

March 5, 2012

Research, Markets & Regulations Division  
Bureau of Consumer Financial Protection  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220  
(Submitted via Regulations.gov)

Re: Comments on Streamlining Inherited Regulations, Docket No. CFPB-2011-0039

Dear Sir or Madam:

These comments are submitted in response to the Consumer Financial Protection Bureau's request for public comment on streamlining regulations it inherited from other federal agencies (Docket No. CFPB-2011-0039).

The Institute for College Access & Success (TICAS) is an independent, nonpartisan, nonprofit research and policy organization working to improve both educational opportunity and outcomes so that more students complete meaningful post-secondary credentials without incurring burdensome debt. Our Project on Student Debt focuses on increasing public understanding of rising student debt—including private student loan debt—and the implications for individuals, families, the economy and society. Private student loans are one of the riskiest ways to pay for college, and a majority of private loan borrowers could have borrowed more in federal loans before turning to private loans.<sup>1</sup>

TICAS is concerned that several of the “specific illustrations of potential streamlining opportunities” listed in the Federal Register notice would weaken consumer protections. We comment on three in particular below.

1. Consistent and Sufficient Definitions. Protections under statutes such as the Fair Credit Reporting Act should not be narrowed by restricting the individuals or types of credit protected to mirror narrower definitions under other statutes that serve different purposes. However, we support proposals to make definitions consistent if that expands consumer protection.
2. Coverage/Scope of Regulation Z. In general, Regulation Z covers a creditor if it extended consumer credit more than 25 times in the past calendar year. This and other thresholds should not be raised. Raising them, and thereby expanding the current exemptions, would lessen both the uniformity of disclosures and the protections that consumers receive. Similarly, calculating volume with separate thresholds for different types of credit transactions would lead to evasions and more complicated calculations.

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<sup>1</sup> The Institute for College Access & Success. July 2011. *Private Loans: Facts and Trends*. [http://projectonstudentdebt.org/files/pub/private\\_loan\\_facts\\_trends.pdf](http://projectonstudentdebt.org/files/pub/private_loan_facts_trends.pdf).

3. Electronic Disclosures. Electronic disclosures or statements should not be permitted to substitute for paper ones unless the consumer has consented to electronic delivery following the requirements of the E-Sign Act. It is simply too important that consumers receive and actually see critical notices and information about their accounts to permit that information to be delivered electronically to a consumer who has not chosen that method. Similarly, the Bureau should not waive or alter legal requirements for mobile banking applications piecemeal without a full consideration of all of the issues and careful study of the most effective ways for consumers to receive information. The requirement in the E-Sign Act that a consumer must be able to retain an electronic notice before that notice can substitute for a paper one is a critical consumer protection. Consumers need the ability to keep records of important information. It is possible that text messages, coupled with emails, annual paper statements, or some other retainable record, could meet the spirit of the E-Sign Act. But the issue should be considered in the larger context of regulation of mobile banking and more research on the best methods of reaching consumers with the information they need.

**We urge the Bureau to make mandatory school certification of private loans and the reporting of campus-level private loan data regulatory priorities.** Requiring lenders to obtain school certification for all private loans, including confirmation that students have been notified of any remaining federal loan eligibility, will ensure that all colleges have the opportunity to counsel students before they commit to a risky private loan. Organizations representing lenders, financial aid administrators, colleges, and students all support this policy and see it as a critical tool for ensuring that students use safer federal loans first.<sup>2</sup>

Furthermore, requiring school certification would help to contain students' debt burdens. Sallie Mae, the largest lender of private student loans, has reported that school certification reduces the amount borrowed for nearly 30 percent of the loans that go through the certification process, because loans are capped at the student's full cost of attendance minus aid as reported by the school.<sup>3</sup> Analyses indicate that school-certified loans also have significantly lower default rates than uncertified loans.<sup>4</sup>

Requiring that lenders obtain school certification for all private student loans *and* report loan data to the U.S. Department of Education's existing National Student Loan Data System (NSLDS) would be strong steps forward in arming students with the information they need to make smart borrowing decisions. These steps would support colleges in developing and enhancing good loan counseling practices by ensuring that colleges have a window of time

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<sup>2</sup> See: December 10, 2009 letter signed by 25 organizations, including TICAS, in support of mandatory certification ([http://projectonstudentdebt.org/pub\\_view.php?idx=534](http://projectonstudentdebt.org/pub_view.php?idx=534)), and May 7, 2010 letter signed by lenders and others urging inclusion of mandatory school certification in the Senate financial reform bill (<http://bit.ly/zawOJo>).

<sup>3</sup> Sallie Mae Inc. Re: Proposed Rule Implementing Title X of the Higher Education Opportunity Act of 2008, Docket No.R-1353. [http://www.federalreserve.gov/SECRS/2009/May/20090529/R-1353/R-1353\\_052609\\_21079\\_591049709690\\_1.pdf](http://www.federalreserve.gov/SECRS/2009/May/20090529/R-1353/R-1353_052609_21079_591049709690_1.pdf). Accessed December 9, 2011.

<sup>4</sup> See: Moody's Investors Service. 2009. "Direct-To-Consumer" Student Loans: Higher Risk. Also see testimony of Congressman Danny K. Davis before U.S. House Committee on the Judiciary Subcommittee on Commercial and Administrative Law, Hearing on "An Undue Hardship? Discharging Educational Debt in Bankruptcy." September 23, 2009. <http://www.judiciary.house.gov/hearings/pdf/Davis090923.pdf>.

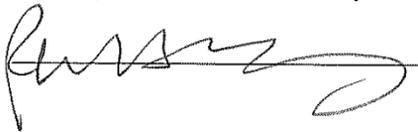
within which to counsel their students about their borrowing options and increasing the information available to colleges about private loan borrowing among their students. Currently, colleges can use the NSLDS to access records about students' federal loan history, including the types, amounts, and interest rates on their federal loans, and to help students understand the implications of their cumulative borrowing. Colleges also use these records to counsel borrowers who are experiencing difficulty during repayment in order to help them avoid default. However, since private loans are excluded, these records show an incomplete picture of student loan borrowing for many students.

Including all student loans in one federal database will enable student borrowers to see and track all their loans in one place. It will also allow colleges and policymakers to assess students' usage of both federal and private loans and to craft policies to better encourage smart borrowing.

The existing private loan disclosures required by the Higher Education Opportunity Act of 2008 (HEOA) should be improved, but doing so is not as urgent as requiring mandatory certification of private loans and the reporting of campus-level private loan data. Because the existing disclosures required by HEOA and promulgated by the Federal Reserve Board only went into effect in February 2010, little empirical data exists on these disclosures' effectiveness. Nevertheless, there is good reason to believe they do not provide adequate consumer information or protections. For example, the current disclosures fail to mention the FAFSA (the Free Application for Federal Student Aid), provide the Department of Education's toll-free number, or tell borrowers that there is no income limit for federal loans. In addition, lenders are not required to send the final disclosure with the actual loan terms to all co-signers, and the current rules do not extend cancellation rights to co-signers.<sup>5</sup> Stronger and clearer disclosures are needed to ensure that students fully understand the differences between federal and private loans and how interest rates and loan terms affect the amount they will need to repay and the risks associated with borrowing. As evidenced by the mortgage crisis, confusion and misinformation about interest rates and loan terms can have devastating consequences for consumers.

Thank you for this opportunity to comment. I would be glad to answer any questions you may have and can be reached at (202) 223-6060 ext. 603.

Sincerely,



Pauline Abernathy  
Vice President, The Institute for College Access & Success

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<sup>5</sup> For more information on weaknesses in the current disclosures, see The Institute for College Access & Success. August 2009. *Summary of New Disclosure Requirements for Private Student Loans*. [http://projectonstudentdebt.org/files/pub/FRB\\_summary\\_aug09rules.pdf](http://projectonstudentdebt.org/files/pub/FRB_summary_aug09rules.pdf).