November 7, 2007

The Honorable George Miller
Chairman
Committee on Education and Labor
U.S. House of Representatives
2175 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

As the Education and Labor Committee prepares to consider legislation to reauthorize the Higher Education Act, we are writing to submit suggestions for the bill which we hope can be taken into consideration. These suggestions have been prepared prior to our associations having reviewed the legislation and reflect the suggestions of the Consumer Bankers Association, the Financial Services Roundtable, and the American Bankers Association.

Information for Student Loan Borrowers

Our associations strongly support increasing the information available to student and parents considering borrowing for educational expenses. Such information supports wise shopping for loans, increases understanding of the terms and conditions of their loans, including the obligation to repay, and encourages borrowers to only take out those loans they actually need. In particular, our associations support every borrower being fully advised of their right to choose their own student loan lender and to fully utilize federal grant, work-study and loan programs before borrowing.

In drafting new disclosure terms for borrowers, we encourage you to prioritize the information provided to them. Borrowers receiving too much information are less likely to read or absorb the information and may not understand the most critical loan terms. Information should also be provided to borrowers at the correct times in the loan process, with the most important time being when the borrower applies for a loan.

We believe that many of the provisions of H.R. 890 will help borrowers and support healthy competition in the FFEL program.

We have attached to this letter comments developed earlier this year on H.R. 890 soon after it was passed by the House. Because we understand that the "sunshine" provisions included in the House majority Higher Education Act reauthorization bill may be based on this bill, we are sharing these with you again now.

Technical Amendment Relating to "Identity Theft"

We are requesting a technical amendment deleting the word "crime" from the identity theft discharge provision in Section 437(c) of the Higher Education Act. The Federal government enacted the Fair and Accurate Credit Transactions (FACT) Act to provide protection to individuals through a comprehensive set of provisions designed to state a national goal of protecting victims of identity theft. In 2006, the Congress passed, and the President signed into law, complementary provisions that specifically address the subject of identity theft in the context of the Federal Family Education Loan Program (FFELP) (see Section 437(c) of the Higher Education Act, as amended). Just as in the case of the FACT Act, the language made clear that individuals are to be protected from the liability and stress of identity theft by providing that the debt arising from identity theft in the student loan programs would be extinguished—"discharged"— for the individual whose identity had been stolen and loans falsely certified as a result.

While the FACT Act calls for the lender to extinguish the debt of the individual who is a victim of identity theft, the Department has posited, in the Final Regulations published on November 1, 2007, that the "crime" of identity theft only exists following a judicial determination that a named individual committed the crime of identity theft. The use of the term "crime" by the statute does not call for a judicial determination, nor does it call for identification of the perpetrator. Indeed, the "crime" of identity theft is a crime committed by stealth, often by the interception of electronic bits of information. This being so there is in most situations little likelihood that the perpetrator of the crime of identity theft will ever be identified, much less convicted. Victims seldom know the perpetrator in identity theft cases, and are frequently unaware of the criminal activity until unfortunate events, such as denial of credit or being turned down for employment, ensue. For the Department to require that there be a conviction or any judicial determination is to effectively deny the remedy that Congress has provided. Deleting the word "crime" will make clear that Congress intended to help victims of identity theft without making them go through a long and sometimes impossible process of proving that a crime was committed by a particular person.

Student Loan Information Amendment

We understand that the House bill may include a version of an amendment referred to as the "Student Loan Information Amendment." We believe this amendment, which pre-empts the Title V provisions of Gramm-Leach-Bliley, and is included in H.R.3746, the College Access and Opportunity Act introduced by Rep. Howard "Buck" McKeon, would create significant opportunities for data breaches that could result in millions of student and parent borrowers being exposed to the risk of identity theft.

Our associations also believe that the amendment as included in Rep.. McKeon's bill is excessively broad. Under it a third party servicer could request all of the student loan information included in any student loan servicer's portfolio. Provisions in the amendment allowing the requestor to specify the format for the data and the timetable for delivery also are overly broad and are particularly unfair in that the lender is required to provide the data without charge.

We ask that the student loan information amendment not be included in the bill and that a provision in the Senate passed bill, S. 1642 (section 426) assuring the applicability of

Gramm-Leach-Bliley to data transfers in the FFEL program be added. This amendment reads, in part, "each entity participating in a program under this part that is subject to subtitle A of Title V of the Gramm-Leach-Bliley Act, shall only use, release, disclose, sell, transfer, or give student information including the name, address, social security number, or amount borrowed by a borrower or a borrower's parent, in accordance with the provision of such subtitle."

Because of the magnitude of the potential of harm to borrowers inherent in this amendment, our associations are sending a separate letter to you and other members of the Committee with additional detailed information.

Role of Lenders in Promoting Financial Literacy and Economic Education

America's financial services community has played a leadership role in promoting financial literacy for over two decades. During this time, millions of dollars have been devoted to developing resources and providing services to America's youth. The recent final regulations issued by the Department of Education appropriately identify FFEL guaranty agencies as having a role in promoting financial literacy, but are silent on the services available from lenders. To address this apparent oversight in the regulations, we recommend an amendment to section 435(d) of the Act to provide:

"Nothing in this section shall be interpreted to preclude eligible lenders or their affiliates from offering financial literacy or economic education counseling or instruction to applicants or recipients of loans under this Title, provided that such counseling or instruction is not undertaken to secure applications for loans under this part."

Role of the Department of Education in Regulating Non-Federally Supported Student Loans

We understand that the reauthorization bill is likely to include new marketing regulations for private, non-federally supported student loans ("private student loans"). We welcome the establishment of standards to regulate the private student loan marketplace and hope to work with the Education and Labor Committee on developing this legislation.

We believe the U.S. Department of Education is not an appropriate regulator for private student loans and that the assignment of any regulatory or administrative role associated within this market would be counterproductive and lead to overlapping or duplicative regulations and confusion. The private student loan marketplace has for many years been subject to a host of federal and state consumer lending laws with no or very limited applicability to federal student loans, including the Fair Credit Report Act, Regulation Z, Regulation B, the FTC Act, Regulation AA, and many other laws and regulations. The U.S. Department of Education does not have the expertise or experience interpreting or enforcing such requirements to effectively oversee compliance with these requirements related to private student loans. To avoid such problems, regulation of the private student loan marketplace should continue to reside with the appropriate financial services regulator corresponding to the type of lender involved. Armed with clarity from strengthened national marketing standards, existing regulators with expertise enforcing consumer lending law compliance will provide effective oversight of the private student loan marketplace.

Anticipated Amendment on Auctions

We understand that during Committee mark-up an amendment may be offered by Rep. Tom Petri based on his newly introduced "SLAM" Act. We urge the committee to reject this amendment.

The Petri amendment represents a dangerously broad delegation of legislative authority to a "study group of technical experts" to create a pilot project for an auction of up to 20 percent of the FFEL program. We believe that the auction model this group would develop, because it is required to maximize savings to taxpayers, would result in the elimination of whatever borrower benefits remain available on FFEL loans. More importantly, the economic pressures created by the auction are likely to encourage lower quality servicing on loans that could result in more delinquencies and defaults.

Any auction mechanism also results in a major curtailment of borrower choice because only the auction winners will be allowed to make loans. Thus, borrowers would be forced to use a lender that may offer poor service and schools may be required to work with lenders that are administratively incompetent or worse.

Simply put, the arguable benefits of a student loan auction are overwhelmingly outweighed by the negatives to students, parents and schools.

In addition to rejecting the anticipated Petri auction amendment, our associations also endorse the repeal of the parent PLUS auction included in PL 110-84.

Effective Dates

As you know, it has been a busy year for changes to the student loan program and to program regulations. We urge the Committee to set an effective date of no less than six months from the date of enactment for any change to the student loan program included in the legislation.

Thank you for considering our views on this important legislation. We would welcome the opportunity to work with you and/or your staff as this legislation progresses through the legislative process.

Sincerely,

The Consumer Bankers Association
The American Bankers Association
The Financial Services Roundtable

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