require any disclosure about use of the school name.

G. <u>Method of Acceptance -- §226.39(c)</u>

The only restriction placed on methods of acceptance is that electronic acceptance may not be the sole method offered. However, Lenders should be allowed to require electronic acceptance where the applicant has consented to such a method of acceptance. Accordingly, we recommend that the Board clarify that, where the applicant has chosen to apply electronically (<u>i.e.</u>, in a web-based application) and consented under the federal E-SIGN Act to an electronic transaction with the creditor, it would be reasonable for the Lender to require electronic acceptance of the loan if it so chooses.

H. Acceptance and cancellation -- ability to exercise right -- §226. 39(c) and (d)

Allowing either the borrower or the cosigner to exercise rights of acceptance and cancellation will unnecessarily complicate and potentially slow the loan process. Accordingly, we request that the Board clarify its comments to Sections 226.37(f), 226.39(c), and 226.39(d) by specifying that only the applicant receiving the required disclosures may exercise the right to accept and the right to cancel set forth in the Approval Disclosure and the Final Disclosure, respectively.

I. Expiration of cancellation period -- §226. 39(d)

Creditors may not have the operational capability to receive cancellations through midnight, particularly on a Saturday, and even if they do, midnight expiration will present a problem for processing the next day's scheduled disbursements. Accordingly, we recommend that the Board permit each of the following alternatives:

1. The creditor may follow the midnight deadline as stated in the Proposed Rule;

2. The creditor may restrict the right to cancel on the third day to some time earlier than midnight, but extend the cancellation and disbursement blackout period to 5:00 p.m. on the fourth day following receipt of the Final Disclosure; and/or

3. The creditor may restrict the right to cancel on the third day to some time earlier than midnight, but also:

    a. Extend the cancellation period for some reasonable period (e.g., 5 or more days following receipt of the Final Disclosure);

    b. Disburse the funds on the fourth day following the consumer's receipt of the Final Disclosure; and

    c. Instruct the borrower how to return the disbursement without obligation by the end of the extended cancellation period.

J. Application Disclosures to Schools -- §226. 39(f)

Disclosures provided by January 1 will not be meaningful to covered educational institutions because creditors do not typically finalize product offerings for the upcoming academic year until between January and April. Moreover, a creditor may not even be aware that a school has placed it on a list of preferred lenders. Accordingly, we suggest that Board allow creditors to deliver the required disclosures no later than April 1 of each year, or, if later, within 30 days after the creditor is notified that it has been selected as a preferred lender for the covered educational institution.

K. Appendix H -- Models and Samples

1. 2-sided printing

Many creditors may wish to present the disclosures on both sides of a single sheet of paper in order to reduce paper usage and cut paper and mailing costs. We recommend that the Board clarify that the disclosures may be provided on two sides of a single sheet.

2. Sample Forms

We appreciate the inclusion of sample forms, to provide greater clarity regarding the use of the models. However, we recommend that the models be enhanced to provide examples of the use of loan origination fees, to demonstrate how the Board intends for these amounts to be disclosed as part of the itemization of the amount financed.

Thank you again for this opportunity to comment on this proposal. Please contact Jeffrey A. Watiker of my office at (212) 559-1864 or John R. Coffin with the Student Loan Corporation at (203) 975-6856 if you have any questions.

Sincerely yours,

Carl V Howard

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