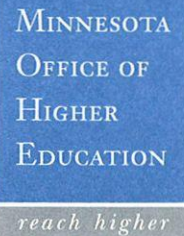


1450 Energy Park Drive, Suite 350  
St. Paul, MN 55108-5227

Tel: 651.642.0567  
800.657.3866

Fax: 651.642.0675

info@ohe.state.mn.us  
www.ohe.state.mn.us



May 21, 2009

Via Email: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

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

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

Dear Ms. Johnson:

The Minnesota Office of Higher Education (OHE) 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). OHE offers the SELF Loan, a state owned and state operated student loan program which has been in existence since 1984 and provides low-cost student loans to thousands of Minnesota residents and students attending Minnesota schools. Last year, 28,000 students were served by the program. The program is unique to Minnesota and is more analogous to federal programs than private loan programs in terms of operating under requirements established in law. OHE has no discretionary authority and can only operate within the authority provided by the state government. Certain provisions within the HEOA as currently proposed appear to conflict with Minnesota statutes and rules.

While the intent of the legislation may not have been to harm state programs that are benefitting students, some of the provisions as currently worded will negatively impact the ability of the SELF Loan program to continue to effectively serve students. We ask for consideration of the unique characteristics and concerns of a state owned and state operated program in drafting the final regulations and to incorporate language that will permit state programs to continue to benefit students.

### **Comments on Proposed Changes to Regulation Z**

#### ***1. Federal Register 12464, Overview of the HEOA's Amendments to TILA***

Minnesota statutes and rules provide that the SELF IV Loan program charges borrowers a variable rate of interest. The interest rate on SELF IV Loans is calculated each quarter based on the prior quarter's three-month LIBOR rate plus a margin, which is an annual percentage rate established by OHE each quarter. The interest rate changes each quarter for all SELF IV borrowers and all SELF IV borrowers are charged the same interest rate.

The proposed federal regulations provide an exception for a change in the index. With the proposed language, we are unclear if it would be acceptable to change the interest rate during the 30-day acceptance period should that fall during the beginning of a quarter since the change is for all borrowers and no individuals are targeted. The determination of the SELF Loan interest rate is established by Minnesota statutes and rules and charging different interest rates for certain borrowers could be determined a violation of Minnesota statutes and rules. OHE requests clarification in the definition of index to incorporate a provision to allow a change in interest rate if the change is uniformly applied to all borrowers and not discriminately applied to certain borrowers.

## ***2. Federal Register 12466, Final Disclosure***

OHE concurs with omitting information about federal loans from the Final Disclosure Form since the borrower has previously been advised of it twice and still chose to accept the loan.

## ***3. Federal Register 12466, II. The Board's Rulemaking Authority***

The Board has proposed various exemptions from TILA. OHE asks that the Board exempt state owned and state operated student loan programs which meet the criteria for the TILA coverage of not providing a meaningful benefit to consumers in the form of useful information or protection. The SELF Loan would appear to meet two of the five criteria outlined:

**Provision (2)** the extent to which the requirement complicates, hinders, or makes more expensive the credit process.

The proposed requirements increase the cost of the program because of the additional disclosure requirements and programming changes. It hinders students from being able to expeditiously take out a SELF Loan by complicating the process when funds are needed.

**Provision (5)** whether the exemption would undermine the goal of consumer protection.

The student is not protected if state owned and state operated programs are forced to provide information that is not realistic and would mislead the student from selecting a favorable state loan.

Additionally, every SELF Loan is certified by the educational institution. This certification requires the institution to attest to the following: that the student is enrolled and maintaining satisfactory academic progress in an eligible program, that the student has applied for federal and state financial aid and that the loan does not exceed the student's cost of education less all financial aid. This protects the student from borrowing funds in excess of his or her need.

## ***4. Federal Register 12468, Section 226.18 – Content of Disclosures***

The SELF Loan does not have a maximum interest rate but instead has a limitation in Minnesota statutes and rules that the interest rate cannot change by more than 3 percent in any one year. In the 25-year history of the SELF program, the highest the interest rate has been is 10.5 percent for three months in 1989. We are concerned that requirements to provide examples of loan repayments at the maximum interest rate will be very misleading to students if the proposed rate

of 21 percent is required to be used. The current SELF IV rate is 4.7 percent, so it would be approximately five years before the interest rate could reach 21 percent even if it went up the maximum amount of 3 percent every year. While the intent of the legislation is consumer protection, the student is not protected if state agencies are forced to provide information that is not realistic and would mislead the student from selecting a favorable state loan product.

While the SELF Loan does not have a maximum interest rate, there are program restrictions on how much the interest rate can increase in a given period of time and OHE is restricted by statutes and rules regarding the ability to change interest rates. Since the interest rate is mandated by Minnesota statutes and rules, state programs should be permitted to utilize an alternative to the published rate. Listed here are some suggestions for the Board's consideration:

- a. For state loan programs that have been in operation for 10 years or more, an annual average of the interest rates over the 10 years could be utilized. If the program has not been in operation for at least 10 years, the rate published by the Board would be used in calculating the average for years where there is no history.
- b. For state loan programs that have been in operation for 10 years or more, utilize the maximum interest rate during that time period.
- c. Permit state loan programs to utilize a rate of double the current interest rate or the rate designated by the Board, whichever is less.

**5. *Federal Register 12475, 38(a)(2) Fees and Default or Late Payment Costs***

Creditors should not be required to disclose third-party fees and costs for collection. Collection costs only apply in the case of default and the amount would most likely be unknown at loan origination. It would also be unknown at what balance or point in time collection fees would be added. Under *38(a)(6) Alternatives to Private Education Loans*, reference is made to providing a more complete description of the federal loans' interest rates to aid in comparison of federal loan programs to private education loans. If the intent is to compare the loans, then the default collection fees for non-federal loan programs should not be listed since no information is being disclosed about collection charges on federal loans. It would be misleading to compare the federal loan information to state or private loan information while adding unknown fees to one and not the other.

**6. *Federal Register 12478, 38(a)(5) Eligibility***

The criteria should be limited on what is required to be disclosed to not complicate the disclosure statement. The more information provided the more cluttered it will become, resulting in the student not reading or seeing the most critical information. Eligibility criteria would normally be identified in the application instructions. The school enrollment eligibility should be confined to full-time or half-time. The SELF program requires the student to maintain satisfactory progress as defined by the school. We would not be able to provide each school's satisfactory progress policy. The criteria required to be disclosed should be confined to age and enrollment status of half- or full-time.

**7. *Federal Register 12479, 38(a)(7) Rights of the Consumer***

If the creditor is not changing the terms to the detriment of the consumer, the creditor should be permitted to extend the amount of time to accept the loan beyond 30 days. For example, if the student contacts the lender on day 32 and wants the loan but failed to sign off the acceptance disclosure statement or it did not reach the lender in time, there would be no benefit to the student or lender to require the student to start the application process over. The student should be permitted to provide the signed acceptance statement if the lender is still able to accept it.

The Board requested comments on whether the application disclosure should include more detail on possible changes to the rate or term. OHE would agree this option should be available if it would permit OHE to disclose changes in the interest rate as described under Comment 1.

**8. *Federal Register 12480, 38(b)(3) Payments Required During Enrollment***

The requirement to use a maximum interest rate of 21 percent if there is no state maximum in the note does not appear reasonable particularly if the lender's rates have never been anywhere near that high. As stated in Comment 4, the SELF Loan does not have a maximum interest rate but instead has a limitation in Minnesota statutes and rules that the interest rate cannot change by more than 3 percent in any one year. In the 25-year history of the SELF program, the highest the interest rate has been is 10.5 percent for three months in 1989. OHE is concerned that requirements to provide examples of loan repayments at the maximum interest rate will be misleading to students if the proposed rate of 21 percent is required to be used. The current SELF IV rate is 4.7 percent, so it would be at least five years before the interest rate could even reach 21 percent if it went up the maximum 3 percent every year. While the intent of the legislation is consumer protection, the student is not protected if lenders are forced to provide information that is not realistic and would mislead the student from selecting a favorable state loan product.

We would propose to allow state programs that are subject to state statutes and rules to be able to utilize an alternative interest rate. Listed here are some suggestions for the Board's consideration:

- a. For state loan programs in operation for 10 years or more, an annual average of the interest rates over the 10 years could be utilized. If the program has not been in operation for at least 10 years, the rate published by the Board would be used in calculating the average for years where there is no history.
- b. For state loan programs which have been in operation for 10 years or more, utilize the maximum interest rate during that time period.
- c. Permit state loan programs to utilize a rate of double the current interest rate or the rate designated by the Board, whichever is less.

**9. *Federal Register 12480, 38(b)(3) Payment Deferral Options***

The proposed regulation does not clarify that creditors are not required to disclose types of deferment that may be available to the borrower during repayment such as military deferment or temporary disability.

**10. *Federal Register 12481, Bankruptcy Limitations***

It would not appear necessary to repeat the non-dischargeable provision on all three disclosures. Any statements regarding student loans not being dischargeable should state that all student loans, including federal loans, are not dischargeable in bankruptcy in order to accurately disclose information.

**11. *Federal Register 12483, Alternatives to Private Education Loans***

As previously commented on, OHE would concur with omitting information about federal loans from the Final Disclosure Form since the borrower has previously been advised of it twice and still chose to accept the loan.

**12. *Federal Register 12484, 39(b) Preferred Lender Arrangements***

Schools should be allowed to provide web site links to creditors not covered under a preferred lender arrangement. It need not be listed as an endorsed loan but could be listed under loans previously utilized by students at the school.

**13. *Federal Register 12484, 39(c) Consumer's Right to Accept***

For those customers who applied for the loan online, the lender should be permitted to require electronic acceptance of the terms since the consumer has access to this means of communication.

There are appropriate times, in addition to the fraud example referenced, when the lender needs to be able to withdraw or modify a credit offer. The SELF Loan program operates under Minnesota statutes and rules which have requirements for student eligibility. The student is required to be making satisfactory academic progress and be enrolled at least half time. The student cannot be delinquent on interest on previous loans or in default on previous loans. The student cannot borrow more than the cost of attendance so, if the student took out other loans or received other aid after the SELF Loan was applied for, the SELF Loan may need to be reduced or cancelled. There are also grade level loan limitations. The lender needs to have the option to withdraw a credit offer when it would violate Minnesota statutes and rules to make the loan. Since the SELF Loan does not differentiate in interest rates to borrowers, the only "term" that would change would be the loan amount. It would not be practical to list each one of these requirements in the disclosure statement. Program requirements are identified in Minnesota statutes and rules, the promissory note and the informational material.

***14. Federal Register 12485, 39(d) Consumer's Right to Cancel***

OHE recommends allowing a reasonable deadline, such as the close of business on the third day, to cancel the loan.

***15. Federal Register 12486, Section 39(e) Self-Certification Form***

For loans certified by the school, OHE requests that no self-certification form be required from the student. It is suggested that after the school certifies the loan, the lender send information with the Final Disclosure Form to the student including the cost of attendance, other financial aid received and the remaining funding need. The student would be informed with the appropriate information and still have an opportunity to cancel the loan if he or she chose to. Requiring the school to certify the loan to the lender and also to the student is redundant and places a significant administrative burden on all parties. OHE supports the requirement to provide self-certification for direct-to-consumer (DTC) loans; as we believe that the legislative requirement was primarily aimed at this loan type.

***16. Federal Register 12486, Section 39(f) Provision of Information by Preferred Lenders***

The preference would be for April 1 rather than January 1 to provide information to schools on loan products available at that time. The January deadline is exceptionally early and would be difficult to comply with. For state owned and state operated programs, statute changes would likely be adopted even later than April since, in the case of Minnesota, the legislative session normally ends in May. Provisions in the language could permit state owned and state operated programs to notify schools of changes after the designated deadline if the changes occurred as a result of state law revisions.

***17. Federal Register 12487, IV. Effective Date***

Given the significant programming changes lenders will need to make, the implementation period should not be any less than the proposed six-month period. There is a significant amount of work to be done in terms of reprogramming systems, reworking the flow of online applications and internal processes along with revising loan applications, agreements and disclosures.

***18. Federal Register 12490, E. Identification of Duplicative, Overlapping, or Conflicting Federal Regulations***

**First Area of Potential Conflict:**

As previously noted, there are potential conflicts with Minnesota statutes and rules depending upon the final language. Comment 13 related to provisions for when a lender could withdraw a credit offer. Minnesota Rule 4850.0011 Subp. 15 identifies criteria for an eligible student for the SELF Loan. If the student no longer met the state eligibility criteria listed below, the SELF Loan could not be made without violating Minnesota Rules.

An eligible student:

- a. is enrolled in an eligible school in Minnesota, or is a Minnesota resident enrolled in an eligible school in another state, United States territory, or province as defined in Minnesota Statutes, section 136A.15, subdivision 5;
- b. is enrolled at least half time in a program leading to a certificate, associate, baccalaureate, masters, doctorate or other professional degree;
- c. is making satisfactory academic progress as defined by the school;
- d. is not currently in default, as defined by each specific program, of any student educational loan program (Stafford Loan, GSL, FISL, NDSL, Perkins, HPL, HEAL, ALAS/SLS or other similar federal, state, private or institutional student loan program) at the current or any previous school;
- e. is not currently delinquent in payment of interest or principal on an outstanding SELF Loan;
- f. has a creditworthy cosigner; and
- g. demonstrates financial eligibility by meeting the "maximum effort" test.

Minnesota Rule 4850.0015 requires loans to be disbursed to the student within 30 days from the end of the loan period. If the student applies late in the academic term, there may not be time to disburse the loan if the student utilizes the full 30-day acceptance period.

Minnesota Statutes 136A.1701 Subd. 4 prescribes loan limits based on grade levels. If the grade level of the student were to be changed by the school after approval, the student may no longer qualify for a SELF Loan at the initially disclosed amount.

State agencies subject to state law need to have provisions in the language to allow cancellation or reduction in loan amounts based on state requirements.

**Second Area of Potential Conflict:**

Minnesota Rule 4850.0011 Subp. 28c. defines how the SELF IV Loan interest rate is calculated.

"SELF IV Loans" means SELF Loans where the interest rate on the loan is determined by the OHE Director at a margin in excess of a SELF IV index rate. The SELF IV initial index rate is the arithmetic average rounded to the nearest tenth of one percent of the three-month London Interbank Offered Rates (LIBOR) rate during the calendar quarter immediately preceding the interest rate adjustment date. The LIBOR rate is determined by the British Banker's Association. Where terms can be obtained for issuance of SELF Loans at a rate favorable to borrowers, the OHE Director may establish other indexes or utilize a fixed rate as provided for in the promissory note.

There is no provision in the rules for students to receive different interest rates based on when the student applies. The interest rate may change for all SELF IV Loans on the first day of each



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quarter. Rules would not permit holding interest rates for students during a 30-day period and then not increasing the margin over the life of the loan.

The regulations need to allow for changes in interest rates in state programs that are not related to a particular borrower.

**Third Area of Potential Conflict:**

Disclosure of loan program terms to schools by a designated date, currently proposed as January 1, could result in conflicts if the state legislature were to adopt changes in the loan program during the legislative session. State agencies should be permitted to notify schools when statute changes are approved which affect the loan terms, even if it is after the designated date.

**Fourth Area of Potential Conflict:**

While the intent of the legislation is to protect and inform consumers, OHE is concerned that providing some of the information as proposed would be misleading to students. Our state owned and state operated program is already subject to limitations in Minnesota statutes and rules to protect consumers, including restrictions on the interest rate. As previously detailed in Comment 4, disclosing an interest rate of 21 percent would be misleading since by law the interest rate could not even reach that for at least five years.

**19. Federal Register 12494, Model Disclosure Forms**

OHE requests that the Board allow the disclosure statement to be positioned in such a manner as to permit the use of window envelopes.

We appreciate the opportunity to provide comments regarding implementation of the HEOA regulations. If you have any questions, please do not hesitate to contact the SELF Loan Manager, Marilyn Kosir, at 651-355-0600.

Sincerely,



David Metzen  
Director