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May 1, 2009

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

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

Dear Ms. Johnson,

I am writing you on behalf of EduCap, a not-for-profit private education loan provider. Because the student loan industry has been surrounded by a lot of misinformation and gross misrepresentation, we appreciate the opportunity to provide you with feedback on the proposed rules. EduCap has a unique perspective on the industry because of its 20-year history in helping students achieve their higher education goals through private education loans, without any government special allowance payments (SAP) or guarantees. During this period, EduCap originated over $4 billion in private education loans that continue to experience an average annual net loss rate of 1.2%. EduCap's loans throughout its 20-year history have required, at a minimum, immediate payment of interest (i.e., no Total Deferment). Our current average interest rate is 5.8%, well below federal student loans.

EduCap believes that these new rules are long overdue for the industry and specifically applauds the Board for developing sample disclosure forms. We find these forms to be very useful and we are confident that they will ultimately help students and their parents navigate a difficult and confusing process. It should be noted that these rules will help add more transparency to private education loans — but transparency is comparatively lacking in federal loans and we hope that policymakers will also ensure that federal student loans have the same level of transparency.

First, let me be very clear that we do not believe that private education loans should be used as a substitute for federal student loans. Instead, private loans should be used to fill the gap between federal and state financial aid provided and the ever rising cost of college; just as they have been for the past 20 years. The current credit crisis is having a tremendous negative impact on the lives of many college students and their families, as many of the funding sources they traditionally relied on have virtually dried up (e.g., home equity, savings, and school endowments). Students and their families have resorted to using high-interest-rate credit cards to pay for college expenses[1].

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[1] USA Today, April 13, 2009: Average college credit card debt rises with fees, tuition (http://www.usatoday.com/money/perfi/credit/2009-04-12-college-credit-card-debt_N.htm)

An educated citizenry is key to our nation's economic future. Therefore, it is imperative that the public policy for student loans is correct and in the best interest of borrowers. If the public policy is to foster access and affordability for borrowing for higher education, then the regulations should ensure clarity, transparency, disclosure, and fair competition for all student loan products and programs. More than 60 student loan providers have exited the industry over the last 2 years. EduCap has not originated any new loans in almost 2 years and, therefore, "has no dog in this fight." However, because of our 20-year history, we believe we can make a positive contribution toward crafting excellent public policy for student loans that will cultivate an educated citizenry.

After careful review of the proposed rules and sample forms, we would like to provide you with the following comments. We respectfully urge you to adopt the proposed edits to ensure the consumers' best interest is being served.

<u>Prominence of APR vs. Interest Rate</u>

The Board's proposal to make the *Interest Rate* more conspicuous than the *Annual Percentage Rate (APR)* on the TILA form undermines the transparency of the total cost of borrowing because the Interest Rate is only one component of the total cost of borrowing and the APR represents the total cost. In addition to the Interest Rate, APR includes additional costs such as origination fees, prepayment penalties, teaser rates, interest calculation methodologies, repayment fees, and guarantee fees.

Students and their parents will undoubtedly be enticed by the prospect of a lower Interest Rate without realizing the impact of other variables on the cost of the loan when they compare loans from different lenders. The loan with the lowest Interest Rate might in fact be the most expensive loan for the student.

The advantage of the APR metric is that it is the one measure that allows for a true comparison of the total cost of the loan. The fact that some consumers might be confused by the use of APR as a comparison tool is not reason enough for the Board to substitute its prominence with another variable that is easier to understand, but less useful. The Interest Rate cannot be used and should not be touted as a uniform comparison metric across multiple loans. Undue focus on the misleading Interest Rate metric could be harmful to students' interest in the long term and contradicts one of the primary purposes of the Higher Education Opportunity Act, which is to prevent deceptive practices in the student loan industry.

The proposed change to the TILA form diminishes transparency, clarity and disclosure for private education loans and deviates greatly from the Board's long established regulations for other types of closed-end loans, where the APR is used as a uniform metric for disclosure.

We recommend that the Private Education Loan sample forms make the APR more prominent than the Interest Rate and include *required* language that would provide consumers guidance on which key variables to use when comparing different loan terms, in addition to a simple explanation of the APR as compared to the Interest Rate. We believe that this change will provide the required clarity, transparency, disclosure, and fair competition that protect students and their families.

Multi-Purpose Loans

The Board's proposal to exclude multi-purpose loans, which may include funds for educational purposes, is bound to create a loophole for certain lenders if these loans are not covered by the new disclosure requirements.

We recommend that any multi-purpose loan that includes funds for educational purposes that exceed 30% of the total loan and/or have borrowers identified as students be covered by the new disclosure requirements. This will help ensure clarity, transparency, disclosure, and fair competition and will eliminate potential loopholes.

Preferred Lender Arrangements and Co-Branding

The Board's proposal to provide an exception to the co-branding prohibition for lenders that have preferred lender arrangements with educational institutions nullifies the HEOA requirement and undermines the transparency for students that the HEOA intended and the Board is trying to achieve. In the past, the majority of deceptive practices that led to the passage of the HEOA were caused by lenders who have preferred lender agreements with the schools and who have created an anti-competitive environment by conspiring with the schools to overcharge consumers (see New York Times: Lenders Pay Universities to Influence Loan Choice[2] and Inside Higher Ed: Deceptive Practices in Loan Industry[3]. According to USA Today[4], approximately 90% of students choose their lenders from their school's preferred lender lists, even when those lenders offer terms that are less beneficial than others that are not on the lists. Additionally, the Department of Education has found that at about 300 colleges, one lender controls 99% of the loan volume[5]. Preferred lenders do not need any additional help in dominating the market in what amounts to a sanctioned monopoly.

We recommend that no such exemptions be allowed and that all lenders be required to adhere to the requirements of HOEA. Otherwise, the Board's proposed exemption will contradict and undermine the HOEA. This will preserve the requirement for clarity, transparency, disclosure, and fair competition and help prevent deceptive marketing practices.

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[2] http://www.nytimes.com/2007/03/16/education/16loans.html?_r=2&ref=education&oref=slogin

[3] http://www.insidehighered.com/news/2007/03/16/cuomo

[4] http://www.usatoday.com/money/industries/banking/2007-04-24-student-loan-future-usat_N.htm

[5] L.A. Times, April 10, 2007: Borrowing Trouble (http://articles.latimes.com/2007/apr/10/opinion/oe-burd10)

Self-Certification Form

The Board's comments clarify that lenders can receive the required Self-Certification from the student or from the school, but do not make it clear whether the student would be allowed to complete the Self-Certification Form on her own (without any involvement from the school's Financial Aid Office). Imposing a requirement for the school to certify the Self-Certification Form could lead to intentional delays in processing the loans, and has the potential to foster deceptive practices by some schools in favor of their preferred lenders (*see above referenced articles*). In addition, imposing such a requirement undermines transparency, eliminates students' ability to choose their own lenders, and could potentially violate students' privacy and that of their parents.

We recommend adding a clarification to the proposed rules to make it abundantly clear that lenders can accept Self-Certification forms that were completed by students to the best of their knowledge and on their own (without direct involvement/certification of the school they are attending or planning to attend). This will protect the privacy rights of the students and their families and provide for their right to choose their own lender and will also mitigate the risk for a preferred lender relationship to supersede the student's own interests.

Thank you again for providing us with the opportunity to comment on the proposed regulations.

Sincerely,

Ali Ersheid
Chief Operating Officer
EduCap Inc.