

APPENDIX B

Truth-In-Lending Act, Regulation Z

On August 14, 2009, the Federal Reserve published a final rule amending Regulation Z (12 C.F.R. Part 226), which implements the Truth in Lending Act (TILA), following the passage of the Higher Education Opportunity Act (HEOA). Title X of the HEOA amended TILA by adding, in addition to other requirements, disclosure and timing requirements that apply to creditors making private education loans, which are defined as loans made for postsecondary educational expenses. Compliance with the final rule is mandatory beginning February 14, 2010. This letter is to make institutions aware of the rule.

Although HHS may be able to provide general information about this regulation, the responsibility for compliance with the regulation rests with your institution, and it is recommend that institutions consult with their legal counsel for specific guidance on its applicability.

The Federal Reserve's August 14, 2009 final rule applies to institutions that meet Regulation Z's definition of "creditor" and extend "private education loans" to their students. Loans made, insured, or guaranteed by the federal government under Title IV of the Higher Education Act of 1965 are specifically exempt from the TILA and the definition of "private education loan." However, loans made under Titles VII and VIII of the Public Health Service (PHS) Act are not exempt from the TILA or the definition of "private education loan." See 15 U.S.C. § 1650(a) (7) and 12 C.F.R. § 226.46(b) (5).

Accordingly, whether the TILA requirements for creditors making private education loans apply to institutions that make loans under Title VII and VIII of the PHS Act depends on whether an institution meets the definition of "creditor" provided by Regulation Z. A "creditor" is defined under Regulation Z as "a person (A) who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than 4 installments (not including a down payment), and (B) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract." A person "regularly extends consumer credit" if it extended credit more than 25 times (or more than 5 times for transactions secured by a dwelling) in the preceding calendar year. See 12 C.F.R. § 226.2(a) (17) (I).

Among other requirements, the amendments to TILA, as implemented by Regulation Z, require that creditors making private education loans:

- Provide a number of new disclosures to student borrowers, which must be given at several different times in the loan origination process;
- Permit the student borrower the right to accept the loan at any time within thirty days after receiving the approval disclosures;
- Allow the student borrower the right to cancel the loan without penalty for three business days after receiving the final disclosures; and
- Obtain a signed "self-certification form" from the student borrower before consummating the loan.

More detailed information about the new requirements can be found in the final rule available at <http://www.federalreserve.gov>, Federal Reserve System 12 CFR Part 226, Regulation Z: Docket No.R- 1353.

Master promissory notes currently used for Title VII and VIII loans will not need revisions; however, truth-in-lending statement forms used by many institutions may need to be revised to comply with the TILA disclosure rules.