S·L·S·A
STUDENT LOAN SERVICING ALLIANCE

May 26, 2009

Via Email: regs.comments@federalreserve.gov

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

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

Dear Ms. Johnson:

The Private Loan Committee of the Student Loan Servicing Alliance (the SLSA) respectfully submits the following comments on the proposed rules to implement Title X of the Higher Education Opportunity Act (HEOA), which amended the Truth in Lending Act (TILA). SLSA represents organizations involved in the origination, servicing and administration of government-insured and private education loans. SLSA's Private Loan Committee (PLC) is composed of almost 60 organizations involved in private education lending, servicing, collection, and financing; a list of the SLSA PLC member organizations is attached.

Private education loan programs are offered by state and nationally-chartered banks, federal savings banks, credit unions, student loan secondary markets, state-owned and operated lenders, state-authorized direct lenders and state-licensed lenders. Student loan service providers are responsible for a range of services to lenders, including the processing of loan applications, communications with consumers, the provision of disclosures and billings, the processing of payments and the collection of past-due payments.

It is clear that the Board has attempted to implement changes to Regulation Z that are consistent with the amendments to the TILA made by the HEOA while recognizing the complexities and practical difficulties that private education lenders face in implementing these provisions. SLSA truly appreciates these efforts and commends the Board for taking this balanced approach. Although we agree with much of the proposal, we are recommending the Board consider some changes and clarifications.

We urge the Board to publish final regulations as close to its deadline of August 14, 2009 as possible so that private education lenders will have the full six-month implementation period in order to reprogram systems, make necessary modifications to any APR calculation required in order to comply with the removal of the interim student credit extension rule, change workflow

and internal procedures, and redraft applications, loan agreements, and disclosures. The entire six-month period will most certainly be needed to comply with the new requirements. In addition, implementation of the final regulations in mid-February is helpful in terms of the loan processing flow, since we will be just past a "peak" involving second disbursements for the 2009-10 academic year, and prior to the beginning of the application process for 2010-11.

Transition Rules

It is our understanding that when the final rules are issued, the Board will provide transition guidance. The transition guidance should cover how to handle loans that are in the pipeline when the guidance becomes effective – in other words, loans based on "old" applications that were received prior to the mandatory compliance date and that have not yet been fully disbursed prior to such date. In addition, the transition rule should cover the procedures that the creditor should follow when it receives an "old" application after the effective date of the regulations.

It is important to the members of SLSA that the Board recognize a lender's need to comply with only one disclosure regime for a particular loan. A bright line is needed to ensure that lenders know which regulatory regime applies. The new rules should apply only to loans for which applications are received on or after the effective date of the regulations (six months after publication of final rules). The old rules should continue to apply to loan applications that were received prior to the effective date of the regulations but have not yet been fully disbursed. We ask that the Board acknowledge that loans disbursed after the effective date of the regulations that are based on applications received prior to the effective date are subject to the former rules.

In addition, we recommend that the guidance permit creditors that receive prior versions of applications (i.e., applications that do not include the new Application and Solicitation Disclosure) on or after the effective date of the new regulation to mail the Application and Solicitation Disclosure to the consumer within three business days of receiving the application. If the consumer is approved for credit within the three business days, the creditor should be permitted to provide the Approval Disclosure in lieu of the Application and Solicitation Disclosure. If the person is denied credit, the Application and Solicitation Disclosure should not be required.

For purposes of the transition rules, the new rules include the new Application and Solicitation, Approval, and Final disclosures, the 30-day acceptance period, the three-day right to cancel, as well as the elimination of the interim student credit extension under 226.17(i).

Section 226.39(e) – Self-Certification Form

SLSA supports the requirement to obtain a self-certification form from the consumer if a private education loan is a direct-to-consumer loan without a school certification requirement. However, SLSA members strongly believe that where there is a process in place for schools to certify loans directly with the creditor for an amount that does not exceed the cost of attendance minus other aid and federal loans, such school-certified loans should be exempt from the self-certification requirement in 226.39(e). We recommend that this exemption apply as long as the

school certification provides the information required on the self-certification form as prescribed by the Department of Education and the lender provides a copy of the school certification to the consumer no later than when the Final Disclosure is provided. We believe that this additional step of supplying the consumer with a copy of the school-certification form should address any lingering concerns that Congress intended for the consumer to see the information.

In addition, the Commentary clarifies that the self-certification provision does not apply in instances where the loan is not intended for a student attending an institution of higher education, and uses the example of a consolidation loan. In addition to consolidation loans made after graduation, loans made for bar study, medical/dental/veterinary residency or relocation are not made in connection with a school, and therefore should not be subject to this provision. SLSA requests that the Board specifically list these types of loans in the Commentary.

Section 226.38(b)(3) - Repayment Terms

The Approval and Final Disclosure proposed rules and corresponding Model and Sample forms inform private education lenders of the detailed requirements and format relative to providing loan rates and estimated total costs. However, the samples used are not reflective of a typical private education loan. A creditor's compliance with the regulation would be greatly supported by a sample form which discloses a typical private education loan. SLSA requests that the Board add to the proposed samples in Appendix H a sample for a loan involving an origination fee that is deducted from the loan proceeds, a repayment fee that is financed, and multiple disbursements. The Model Form should be revised and aligned with this sample, as applicable.

SLSA also requests that the sample reduce any confusion relative to the various terms used throughout the preamble comments, regulations and Official Staff Interpretation (Commentary) in reference to the loan amount, for example: "initial approved principal amount," "principal loan amount," "amount financed." Section 38(b)(3)(i) requires creditors to disclose the "principal amount of the loan." However, these words do not appear on the sample form. We would like clarification from the Board that a creditor meets the requirement of this section via the figure which appears either in the Amount Financed box or in the Itemization of Amount Financed. Additionally, comment 226.38(b)(3)–1 provides that if the creditor provides an Itemization of the Amount Financed that creditor need not disclose the approved principal amount elsewhere. Since this seems to say that by including the Itemization of Amount Financed the creditor may omit one of the primary disclosures, the Amount Financed box, and moreover, since this is contrary to the way the information is presented on the Board's own sample, we would like confirmation that this reading of the Commentary is correct.

226.37(b)(5) - Definition of Private education loan – loans that can be used for multiple purposes

The Board requested comment on whether private education loan application disclosures should be required for loans that may be used for multiple purposes, or alternatively, whether such loans should be excepted from any of the other disclosure requirements. SLSA believes the intent of Congress was to cover only loans that are ***offered*** expressly for postsecondary education

purposes and not loans that just happen to be used to pay for postsecondary education expenses. If a loan offered by a creditor can be used to pay for a piano, for postsecondary education expenses, or a vacation, it doesn't make sense that when the loan proceeds are used to pay for a piano or vacation, regular closed-end disclosures must be given, but if that same loan is used to pay for education expenses, entirely different disclosures must be given.

Given the enhanced liability associated with making loans covered by the new rule, creditors need certainty concerning which loans fall under the rule. Because the abuses were in private student loans that were ***offered*** by creditors intending to make private education loans, the focus should be on ensuring such loans are covered and not on including loan types that may just happen to be used to pay for postsecondary education expenses. The definition of private education loan should be based on whether or not a creditor offers private education loans and not on how the loan proceeds are used.

The proposed definition of private education loan means a loan "extended to a consumer expressly, in whole or in part, for postsecondary educational expenses." By including "in whole or in part", loans that were not intended or offered for the purpose of covering postsecondary expenses are included in the definition and this broader definition imposes the private education loan disclosure regime on multiple purpose loans. SLSA supports removing the phrase "in whole or in part" from the definition of private education loan.

Bar Study, Residency and Relocation Loans

Questions have been raised as to whether loans made for bar study, medical/dental/ veterinary residency or relocation are private education loans or multi-purpose loans. SLSA believes that these loans do not meet either definition and requests clarification in the preamble to this effect. These loans are not made to cover postsecondary educational expenses for attendance at an institution of higher education. In general, they are not school-certified loans. They are not qualified education loans for the purpose of tax deductibility. As such, these loans should continue to be subject to closed-end credit rules in Regulation Z.

Comments on Proposed Changes to Regulation Z

1. Section 226.2(a)(6) – Definition of "Business Day"

We agree with the proposal to define business day for purposes of the regulations that apply to private education loans as all calendar days except Sundays and the legal public holidays specified in 5 USC 6102(a). This will avoid any confusion over whether to count Saturday as a business day and all creditors will have the same business days for purposes of these disclosures. We note that the Board specifically permits the creditor to provide a longer cancellation period than three days.

2. Section 226.17(a)(1) - General disclosure requirements, Form of disclosures

SLSA disagrees with the proposal to make the interest rate more prominent than the Annual Percentage Rate (APR). We fully understand and support the concept of consumer testing and changing disclosures to reflect the result of such testing; however, we believe all closed-end loans should be changed at the same time. Requiring creditors to use two different

disclosure regimes for closed-end credit will be more confusing to consumers than continuing to use the same format for all closed-end loans. The testing did not determine whether consumers would be confused by highlighting the interest rate on certain loans and not even disclosing it on other loans. Our experience in consumer lending tells us there is bound to be confusion, particularly among private education loan consumers who recently received another consumer loan, such as a car loan, and received disclosures that didn't even include the interest rate. Will these consumers think one of the two disclosures is incorrect? If a consumer asks why they are different should we indicate the old format was deemed too confusing? Will the consumer then wonder why we are continuing to use the old format for car loans?

We believe the confusion over APR could be alleviated by having a better explanation of what it is. The current descriptor, "The cost of your credit as a yearly rate," doesn't tell consumers that the cost of interest and certain fees is spread over the life of the loan and it should. Consumers don't understand that the reference to "cost of credit" means interest plus these other fees and that's why the APR is generally higher than the interest rate. This should be viewed as a "teaching moment" – a chance to educate first-time borrowers about the APR calculation and why it is so important in credit transactions.

3. Section 226.17(i) - Interim student credit extensions

We support not allowing creditors to use this special rule for applications received after the effective date of the new regulation; however, the regulation should continue to include the rule and to clarify that it is effective for private education loan applications that were received prior to the effective date. It should remain clear to everyone that applications received prior to the effective date of the new regulations remain covered by the interim student credit extension rule under 226.17(i). We have additional comments on this issue in the section titled "Transition Rules."

4. Section 226.37(b) - Definitions

"Creditor" - SLSA supports applying the current definition of creditor in section 226.2(a)(17) of the regulations to private educational lenders under the new regulations. Any entity that meets the definition of creditor should comply with these regulations, and 25 transactions seem to be a fair test for deciding on whether the burden of the disclosures should apply. We have one concern, however, regarding a new entrant into the private loan business. Under the definition, which looks at activity in the preceding calendar year, it would appear that a new private education lender would not have to comply with the disclosures and other regulatory requirements for the first calendar year, even if education loans are its primary business. We would suggest an exception to the look-back rule for entities that intend to engage in substantial private education loan activity (more than 25 transactions) in their first year.

Regarding whether there are other persons engaged in the business of extending private education loans that would not be creditors under Regulation Z, there are some peer-to-peer lending arrangements in which the persons advancing the funds may not be creditors under Regulation Z, because the individuals may not fund more than 25 loan transactions a year.

5. Section 226.37(d)(1)(ii) - Timing of disclosures, Application or solicitation disclosures

Under the proposal, if a consumer makes a telephone application for a private education loan in a call that was initiated by the creditor, the creditor has the option of providing all the disclosures during the call or placing them in the mail no later than three business days after the consumer requests the credit. If the creditor provides the Approval Disclosure within the three business days, the Application and Solicitation Disclosure isn't required. SLSA supports this approach in general; however, we believe the rules should also cover telephone applications that are initiated by the consumer. We see no logical reason to vary the requirements based on the party that initiates the application.

If a consumer is denied credit and the Application and Solicitation Disclosure has not been provided, we believe it should not be necessary to send the disclosure. In fact, it would confuse the consumer to provide it at the same time the Regulation B adverse action notice is sent out. We request the Board to add a comment to this effect in the Commentary.

6. Section 226.37(d)(2) - Approval disclosures

Many private education lenders provide a preliminary or conditional credit approval to loan applicants. Final approval of the loan is made at the time the completed and signed promissory note is provided to the lender and upon receipt of the school certification for school-certified loans. At the point of preliminary credit approval, the school has most often not provided certification of all loan information, such as certified loan amount and anticipated graduation date (AGD). However, it makes sense to allow for the Approval Disclosure to be made at the time of preliminary approval based on estimates, as supported by proposed section 226.37(e). For example, the creditor may need to estimate the AGD and/or loan amount or use an AGD and/or loan amount provided by the borrower on a loan application until the school certification is obtained.

If the final rule provides for the Approval Disclosure to be provided only at the time of final loan approval (i.e., credit approved, completed/signed promissory note provided and school certification received), this will move the Approval Disclosure to a later time frame. Creditors should have the option to provide this disclosure earlier in the loan process using estimates, as necessary. We urge the Board to clarify the ability of creditors to provide the Approval Disclosure at the time of conditional approval.

7. Section 226.37(d)(3) - Final disclosures

We support the Board's interpretation that the phrase "contemporaneously with consummation" means the time after the consumer accepts the loan and at least three days before consummation. It is important that there be a bright-line test for determining when the Final disclosure is required and when the right to cancel period begins. This determination should not be subject to the vagaries of court interpretations and state laws.

8. Section 226.38(a) - Content of Disclosures, Application or solicitation disclosures

The Application and Solicitation Disclosure must be provided on or with an application or solicitation for a private education loan. Some creditors may have a single application but offer various types of private education loans. Others may have an application form for each type of private education loan they offer. The Commentary should clarify that if a loan application can be used to apply for any type of private education loan, the creditor should be able to either provide the application disclosures for the specific type of private education loan requested or a disclosure for all the types of private education loans offered by the creditor.

9. Commentary – 226.38(a)(1)(i)-1 Rates Actually offered

The proposed Commentary provides guidance for variable interest rate loans regarding how current the interest rate information must be in disclosures that are provided by mail, electronically, by telephone and on or with printed applications. SLSA believes the same rules should apply to creditors that offer fixed-rate loans. Creditors with a fixed-rate program may have "take-one" applications at schools and other locations. These creditors should not be required to replace these forms every time their interest rate changes.

The Board provides various windows of time during which rates on applications that are mailed, printed, or e-mailed may be considered current. However, there is no window for either telephone applications or disclosures viewed on a lender's webpage. In order to prevent unintentional mistakes, SLSA would recommend that the Board adopt a small window of time, such as ten (10) business days, for telephone applications or solicitations and for applications stored on websites.

10. Commentary - Section 226.38(a)(2)(i) and (ii) - Content of disclosures, Application or solicitation, Fees and Default or late Payment Costs

The proposed regulation requires an itemization of the fees or range of fees "required to obtain the private education loan" as well as charges or fees related to changes to the interest rate, and adjustments to principal based on default or late payment. It is unclear under the proposed Commentary whether a fee, such as a fee paid at repayment, is considered a fee "to obtain" the loan. If a fee is unavoidable in connection with the loan, it should be required to be disclosed in the fee section of the disclosure. Such fees would typically include origination and repayment fees, as well as application fees and credit report fees. Other fees, such as late charges, insufficient funds charges, default and collection charges, and fees for deferment, forbearance or loan modification may or may not ever apply, depending on the borrower's behavior. While we believe that these kinds of fees should be disclosed, it is unlikely that these fees and charges are considered in shopping for a loan. Therefore, in order to simplify the disclosure forms, we would recommend that fees that are not required in order to "obtain" the loan and are not relevant in determining the cost of the loan for purposes of the disclosure forms, be disclosed in the "Reference Notes" section at the end of the forms. Model and Sample forms and Commentary should be clarified and aligned regarding fee disclosure.

11. Commentary - Section 226.38(a)(3)-2 - Repayment Terms, Payment deferral options—general

This comment explains that a creditor must provide information about payment deferral options. If the creditor doesn't offer any payment deferral options, "the creditor must disclose that the consumer must begin repayment upon consummating the loan and may not defer repayment at any time." We suggest the comment be revised to indicate that payments begin as specified in the credit agreement. They may not begin until after the loan is disbursed which may be some time after consummation. Alternatively, the Board may wish to simply add the concept of repayment beginning after final disbursement of the loan.

In addition, the Commentary indicates that "payment deferral options also include any options that may apply during the repayment period." SLSA recommends that general information regarding payment deferral options during repayment be included in the "Reference Notes" section of the Application and Solicitation Disclosure. SLSA understands that information included in the "Repayment Options & Sample Costs" section of the Application and Solicitation Disclosure is reflective of deferral options applicable while the student is enrolled and does not project options and costs associated with future deferments for which the borrower must apply and qualify after the loan is in repayment.

12. Commentary 226.38(a)(3)-4 - Repayment Terms, Combination with cost estimate disclosure

The comment states an example of a disclosure that shows payment deferral options is in Appendix H-18. Form H-18 does not show payment deferral options; H-21 does.

13. Section 226.38(a)(4) - Cost estimates

The regulation states the example must be based on the "maximum rate of interest." This is confusing because a variable interest rate loan may also have a maximum rate of interest. Because it is intended that the example be based on the maximum initial rate of interest, as clarified in the Commentary, the word "initial" should be included in the regulation, and also reflected on the Model and Sample forms.

In addition, SLSA supports allowing creditors to base the example on an amount of $5,000 if the creditor doesn't offer loans of $10,000 or more.

SLSA also supports that the Commentary indicate that that any borrower benefit offered by a creditor should not be reflected in the interest rate and/or cost estimates.

14. Commentary 226.38(a)(4)-2 - Cost estimates, Principal amount and fee

The Board requests comment on alternative ways of ensuring that the total cost example reflects the cost of loan fees, whether the assumed principal amount of $10,000 should be used without adding finance charges to the principal amount, whether consumers have historically added or deducted finance charges to the loan amount requested and more.

SLSA PLC members struggled with this example and how to establish an apples-to-apples comparison for consumers shopping for a private education loan. Historically most creditors have relied on the APR provided in advertising materials to represent the cost of credit for private education loans. SLSA understands this new cost estimate intends to reflect information that the majority of consumers can more readily understand and compare.

The majority of private education loan creditors use a "fee-deduct" model whereby the total principal amount borrowed is reduced by a fee percentage resulting in the Amount Financed (amount of credit provided to borrower). However, there are also creditors who determine the total principal amount borrowed by adding a fee percentage ("fee-add") to the requested loan amount. SLSA supports allowing each creditor to use its own methodology when creating the Cost Estimates. Otherwise, the disclosure will not match the actual practice of the creditor.

In order to support the apples-to-apples comparison that the Board is seeking, while still allowing each creditor to use fee-deduct or fee-add, as appropriate, the example should use $10,000 as the amount that the borrower actually receives, net of any fees. SLSA suggests that the Board require creditors to start with a $10,000 Amount Financed (amount of credit provided to the borrower) and determine the applicable fee amount and total principal amount borrowed in accordance with the creditor's methodology. The fee amount and the total principal amount of the loan should be reflected in the "Repayment Option & Sample Cost" section of the Application and Solicitation Disclosure. "Repayment Assumptions" included in the "Reference Notes" section of the disclosure would include the fee calculation methodology.

Example:

#1 – Fee-Deduct Method (the borrower receives net proceeds of $10,000)
Amount Financed = $10,000
Fee Calculation Method: 3% of Total Principal Amount Borrowed (10,000 / .97)
Total Principal Amount Borrowed: $10,309.28
Fee Amount: $309.28

#2 – Fee-Add Method (the borrower receives net proceeds of $10,000)
Amount Financed = $10,000
Fee Calculation Method: 3% of Amount Financed added (10,000 x .03)
Total Principal Amount Borrowed: $10,300
Fee Amount: $300

SLSA acknowledges that the above proposal is not totally accurate. When a consumer requests a loan from a "fee-deduct" creditor, the amount that the consumer receives will in fact be less than what was requested because the origination and other fees will be deducted from the requested amount. Therefore in example #1 above, a consumer requesting a $10,000 loan will actually only receive net proceeds of $9,700.

Alternatively, if the Board believes that using a uniform principal loan amount of $10,000 is clearer and simpler, then we would recommend that the Board adopt the fee-deduct methodology since that is the practice of a majority of creditors making private education loans.

15. Commentary 226.38(a)(4)-5 - Cost Estimates, Deferment period assumptions

This comment indicates that for loan programs intended for educational expenses of undergraduate students, the creditor must assume that the consumer defers payments for four years plus the loan's maximum applicable grace period, if any. For all other loans the creditor must assume that the consumer defers for the lesser of two years plus the maximum applicable grace period, if any, or the maximum time the consumer may defer payments under the program.

While we understand a desire for uniformity is behind the proposal to require the cost example to be based on four years for undergraduate loans and two years or a lesser period for all other loans, we think the example will be confusing for certain loan programs and would like lenders to have the option of providing the example based on the terms of the program they offer. For example, loans for law and medical students anticipate a deferral period of three or four years. Under the proposal, lenders would be forced to assume a deferral period of two years. In addition, SLSA members would like the flexibility to use a deferral period of less than four years for undergraduate students if the loan program does not allow a deferral of four years.

16. Section 226.38(a)(5) - Eligibility Requirements

Any age or school enrollment eligibility requirements must be disclosed. SLSA supports limiting the eligibility requirements to age and school enrollment, which are the primary eligibility requirements for private education loans.

17. Section 226.38(a)(6)(ii) - Alternatives to Private Education Loans

SLSA requests the Board to clarify that interest rates for Grad PLUS loans are required to be included in the list. This should be clarified in the Model and Sample forms also.

18. Section 226.38(a)(7) - Rights of the Consumer

Creditors will be required to disclose that the consumer has at least 30 days to accept the loan during which time the terms won't change except that the interest rate may change based on the variable index it is tied to. We strongly support the ability to make unequivocally beneficial changes and to make changes based on a request by the consumer (even when those may cause additional changes by the creditor). Whether other changes should be allowed is discussed below under our comments on 226.39(c). With respect to the issue of whether more detail on possible changes should be permitted, we note that it is very difficult to cover all potential scenarios concisely in a two-page disclosure and that all of such potential changes would be explained in the promissory note. The Board may wish to provide one or two examples of changes. Certainly the most common change is likely to be a change in the loan amount as a result of a school certification (or even a change in the school certification originally provided). Increases or decreases in the loan amount may change other loan terms, in particular, the term of the loan.

19. Section 226.38(a)(8) - Self-Certification Information

The regulation states the Application and Solicitation Disclosure must include a statement that, before the loan may be consummated, the consumer must obtain from the relevant institution of higher education the self-certification form, and complete, sign and submit it to the creditor. The Model and Sample forms, however, do not instruct the consumer to sign the form and submit it to the creditor. We recommend that they be changed to include this required information. However, if the SLSA recommendation to exempt school-certified loans from the self-certification form provision is accepted, creditors will need the authority to delete this information from the Model Form, as applicable.

20. Section 226.38(b)(3)(vi) – Bankruptcy Limitations

The Board requests comment on whether disclosure of education loan discharge limitations in bankruptcy should be included in the Application and Solicitation Disclosure as implemented by § 226.38(a)(2).

SLSA has no objection to the continued disclosure of bankruptcy limitations relevant to student loans. This limitation is a unique characteristic of student loans, and while it is a characteristic which ultimately allows creditors to pass cost savings on to consumers it is a characteristic with the potential to have a significant impact on a consumer's future. The disclosure of it is reasonable. Furthermore, we wish to point out that this characteristic of education loans is not unique to private education loans but extends also to federal education loans. The membership of SLSA would like the Board to make clear that lenders may also disclose the fact that federal loans have the same limitations on bankruptcy as do private education loans.

21. Section 226.38(b)(3)(vii)(B) – Maximum Possible Rate

The Board requests comment on whether a specific maximum rate assumption should be used for disclosures where a maximum rate cannot be determined, and, if so, whether 21% is the most appropriate rate or whether another rate should be used. The Board also requests comment on whether, if a maximum rate of interest is to be specified, the Board should publish the rate periodically, based on a median or a commonly used usury rate applicable to private education loans in various states. The Board also requests comment on alternative approaches by which creditors may make a good faith estimate of a maximum possible rate when a maximum rate cannot be determined.

Many in the SLSA membership agree with the Board's proposed use of a maximum interest rate of 21% where a different maximum interest rate cannot be determined. However, the membership of SLSA also includes lenders for whom 21% would represent an excessively high disclosure compared to their historical rates and would, therefore, give an unlikely if not inaccurate representation to consumers. Because SLSA was unable to reach consensus on this recommendation, members of the SLSA PLC will provide individual comments to the Board regarding maximum possible rate.

22. Section 226.38(b)(3)(vii)(C) – Maximum Monthly Payment

As with proposed § 226.38(b)(3)(vii), the Board requests comment on other approaches by which creditors may calculate a maximum payment when a maximum rate cannot be determined. See comment under section 226.38(b)(3)(vii)(B).

23. Section 226.38(b)(5)(ii) – Beneficial Changes

As discussed in the section-by-section analysis in § 226.39(c), the Board is proposing to allow the creditor to make unequivocally beneficial changes, to make changes based on a request by the consumer, and is requesting comment on whether other changes should be allowed. The Board requests comment on whether the disclosure should include more detail on possible changes to the rate or terms.

Many of the members of the SLSA Private Loan Committee require school certification of their loans. This is a process wherein the school assures against overborrowing by the student by verifying the student's need and, as necessary, adjusting the loan amount. SLSA requests that the Board allow creditors to make changes to the approved loan, during the 30-day acceptance period, based on certification from the school. For example, if a creditor approves a student for $10,000 but the school only certifies an amount of $7,000 the creditor should be allowed to make this change to the approved loan. Likewise, if a creditor uses a borrower certified AGD and the school certifies a new AGD as part of the school certification, the creditor should be permitted to use the new AGD in the Final Disclosure. Because the school certification comes so late in the process, SLSA would also request that the creditor not be required to re-send the Approval Disclosure and re-start the 30-day clock. The consumer will shortly receive the Final Disclosure which will have updated terms, and will have a three-day right to cancel if he/she does not agree with the terms as finally disclosed.

See also the discussion under section 226.39(c).

24. Exception re: TILA Requirement 128(e)(4)(B)

SLSA supports the Board-proposed exception to drop the federal loan alternatives disclosure in the final set of disclosures. We agree that based on the timing of the Final Disclosure, this specific disclosure requirement does not provide a meaningful benefit to the consumer and is more appropriately placed in the Application and Solicitation and Approval disclosures.

25. Section 226.38(c)(4) - Cancellation Right

Regarding the placement of the right-to-cancel statement and making this disclosure more conspicuous than other disclosures required under § 226.38(c), SLSA requests that the Board allow this statement to be positioned on the Final Disclosure so as to allow for the use of window envelopes. Creditors often include consumer name and mailing address as part of the disclosure form to facilitate mailing processes utilizing window envelopes.

26. Section 226.39(c) Consumer's Right to Accept

The Board requests comment on whether there are other instances where a material condition of the loan offer is not met such that the creditor should be permitted to withdraw the offer or change the terms of the loan. SLSA agrees that situations involving fraud may arise, as well as change in student enrollment status or other eligibility criteria that may result in the withdrawal of a loan offer. For example, a state-based lender may have requirements to lend to residents or students attending schools located in its state. A student may receive a preliminary approval to borrow a loan, but upon the lender's receipt of the school certification, there may be a determination that the student doesn't meet the eligibility requirements to borrow from that particular lender, resulting in a withdrawal of the offer. Other extenuating circumstances that could result in an offer withdrawal or potential change in loan terms may include bankruptcy, withdrawal of a co-borrower, or failure to meet another eligibility condition. These changes by a lender in the terms of the loan could occur during or after the 30-day acceptance period or even following the Final Disclosure, in certain cases. Lenders must have the right to change the loan terms or withdraw the offer where the consumer does not meet the stated eligibility requirements, and the Commentary should reflect this fact. In addition, in order to avoid misleading the consumer, the disclosures should also note that the offer may be changed or withdrawn if the consumer does not meet all of the eligibility conditions of the loan.

27. Section 226.39(d) – Consumer's Right to Cancel

SLSA requests that the Board clarify whether all consumers who are obligated on a private student loan have a right to cancel, or whether this right belongs only to the principal debtor.

28. Section 226.39(f) – Provision of Information by Preferred Lenders

The Board has requested comment on the appropriate date by which preferred lenders must provide the required information on a model form and on what information should be required. In addition, the Board has requested comment on whether this model form should be issued in final form at the same time as the other proposed rules. Under the proposed regulations, creditors who are involved in a preferred lender arrangement are to provide educational institutions with terms and conditions by January 1st of each year. The Board proposes to use the general information on the application form (§ 226.38(a)) as the template for the model form, or to permit the lender to provide general information regarding rates, terms and eligibility (without providing the other information in the form, such as availability of federal loans and cost estimates).

SLSA believes that the proposed time frame of January 1 is inappropriately early and will be difficult to comply with. Based on current practices with schools, a more appropriate date would be April 1st of each year. There is a general process for awarding financial aid that typically involves packaging financial aid by schools during February, providing financial aid award letters to students in the March/April time frame, and consulting with students and families regarding financial aid and options beginning in April and continuing throughout the

academic year. In addition, lenders are generally determining private loan program attributes, financing, etc. for the upcoming academic year to be ready for this traditional financial aid awarding schedule. An April 1 time frame fits within the current timeline for providing schools with information about pricing and other private education loan attributes and will result in more accurate loan disclosures from schools to students.

SLSA supports the approach taken by the Board with respect to providing a covered institution in a preferred lender arrangement with the information required under 226.38(a)(1), (2), (3) and (5) in any format, or the option to provide the school with copies of the Application and Solicitation Disclosure the lender uses to comply with 226.38(a).

SLSA requests that the Board clarify that schools that provide preferred lender disclosures based on information provided by creditors in accordance with 226.39(f) are exempt from the advertising rules in 226.24 of Regulation Z.

29. Effective date for final regulations

The implementation date definitely needs to be at least six months into the future given the complexities and the programming required by lenders and servicers. We would urge the Board to publish final regulations by August 14, 2009 (and as close to that date as possible) so that lenders and servicers will have the full six months to reprogram systems, make necessary modifications to any APR calculation required to comply with the proposed removal of the interim student credit extension rule, change workflow and internal procedures, and redraft loan agreements and disclosures. Lenders and servicers will have to work very hard to implement the rule in only six months. Also, February is a good time frame for implementing changes, since it follows the typical final disbursement cycle for the second semester beginning in January and is before new applications are received for the upcoming academic year. This time frame is expected to minimize transition issues for creditors.

30. Model and Sample Forms

We appreciate the fact that the Board has developed sample forms, in addition to the model forms required by statute. Such forms have been very helpful in understanding our disclosure obligations. To that end, we ask that the Board include in the final regulations a sample disclosure form that correlates more closely to the features of a "typical" private education loan: multiple disbursements, an origination fee, and a repayment fee. In addition, it should contain sample disclosures about the ability of the consumer to obtain a deferral of loan payments once in repayment.

Because the use of a co-borrower is typical in private education loans, and is an important tool in helping to reduce the interest rate on a loan, we would urge the Board to consider moving the co-borrower disclosure from the "Reference Notes" section up to the interest rate disclosure. It can be included in the text under "your starting rate."

As indicated in the discussion with respect to § 226.38(a)(2)(i), SLSA recommends that only the fees that are required "to obtain" the loan (such as application, origination, and

repayment fees) be disclosed in the first section of the various disclosures. Fees that are optional or for an additional service, or that depend on the consumer's behavior (such as insufficient funds charges, late fees, collection fees, fees for forbearance, etc.) should be disclosed in the "Reference Notes" section at the end of the document.

As indicated in the discussion with respect to § 226.38(b)(3)(vi), SLSA recommends that the bankruptcy disclosure should be included in the "Reference Notes" section of the Application and Solicitation Disclosure.

As indicated in the discussion with respect to § 226.39(c), SLSA recommends that the Board include language regarding the creditor's ability to change the loan terms or withdraw the loan if the consumer does not meet certain eligibility criteria.

Many lenders would prefer to create two-sided documents for both economical and ecological reasons. Please indicate in the Commentary whether this is permissible. It would also be helpful to have confirmation that the disclosures can be longer than two pages. We believe that in certain instances the Approval Disclosure especially (because it has more detailed terms and includes the section on "Federal Loan Alternatives") may exceed two pages.

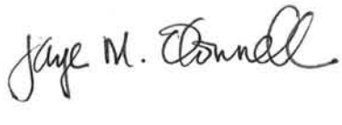
SLSA also requests clarification and confirmation that certain tracking information, such as a unique application/account ID and/or date may be included on the approval and final disclosures without losing safe harbor protections.

Finally, we would note a few small corrections on the Model and Sample forms.

- In the list of Federal Loan Alternatives, the PLUS category should include Graduate/Professional Students as well as Parents when the disclosure is provided for private education loans made to graduate or professional students.
- To prevent confusion, if the Board continues to require that the consumer complete and return a self-certification form for all loans (including those that are certified by the school), then the name of the form should be corrected to read "Self-Certification Form" (in item 2 under "Next Steps" on the Application and Solicitation Disclosure).
- In addition, the forms should permit the consumer to return the completed self-certification form to the lender.

Thank you for considering our comments. Please feel free to contact us if you have questions.

Sincerely,



Winfield P. Crigler
Executive Director
Student Loan Servicing Alliance
wpcrigler@slsa.net

Jaye M. O'Connell
Chair
SLSA Private Loan Committee
oconnell@vsac.org

SLSA Private Loan Committee
Member Organizations (as of 5/2009)

ACCESS GROUP, INC.
ACCOUNT CONTROL TECHNOLOGY
ACS, INC
AES/PHEAA
ALASKA COMMISSION ON POSTSECONDARY EDUCATION
ALLIANCE ONE
BANK OF NORTH DAKOTA
CAMPUS DOOR
C-BRIDGE CORPORATION
COLLEGE FOUNDATION, INC.
COLLEGE LOAN CORPORATION
COLOGY, INC,
EDFINANCIAL SERVICES
EDSOUTH
ENTERPRISE RECOVERY SYSTEMS, INC.
THE FIRST MARBLEHEAD CORPORATION
GENESIS FINANCIAL SOLUTIONS, INC.
GRADUATE LEVERAGE
GRANITE STATE MANAGEMENT & RESOURCES
GREAT LAKES EDUCATIONAL LOAN SERVICES, INC.
HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY (HESAA)
ILLINOIS DESIGNATED ACCOUNT PURCHASE PROGRAM (IDAPP)
IOWA STUDENT LOAN LIQUIDITY CORPORATION
IQOR, INC.
KENTUCKY HIGHER EDUCATION STUDENT LOAN CORP.
MOUNTAIN AMERICA CREDIT UNION
MEFA
MES – MAINE EDUCATION SERIVCES
MICHIGAN HIGHER EDUCATION STUDENT LOAN AUTHORITY
MINNESOTA OFFICE OF HIGHER EDUCATION
MISSOURI HIGHER EDUCATION LOAN AUTHORITY (MOHELA)
NCHELP
NATIONAL EDUCATION SERVICING LLC
NCO GROUP, INC.
NELNET
NEW MEXICO STUDENT LOANS
NORTHSTAR
NORTH TEXAS HIGHER EDUCATION AUTHORITY
OSI EDUCATION SERVICES, INC.
PANHANDLE-PLAINS STUDENT LOAN CENTER
PROGRESSIVE FINANCIAL SERVICES, INC.
REGIONAL ADJUSTMENT BUREAU (RAB)
RELIAMAX SURETY COMPANY
RHODE ISLAND STUDENT LOAN AUTHORITY (RISLA)
SALLIE MAE, INC.
SOUTH CAROLINA STUDENT LOAN CORP.
STUDENT ASSISTANCE FOUNDATION (Montana)
THE STUDENT LOAN CORPORATION (CITIBANK)
STUDENT LOAN FINANCE CORP.
SUNTRUST BANKS, INC.
U.S. BANK
UTAH HIGHER EDUCATION ASSISTANCE AUTHORITY
VERMONT STUDENT ASSISTANCE CORP.
WACHOVIA EDUCATION FINANCE
WELLS FARGO EDUCATION FINANCIAL SERVICES
WEST ASSET MANAGEMENT
XPRESS LOAN SERVICING