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OFFICE OF THE VICE PRESIDENT — STUDENT AFFAIRS

OFFICE OF THE PRESIDENT
1111 Franklin Street, 9th Floor
Oakland, California 94607-5200

May 26, 2009

Docket No. R-1353
Attn: Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave. NW
Washington, DC 20551

Dear Ms. Johnson:

I am writing on behalf of the ten-campus system of the University of California (UC) to offer our comments on the Federal Reserve's proposed amendments to Regulation Z (Truth in Lending), Docket No. R-1353. Collectively, our campuses enroll more than 220,000 undergraduate and graduate students.

Our comments are intended to ensure that the provisions of the Higher Education Opportunity Act (HEOA) are implemented in a practical way that will still protect the interests of students. With that intent in mind, there are a few instances where the Federal Reserve is asked to exercise its authority to make exceptions so that the best interests of students are preserved while avoiding unintended consequences that could inadvertently harm the students we serve. UC requests the Federal Reserve to require greater transparency in creditor practices so that students can make informed decisions about whether or not to apply for a loan with a particular creditor. In addition, UC requests that the Federal Reserve adopt the proposed recommendations that would better assist institutions that offer "preferred lender lists" to provide loan details that the institution believes would be most helpful to students and on a frequency that corresponds with the institution's updating of loan detail information for that list, such as current interest rates and total loan cost.

The University appreciates the opportunity to comment on these proposed regulations. Should you have any questions regarding the University's recommendations, please contact Jackie Ito-Woo at (510) 987-9544 or via email at Jackie.Ito-Woo@ucop.edu.

Sincerely,

Kate Jeffery
Director
Student Financial Support

Section 226.17(a)(2) General disclosure requirements

The Federal Reserve proposes to use its authority to except private education loans from the requirement that the annual percentage rate (APR) and finance charge be more prominent than any other disclosure, except the creditor's identity. Instead, the proposed rules would require the finance charge to be more prominent than APR on creditor disclosures.

Requiring an APR gives borrowers an idea of the overall cost of a loan. Since an APR is just an annualized interest rate, they are often very close to the finance charge. But APRs are different than finance charges because they help borrowers compare overall costs of a loan. We recommend that the Federal Reserve maintain the APR and finance charge in equal proportions.

Furthermore, the elements that must comprise the APR should be spelled out in regulations to ensure that creditors accurately disclose all fees, regardless of what they may be called, e.g., "transfer fee" or "set-up fee." They should be included in the APR calculation if the student has to pay that fee upfront or have the fee financed as part of the loan in order to be eligible for the loan.

Section 226.37 Special Disclosure Requirements for Private Education Loans

We recommend that several categories of loans be excluded from the definition of private education loan. The additional administrative burden of covering these loans does not provide commensurate benefits to students. The resources institutions will spend on meeting these requirements for these categories of loans or payment plans would be better spent counseling and working with students to help them find the resources they need to cover their educational costs.

Exempt federal loans. Current regulations already exempt "loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965." But there are other forms of federal loans—such as title VII and title VIII of the Public Health Service Act—that are equally as beneficial to students and should not be subject to TILA requirements since they are federal loans. The Department of Education recently reinforced this idea when it decided to use language to exempt these other forms of federal loans from the definition of preferred lender arrangements during negotiated rulemaking. We recommend that 226.37(b)(5)(i) be modified to read:

Is not made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 <u>or loans made under title VII or title VIII of the Public Health Service Act.</u>

Exempt institutional loans. Many institutions offer institutional loans with more favorable terms than other private loans available in the market. In fact, many institutions offer institutional loans that have more favorable terms than most federal loans—with fixed interest rates of 5 or 6 percent, no upfront fees, and no accrual of interest while the student is enrolled at least half time and during grace and deferment periods.

The Federal Reserve's proposed definition of a private education loan would clearly include institutional loans and would require them to be subject to TILA disclosure requirements, even when the loans have terms and conditions that are equal to or better than unsubsidized federal loans. Requiring institutions with these loans to comply with TILA will put an enormous amount of unnecessary administrative burden on institutions. More importantly, this will lead to even greater confusion among students who will be inundated with disclosures for loans that will be far better than other private loans.

Institutional loans take many forms. At some institutions, institutional loans are often funded through numerous separate endowed loans [programs], sometimes with unique requirements or terms set by the donor. Two UC campuses administer more than one hundred such funds. Other institutional loans are funded though institutional resources to provide additional support for students who do not receive sufficient support from other aid sources. At UC, institutional loans are usually offered through the student aid award process to those the institution believes are most in need. The terms of these loans are typically similar to those of the Federal Perkins Loan—a subsidized, low-cost student loan for financially needy students. Consequently, students are not given the option to request these loans as there are insufficient funds to accommodate such requests.

We also recognize that some institutions may provide institutional loans that are no better or may even have worse terms and conditions than other private student loans. In extreme cases, some institutions may even offer terms and conditions that could be considered usurious in nature. To ensure exemption of only institutional loans with certain terms or conditions that are comparable or better than federal loans, we recognize that several higher education associations are recommending that 226.3 be modified to exclude institutional loans that meet certain minimum requirements such as:

- An interest rate capped at a rate no greater than an unsubsidized Stafford loan (currently fixed at 6.8 percent);
- No up-front or hidden fees;
- No requirement to pay loan principal until the student ceases to be enrolled at least half-time;
- No interest capitalization while enrolled; and
- No prepayment penalty

For loans that accrue interest during the period the student is enrolled at least half time, UC supports these loan parameters for exclusion. In addition, however, UC's institutional loans do not accrue in-school interest; rather, UC's institutional loans are heavily subsidized during the period the student is enrolled, including the grace period. The terms of some of the endowment loans, however, require a simple interest rate of 8% with no interest capitalization at any time throughout the life of the loan. Consequently, an 8% interest rate with no interest accrual during the in-school period and no interest capitalization results in a lower loan cost than one that charges in-school interest at a lower interest rate.

Therefore, UC suggests a slightly modified version of the parameters suggested by some of the higher education associations:

- An interest rate capped at a rate no greater than an unsubsidized Stafford loan (currently fixed at 6.8 percent) if interest accrues while the student is enrolled at least half time, or an interest rate capped at no greater than 8.0% if no interest accrues while the student is enrolled at least half time;
- No up-front or hidden fees;
- No requirement to pay loan principal until the student ceases to be enrolled at least half-time;
- No interest capitalization while enrolled; and
- No prepayment penalty

We propose that 226.37(b)(5) be modified to read: <u>Does not include loans made by a covered institution that is funded by the covered institution's own funds or funded by donor-directed contributions, with an interest rate capped at a rate no greater than an unsubsidized Stafford loan (currently fixed at 6.8 percent) if interest accrues while the student is enrolled at least half time, or an interest rate capped at no greater than 8.0% if no interest accrues while the student is enrolled at least half time; no up-front or hidden fees; no requirement to pay on loan principal until the student ceases to be enrolled at least half-time, no interest capitalization while enrolled, and no prepayment penalty."</u>

Other coverage issues

Deferred Payment Plans (aka "Tuition Payment Plans"). At UC, deferred payment plans are offered to help students and families pay for fees (approximately $8,700 in 2009-10) or fees and tuition (approximately $31,700 in 2009-10), without having to resort to traditional long-term student loans or use high-cost credit cards. These payment plans offer a convenient, low-cost alternative. However, there has been considerable discussion recently about whether these plans might be covered, so greater clarity about the applicability of Reg Z to such plans would be helpful.

At UC, deferred payment plans are set up in several different ways but with many commonalities. The payment plans allow the student to spread out payment of amounts due to the institution over a specific number of payments, generally timed so that the receivable is paid in full before the end of the period of enrollment. Some campuses offer these plans term-by-term or, for convenience purposes, for the entire year, thus eliminating the need for the student to reapply each term. Even if the annual plan is selected, the student can opt out of the plan, without penalty, for any term provided that the prior term's fees and tuition are paid in full. Plan enrollment may also be open to students later in the process, so that those who are having trouble meeting the payment deadline can sign up for the extended payment plan and avoid being de-registered for classes.

Other factors that distinguish these plans include:

No funds are disbursed; only due dates for payment of these required fees and tuition are extended so that payments can be made in multiple installments.

None of the UC plans charge interest, but all charge an administrative fee to enroll, generally in the range of $25 - $40 per term, or with a slightly discounted annualized rate for an annual plan. The enrollment fee may be charged once, covering many terms, or separately for each term in which the plan is used. Plans charge late fees on missed payments.

Enrollment in the plan may be set up by the term, the year, or for a longer period. Typically, the number of payments per term bill will be between 3 and 5, or 6 to 10 payments over a year. Typically the first payment is a "down payment" of a portion of the required fee/tuition amount with the balance of the amount due scheduled in installments.

Some campuses may have students or parents who sign up for a deferred payment plan sign a promissory note acknowledging their obligation to the institution to make it easier to collect the debt from those who do not follow through on the terms of the payment plan or declare bankruptcy.

For institutions that currently manage their own payment plans, additional requirements, such as creating the mechanism to allow for monitoring the three-day rescission, could be sufficiently costly that these plans may be discontinued all together or outsourced, creating additional administrative expense to the programs for which students would ultimately have to pay.

Short-term or Emergency Loans. Many colleges and universities operate loan funds designed to provide short-term or emergency loans to students to cover a variety of immediate needs (car repairs, unexpected medical expense, travel home due to an emergency, textbook costs pending receipt of other aid). At the UC, short-term/emergency loans do not charge interest nor application or other upfront fees; repayment of the loan amount is typically due within the term, usually in one to four payments.

These loans may be considered advances against expected late-arriving aid or other resource. The institution might require a promissory note or simply an authorization to repay the short-term loan out of anticipated aid funds when they arrive.

We believe that such loans would fall under the existing exemption for loans with less than four scheduled payments and no finance charge.

Section 226.37(d)(1)(B) Timing of disclosures, Application or solicitation disclosures (oral and electronic disclosures)

The Federal Reserve should not allow a creditor to accept a student's verbal acceptance of a loan when a telephone application or solicitation is involved, whether initiated by the creditor or the student. A separate and additional acceptance step by the student should be required after the written disclosures have been received by the student to ensure that the student is making an informed decision. Too many students have unwittingly accepted loans when they thought they were only inquiring about loan eligibility, interest rates, or other loan information.

Electronic loan application processes should also require an extra step in the process—after the interest rate for which the student has been approved has been disclosed to the student—before the student's acceptance of the loan is valid. Although creditors' electronic systems have been developed to streamline the application process, some have made the application/acceptance process so streamlined that it is an all-in-one process. Consequently, students do not always realize that submission of the application may also serve as an acceptance of the loan upon approval.

The Federal Reserve should exercise extra care and caution in developing these regulations that involve oral communications or electronic applications between creditors and student to ensure that the best interest of students are protected.

Section 226.38(a)(1)(i) Content of disclosures, Application or solicitation, Interest Rates and Creditworthiness

The Federal Reserve proposes rules that would require creditors to disclose the interest rate or range of interest rates applicable to the loan at the time of application. If the rate will depend on a later determination of the borrower's creditworthiness, the creditor must also include a statement that the rate will depend on the consumer's creditworthiness and "other factors, if applicable."

We believe that students deserve to know exactly what factors will be used in determining their eligibility for loan approval as well as the interest rate. Private education loan interest rates may depend on myriad factors and increasing transparency in this area will be beneficial to students.

Required disclosure of the "automatic" loan eligibility disqualifiers would also be very helpful to students.

Section 226.38(a)(4) Content of Disclosures, Application or solicitation disclosures, Cost Estimates

A common practice among creditors of private loans is to advertise "borrower benefits" that are conditioned on certain borrower behavior or action, such as an interest rate reduction after X number of on-time, monthly payments are made, or if the borrower enrolls in an arrangement to have loan repayment debited directly from the borrower's checking or savings account. Creditors should not be allowed to take into account such "conditional" benefits and associated discounts, whether a flat fee or percentage based fee, when calculating the loan cost estimates.

Additionally, uniform assumptions should be made for those calculations, such as the timing of loan disbursement of the loan amount (e.g., loan amount is disbursed to the student in two installments—once per semester) and when repayment of principal and interest is expected to begin. Otherwise, the cost estimates will be meaningless.

If it is unrealistic to have creditors use uniform assumptions, then, at a minimum, creditors should be required to disclose the assumptions used in their cost calculations.

Just as the elements that must comprise the APR should be spelled out in regulations to ensure that creditors accurately disclose all fees, regardless of what they may be called, e.g., "transfer fee" or "set-up fee," they should be included in the cost estimate calculation if the student has to pay that fee upfront or have the fee financed as part of the loan in order to be eligible for the loan.

Section 226.38(a)(5) Content of disclosures, Application or solicitation, Eligibility

The Federal Reserve proposes rules that would require creditors to disclose any age or school enrollment eligibility requirements relating to the consumer or co-signer, if applicable.

We believe that students deserve to know exactly what factors will be used in determining their eligibility for loan approval and increasing transparency in this area will be beneficial to students.

Required disclosure of the "automatic" loan eligibility disqualifiers would also be very helpful to students.

Section 226.38(a)(9) Content of Disclosures, Application or solicitation disclosures, Borrower Benefits

A new section should be added that describes any borrower benefits the creditor is offering to borrowers. This section should consist of two parts: 1) conditional benefits, meaning the benefit must be "earned" by the borrower based on borrower behavior or action and 2) unconditional, available to 100% of borrowers, and the benefit cannot be lost. For the conditional benefits, information on what is required to qualify for the benefit, how the benefit can be lost and whether such lost is permanent, and if not permanent, how the borrower can regain eligibility for the benefit.

Section 226.38(a)(6) Content of disclosures, Application or solicitation, Alternatives to Private Education Loans

The Federal Reserve proposes regulations that would require a statement that the consumer may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965, as well as the applicable interest rates for those loan programs. To implement this provision, the Federal Reserve proposes to label the relevant section of its model form "Federal Loan Alternatives" as opposed to requiring creditors to state that federal loans may be obtained in lieu of or in addition to private education loans.

While we appreciate the Federal Reserve's concern about overloading consumers with information, we believe that these disclosures should clearly state that students may qualify for Federal financial assistance and should encourage students to use all available title IV aid before using private education loans.

In addition, proposed comment 38(a)(6)(ii)-1 would explain that the disclosure must list the address of an appropriate U.S. Department of Education Web site such as http://federalstudentaid.ed.gov. While that Web address would take borrowers to the main Federal Student Aid Gateway, we recommend that the disclosures use http://federalstudentaid.ed.gov/federalaidfirst/index.html, a Web site set up by the Department of Education specifically promoting the use of federal student aid before turning to private student loans. Creditors should be required to use the most up-to-date Web address offered by the Department of Education on this matter.

Section 226.38 (b)(1) Content of disclosures, Approval disclosures, Interest Rate

Under proposed rules, creditors would be required to disclose whether the interest rate is variable or fixed. If the interest rate is variable, comment 38(a)(1)(iii)-2 would require the creditor to disclose (1) the maximum allowable increase during a single time period, or the lack of such a limit, and (2) the maximum allowable interest rate over the life of the loan, or the lack of a maximum rate.

Listing the maximum allowable interest rate on a variable loan is important, but of equal importance is giving borrowers a realistic look at the rate they can expect to pay. Therefore, we feel it is also important for creditors to disclose either the weighted average rate borrowers receive on their loans or the index and margin for which most loan applicants are approved—both for loans with cosigners and without cosigners.

Creditors may use “teaser” rates to entice consumers to use their product, but the number of borrowers that qualify for these teaser rates is questionable. Requiring creditors to disclose the weighted average interest rate borrowers receive or the index and margin for which most loan applicants qualify will give borrowers a realistic depiction of the rate they can expect to receive.

Having this type of “most commonly approved interest rate/index plus margin” information will be especially helpful to institutions that offer their students “preferred lender” lists. This rate information can be used as the sole criterion, or among the criteria, on which the selection of the creditors for such lists is based. Currently, the lowest cost interest rate/index plus margin may be the basis on which the creditors are selected, even if it is not representative of the rate for which most loan applicants will qualify. Greater creditor transparency is desperately needed in order for institutions to better protect the best interests of their students as not all creditors will otherwise provide such critical information.

The Federal Reserve should also require creditors to disclose whether there is an interest rate floor or the absence of a floor. Without having this type of information, a student might unwittingly assume the possibility of a much lower interest rate when, in fact, the creditor has an interest rate floor.

Section 226.38 (b)(2) Content of disclosures, Approval disclosures, Fees and Default or Late Payment Costs

The proposed rules would require an itemization of the fees or range of fees required "to obtain" the private educational loan as well as fees or adjustments due to "defaults or late payments." However, some creditors charge fees for borrowers to request deferments, forbearances, or other services.

Since these a private education loans, creditors should not be allowed to charge these types of fees for assisting students when they are faced with repayment difficulties. These types of fees would not be reflected in either the APR or cost estimates, yet many students are likely to need these types of administrative repayment relief.

Section 226.38(b)(3) Content of Disclosure, Approval disclosures, Repayment terms (new: Borrower Benefits)

A new subsection should be added that describes any borrower benefits the creditor is offering to borrowers. This section should consist of two parts: 1) conditional benefits, meaning the benefit must be "earned" by the borrower based on borrower behavior or action and 2) unconditional benefits that 100% of borrowers will receive, and the benefit cannot be lost. For the conditional benefits, information on what is required to qualify for the benefit, how the benefit can be lost, whether such loss is permanent, and if not permanent, how the borrower can regain eligibility for the benefit.

There are some creditors who advertise great borrower benefits but will not commit to describing these benefits in writing in a manner that obligates the creditor to honor the benefit later in repayment when the borrower might otherwise qualify. For example, creditors of private loans will not incorporate these benefits into the promissory note. If creditors are allowed to advertise these benefits, creditors should be required to back them up and be accountable for honoring them if the borrower meets the advertised eligibility requirements.

The problem is that some creditors have been known to withdraw these benefits, at will, after the loan has been consummated, since creditors are not currently required to provide these commitments in writing to the borrower.

Section 226.38(b)(3)(vi) Content of disclosures, Approval disclosures, Bankruptcy

The proposed rules would require the creditor to disclose at the time of loan approval that if the consumer files for bankruptcy, the consumer may still be required to pay back the loan. We urge the Federal Reserve to add this statement to 226.38(a), during application or solicitation. The fact that private education loans are generally not dischargeable in bankruptcy is inconsistent with other forms of private credit. This is one of the dangers of private student loans and consumers should have that information disclosed as early as possible, preferably before they apply for the loan.

Section 226.39(a) – Limitations on private educational loans: Co-branding prohibited

The Federal Reserve proposes regulations that would prohibit a creditor from using the name, emblem, mascot, or logo of a covered educational institution, or other words, pictures, or symbols identified with a covered educational institution, in the marketing of private education loans in a way that implies that the covered institution endorses the creditor's loans, unless the institution and the creditor have entered into a preferred lender arrangement. While we support the Federal Reserve's proposed safe harbor to allow creditors to use the name of the institution if necessary to provide useful information to the institution's students, we have two concerns with this provision.

First, if institutional loans are not excluded from the definition of private education loan, or for any types of institutional loans that are covered, the creditor and the institution are the same entity. Certainly an institution should not be prohibited from using its own name, emblem, mascot, or logo when providing information about its own institutional loan. Therefore we seek an exception to this proposed regulation for loans made by an institution, i.e., an "institutional loan."

Second, we object to the Federal Reserve's proposal to ignore the statutory ban on co-branding in cases of a preferred lender arrangement. This would be in direct contradiction to statutory intent, Department of Education regulations, and the desire of most colleges and universities. Even if an institution enters into a specific agreement with a preferred lender, the institution is unlikely to want the creditor to use its name in marketing materials over which it has no control. Under regulations that will be proposed by the Department of Education shortly, an institution may not allow a creditor in a preferred lender arrangement to co-brand its loans. Furthermore, under those same proposed rules, an institution can be determined to be party to a preferred lender arrangement quite easily without having any direct relationship or agreement with a creditor. Simply providing a list to students of the 10 creditors used most frequently by its students last year would be enough, if the list did not include every creditor who provided a loan to one of its students. We believe the better course is to prohibit co-branding by using an institution's name and symbols unless the institution is party to the loan.

Section 226.39(d) Consumer's right to cancel

The rescission period must be as generous as possible to ensure that the borrower has all the facts before being obligated to repay the loan. A narrow definition of the three-day period would be a disservice to students. There should be no prepayment penalty imposed on the student to cancel the loan.

If the student is making an informed decision and needs the loan proceeds sooner, the Federal Reserve should allow the borrower to waive the three-day disbursement delay, but only at borrower request and as a separate and distinct step in the loan acceptance process.

Section 226.39(e) – Limitations on private educational loans: Self-certification form

The Federal Reserve proposes that creditors obtain from the consumer a self-certification developed by the Secretary of Education under section 155 of the Higher Education act of 1965, signed by the consumer before consummating the private education loan.

This provision is nonsensical in situations where the institution is the creditor making loans from its own funds or from donor-directed contributions. Requiring institutions to give a student a self-certification form, and then requiring the student to turn that self-certification form right back to the institution creates additional burdens for both the institution and the student. Institutions could still provide the student with a simple disclosure that lists the data elements required by statute.

We also seek an exception to the self-certification form for institutions that are already providing direct certifications to creditors. Currently, if a private educational loan certification request is sent to an institution by a creditor, the institution provides the information that would be required by the self-certification form, as well as additional information such as the student's enrollment status and anticipated graduation date. Since this information is already being provided directly from the institution to creditors, there is no need to provide another form for a student to certify the same information. As suggested above, the institution could provide a notice to the student advising the student that it has certified a private education loan as requested by Creditor X for Y amount, and providing the statutory disclosures.

For institutions that currently certify thousands of private loans each year through a streamlined process directly to a creditor, introducing a self-certification form would be extremely burdensome, less reliable, duplicative, and more error-prone. The likelihood of error as the data goes from institution, to student, to creditor, is increased, thereby creating conflicts that need further resolution. It seems clear that Congressional intent was to introduce a self-certification form for direct-to-consumer (DTC) loans, where the institution is not involved, to prevent excessive borrowing or borrowing that precludes non-loan assistance.

We request that the self-certification form only be required for DTC loans where the institution is not already certifying the loan.

Section 226.39(f) Limitations on private educational loans: Provision of information by preferred lenders

The Federal Reserve proposes that by January 1 each year, a creditor must provide an institution with which it has a preferred lender arrangement the following information for loans it will make the following year:

- Interest rate information
- Fees and default or late payment costs
- Repayment terms
- Eligibility requirements

The Federal Reserve proposes that creditors not provide institutions with cost estimates [226.38(a)(4)] because "educational institutions can perform their own calculations of the total cost of the creditors' loans." These can be complex calculations, especially given the myriad variations between different variables that make up the cost of a loan. We recommend that creditors be required to provide cost estimates as well as the other criteria outlined in 226.39(f).

In addition, to the extent that an institution provides updated interest rate information on its preferred lender list, the creditor should also provide to that institution both the current interest rate on a monthly or quarterly basis, based on the frequency of interest rate index change, and the associated total cost of the loan on that same frequency.

Institutions have somewhat different time lines for when preferred lender lists are made available to their students for the upcoming academic year. If the summer session is handled as a "header" to the financial aid process, the timing for when the preferred lender list is needed will be different than an institution that treats summer session as a "trailer." Additionally, the timing of when an institution may need the information may also be influenced by whether the institution is on a quarter or semester term. Regardless, a January 1 timeframe would not coordinate well with the timing of when preferred lender lists are typically compiled. In order to best meet institutional information needs, no arbitrary time frame should be required. Creditors should be required to provide the information when specified by the institution to meet the institution's time frame for providing such information to its students.

Disclosure Forms

Federal Loan Alternatives:

- A statement should be added that makes clear to the student that eligibility for federal loans requires the student to apply using the Free Application for Federal Student Aid.
- A statement should be added for Federal Perkins and Subsidized Stafford Loan that students must qualify for these loans based on financial need. They are not available "on request."
- The types of federal loans should include PLUS for graduate students.
- The instructions for completion of the information should be clear that a Direct Loan institution would display only the applicable Direct Loan interest rate, and an FFEL institution would display only the applicable FFEL interest rate, unless the institution makes both types of loans available to its students.

The calculation of the APR and loan costs should not include any borrower benefits that are conditioned on specific borrower behavior, such as a specified number of on-time, monthly payments, graduation, or agreement to have payments debited automatically from a checking or savings account.

The creditor should be required to have the student sign the disclosure statement and retain it to demonstrate that proper disclosures were made to the student.