Office of Thrift Supervision
Department of the Treasury

Montrice Godard Yakimov
Managing Director, Compliance and Consumer Protection

1700 G Street, N.W., Washington, DC 20552 • (202) 906-6173

May 21, 2009

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

SUBJECT: Comments on Proposed Amendments to Regulation Z
Docket No. R-1353

Dear Ms. Johnson:

The Office of Thrift Supervision (OTS) has reviewed the Federal Reserve Board's proposed amendments to Regulation Z to implement the Higher Education Opportunity Act. We are encouraged by the many features of the proposal that are designed to provide consumers with greater transparency in connection with private education loans. To provide assistance with this effort, we have enclosed a staff comment on the proposed rule.

If you have any questions regarding our comments, please contact either April Breslaw, Consumer Regulations Director at (202) 906-6989; Rhonda Daniels, Senior Compliance Program Analyst at (202) 906-7158; or Richard Bennett, Senior Compliance Counsel at (202) 906-7409.

Sincerely,

MGYakimov

Montrice G. Yakimov

Enclosure

Office of Thrift Supervision
Staff Commentary on Proposed Regulation Z Amendment
FRB Docket R-1353

The Higher Education Opportunity Act of 2008 (HEOA) amended the Truth in Lending Act (TILA) by adding disclosure and timing requirements that apply to creditors making private education loans.[1] The Office of Thrift Supervision (OTS) is taking this opportunity to comment on the proposal by the Board of Governors of the Federal Reserve System (Board) to amend Regulation Z to address the changes made by HEOA.

OTS is encouraged by the provisions of the proposal designed to increase transparency in connection with private education loans. However, OTS is concerned about the proposed approach to disclosing the maximum rate of interest for a private education loan when this rate cannot be determined at the time that a loan is approved. As discussed below, we recommend an alternative approach in these circumstances.

Discussion

HEOA has amended TILA to require the lender to disclose certain information between the time that a private education loan is approved and the time that the transaction is consummated. This information includes:

- An estimate of the total amount of payments at the maximum possible interest rate offered by the private educational lender that is applicable to the borrower ;[2] and

- The maximum monthly payment calculated using the maximum interest rate actually offered by the private educational lender that is applicable to the borrower.[3]

If this information cannot be determined at the time that a loan is approved, the lender must provide a good faith estimate.[4]

As proposed, however, the relevant sections of Regulation Z provide that if the maximum rate of interest for the loan cannot be determined at the time of approval, the creditor must use a rate of 21% in estimating the total amount of payments and the

[1] Section 1011 of the HEOA defines a "private education loan" as a loan provided by a private educational lender that is not made, insured, or guaranteed under title IV of the Higher Education Act of 1965. Such a loan must be issued to a borrower for postsecondary educational expenses, but does not include an extension of credit under an open end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling.
[2] 15 U.S.C. § 1638(e)(2)(H).
[3] 15 U.S.C. § 1638(e)(2)(O).
[4] 15 U.S.C. § 1638(e)(2)(H) and (e)(2)(O).

maximum monthly payment.[5] The 21% rate must also be used on the Estimated Repayment Schedule & Terms provided to the borrower.[6] The proposal suggests that this situation would likely occur when a creditor does business in a state without a usury limit on interest rates and the legal agreement between the parties does not specify a maximum rate.[7] The Board proposed using 21% in these circumstances because 21% represents a "midpoint in the range of usury rate ceilings that consumers in the private education loan market are likely to face."[8]

OTS suggests that the Board adopt a different approach. For the "maximum rate" we propose that a creditor use the higher of 21% or the maximum rate at which that creditor actually made a comparable private educational loan during a reasonably recent period of time, e.g., two years prior to the borrower's application. Otherwise, a creditor with a history of charging rates above common usury limits will be permitted to significantly understate its disclosures. Moreover, it is questionable whether an estimate based on a 21% rate could be deemed a "good faith estimate" for such a creditor. In addition to eliminating the risk that disclosures will be understated, the alternative approach might also encourage creditors that are not subject to usury limits to specify a maximum rate in their legal agreements, which would benefit consumers.

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[5] See proposed text for 12 C.F.R. § 226.38(b)(3)(vii) and (viii) and accompanying discussion at 74 Fed. Reg. 12464, 12481-82, 12493-94 (March 24, 2009).
[6] See "H-23, Private Education Loan Final Sample," 74 Fed. Reg. at 12506.
[7] 74 Fed. Reg. at 12481.
[8] Id.