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VIA Federal Rulemaking Portal

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

***Re: Regulation Z; Docket No. R-1353
Truth in Lending: Proposed Rule***

Dear Ms. Johnson:

Career Education Corporation (CEC) appreciates the opportunity to comment, on behalf of the colleges, schools and universities that are part of the CEC network of post-secondary education facilities, on proposed Regulation Z, Docket No. R-1353, which implements the Truth in Lending Act (TILA) following the passage of the Higher Education Opportunity Act (HEOA). Title X of HEOA amends TILA by (among other things) adding disclosure and timing requirements that apply to creditors making private education loans, defined as loans made expressly for postsecondary educational expenses, but excluding loans made, insured or guaranteed by the Federal government under Title IV of the Higher Education Act of 1965 and other exempted loan products.

CEC supports the philosophies underlying the proposed TILA amendments and the HEOA concerning private education loans, but wishes to express its concerns with certain aspects of the proposed regulations that may adversely impact student borrowers.

About Career Education Corporation

CEC, through the colleges, schools, and universities that are part of its family, offers high quality education to a diverse population of approximately 99,000 students across the world in a variety of career-oriented disciplines. More than 75 campuses serve these students. Our campuses are located throughout the U.S. and in France, Italy, and the United Kingdom, and offer doctoral, masters, bachelors, and associate degrees and diploma and certificate programs. Approximately one-third of our students attend the web-based virtual campuses of American InterContinental University Online and Colorado Technical University Online.

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CEC is an industry leader whose gold-standard brands are recognized globally. Those brands include, among others, the Le Cordon Bleu Schools North America; Harrington College of Design; Brooks Institute; International Academy of Design & Technology; American InterContinental University; Colorado Technical University and Sanford-Brown Institutes and Colleges. Through its schools, CEC is committed to providing quality education, enabling students to graduate and pursue rewarding careers in a variety of disciplines.

CEC Has Established an Institutional Payment Plan for Education Costs

Our students finance tuition costs through the use of a variety of funding sources, including, among others, federal loan and grant programs, state grant programs, private loans and grants, school payment plans, private and institutional scholarships and cash payments. In the first calendar quarter of 2009, 77.7% of our students utilized Title IV program funds, up from 63.9% in the first calendar quarter 2008; and 2.8% of our students utilized private loans, down from 15.1% in the year-ago quarter. The dramatic decrease in private loan funding is attributable primarily to the withdrawal of private lenders from the student loan marketplace in the current economic recession.

We are working with third parties to implement funding programs that will assist our students to continue their programs of study and have expanded our internal funding programs. We offer payment plans to certain students to ensure that our students can finish their existing educational programs with us and to allow new students to attend our schools. Our primary programs do not require a credit check and are interest-free both during the in-school period and for a limited period afterward. As of March 31, 2009, we have committed approximately \$42.7 million of funding through extended payment plans, primarily through programs that require a credit check, are interest-free while students are in school, and bear fixed interest rates thereafter.

We have dedicated substantial resources to compliance with TILA and the many federal and state statutes and regulations governing the payment plans we offer to our students.

Comments on the Proposed Regulations

The HEOA took a two-pronged approach – it placed new restrictions and requirements on lenders and higher education institutions participating in the federal student aid programs through the Higher Education Act, and it placed new obligations and restrictions on private lenders who make educational loans through the TILA.

The Federal Reserve Board proposes to use the current definition of “creditor” in Regulation Z at 12 CFR 226.2(a)(17) as the definition of “private education lender” for the new Subpart F related to private education loans. This proposal is problematic in that it could encompass the activities of higher education institutions that provide financing plans for the benefit of their students. The problems caused by this broad interpretation arise in part from the regulations being developed by the U.S. Department of Education to implement the HEOA, which relies on definitions from TILA as implemented by the Federal Reserve in Regulation Z, and in part from the provisions of the new Subpart F.

In expanding our payment plan program across the U.S. in 2008, we have become well acquainted with students' need to finance their educations and with the lack of availability of financing alternatives in the current marketplace. We recognize that the Federal Reserve is balancing the policy goals of HEOA with real-world considerations for those providing student educational loans. Certain aspects of the proposed regulations pose difficult challenges for institutions like CEC that offer payment plans to students, and could have the unintended consequences of discouraging programs like our payment plans or other institutional loan programs, reducing access of students to educational funding sources and to continued education.

CEC suggests the following changes to the proposed regulations:

› Change the definition of “creditor” to specifically exclude secondary education institutions offering installment payment plans or institutional loans to student borrowers for attending the institution, while retaining the application of Subpart C to such loans or payment plans if the institutions otherwise meet the definition of “creditor.”

› Make clear that the definition of “private student loan” excludes extensions of credit made by a covered secondary education institution for attending the institution, so that these credit extensions will be subject to Subpart C requirements but will be excluded from Subpart F requirements.

Also, there exists a body of case law that provides that credit sales which do not involve disbursements of funds to the borrower are not “loans,” although there is case law to the contrary (*see* Addendum 1 to this letter). The proposed rule in its current form could result in extended litigation on the appropriate legal characterization of such retail installment contracts and further discourage educational institutions from providing these programs to their students. The definition of “private student loan” impacts schools’ calculation of compliance with the 90/10 rules as well; the ambiguity as to what constitutes a loan impacts whether schools may exclude retail installment agreements which do not involve the delivery of money from the definition of institutional loan, for purposes of applying the net present value approach on such retail installment contracts for the 90/10 rule. Such ambiguities, resulting in part from the complex interplay of the proposed regulations with Department of Education rulemaking, has potential to reduce schools’ willingness or ability to extend credit to their students.

Suggested language for the definition of “creditor” and “private student loan” follows (with new language underlined and proposed deletions struck out):

(17) *Creditor* means:

.....(v) Notwithstanding subparagraph (i) above, an institution of higher education that participates in the federal student aid programs pursuant to Title IV of the Higher Education Act is not a creditor with respect to [non-interest-bearing] installment payment plans or institutional loans made to borrowers for attendance at the institution; provided, however, that the provisions of Subpart C and §226.38(a)(6) shall apply to such payment plans or institutional loans if the institution otherwise meets the definition of creditor.

(5) *Private education loan* means a loan made by a creditor that:

- (i) Is not made, insured, or guaranteed under Title IV of the Higher Education Act of 1965 (20 USC 1070 *et seq.*);
- (ii) Is extended to a consumer expressly, in whole or in part, for postsecondary educational expenses, ~~regardless of whether the loan is provided by the education institution that the student attends~~ regardless of whether the loan is certified by the institution or is a direct to consumer loan;
- (iii) Does not include open-end credit or any loan that is secured by real property or a dwelling; and
- (iv) Does not include extensions of credit made by institutions to students to cover tuition and other charges pursuant to installment payment plans that are non-interest bearing or that provide for fixed rate interest payments.

The code of conduct provisions in the proposed regulations prohibit an institution from entering into a revenue-sharing arrangement with a lender. If the institution itself is the lender, it will not be possible to avoid sharing revenue. Under the code of conduct provisions, a school would be unable to pay its employees in the financial aid office or other departments that process and service its loans. Extending the coverage of the term “private student loan” to include institutions of higher education would not further Congress’ purpose in passing the underlying legislation, which was to remedy abuses related to relationships between lenders and institutions in which institutions steered borrowers to particular lenders in return for some benefit to the institutions. These abuses do not pertain to situations in which schools extend credit to their students for educational costs. Student borrowers will benefit if extensions of credit made by educational institutions are excluded from the definition of “private student loan.”

These recommended changes would fulfill the public policy goals of providing good consumer information to student loan borrowers while not imposing an undue burden on secondary education institutions that choose to assist their students in paying for their educational costs:

› Borrowers would get appropriate disclosures for these educational institution payment programs under Subpart C.

› The complex disclosures and rules in Subpart F could discourage educational institutions from extending credit to students through deferred payment plans or institutional loans, leading students to use more costly or less desirable means to finance their educations, such as credit cards or home equity loans, or to abandon their postsecondary schooling.

Furthermore, the 30-day acceptance period provided under Section 226.38(b)(5) is particularly problematic and would discourage schools from providing these types of payment programs,

since most schools require students to pay tuition and fees in full at the beginning of an educational term. In addition, many of the disclosures that appear to be most relevant to adjustable rate student loans would be confusing to students and unnecessary in instances in which schools offer payment plans with either no interest charges or a fixed interest rate.

Thank you for the opportunity to comment on this important proposed regulation.

Sincerely,

Jeffrey D. Ayers
Senior Vice President, General Counsel
and Corporate Secretary

Appendix 1

A number of courts have concluded that to be a loan, one party must deliver a sum of money to another party. For example, in In re Grand Union Co., 219 F.2d 353, 356 (2d Cir. 1914), the Second Circuit Court of Appeals ruled that: “[A] loan, ... is the delivery of a sum of money to another under a contract to return at some future time an equivalent amount with or without an additional sum agreed upon for its use; and if such be the intent of the parties the transaction will be deemed a loan regardless of its form.” (emphasis added). In a number of more recent decisions, courts have reiterated that a loan must include the delivery of a sum of money. See, e.g., Humboldt Bank v. Gulf Insurance Co., 323 F.Supp.2d 1027 (N.D. Calif. 2004)(“[a] loan is a contract by which one delivers a sum of money to another and the latter agrees to return at a future time a sum equivalent to that which he borrowed” (citations omitted); Odell v. Legal Bucks, LLC, 665 S.E.2d 767 (N.Car. 2008) (citing North Carolina cases defining “a loan as a delivery or transfer of a sum of money to another under a contract to return at some future time an equivalent amount with or without an additional sum being agreed upon for its use).

Other courts, however, have considered extensions of credit which do not involve the delivery of funds as educational loans. See, e.g., Merchant v. Merchant, 958 F.2d 738 (6th Cir. 1992) (private educational institution’s extensions of credit for educational expenses were educational loans for purposes of Section 523(a)(8) of the Bankruptcy Code); but see, In re Renshaw, 222 F.3d 82 (2d Cir. 2000) (school’s enrollment agreement which specified tuition charges with an obligation to pay a service charge if payments not made by their due date did not meet the classic definition of loan and was therefore outside of Section 523(a)(8) of the Bankruptcy Code.)