

October 8, 2009

The Honorable Barney Frank
Chairman
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Re: School Loan Exemption in H.R. 3126 Consumer Financial Protection Agency

Dear Chairman Frank:

Thank you for your leadership in advancing legislation to create a much-needed Consumer Financial Protection Agency (CFPA). As advocates for consumers, students, higher education and taxpayers, we strongly urge you to ensure the CFPA has full authority over *all* private student loans, regardless of the institution offering the loan. We are concerned that clarifications to address small business concerns have inadvertently exempted dangerous private student loans made by large for-profit colleges from the CFPA's enforcement authority.

Private student loans are one of the riskiest ways to pay for college, yet a growing number of students have private student loans as well as, or instead of, federal student loans. Private student loans are expensive, mostly variable-rate loans that cost more for those who can least afford them. They lack the fixed rates, consumer protections and flexible repayment options of federal student loans, and are not financial aid any more than a credit card is when used to pay for textbooks or tuition.

At for-profit colleges, which are attended disproportionately by African-American and Latino students, 42 percent of undergraduate students took out private loans in 2007-08. Several large for-profit colleges, including Corinthian Colleges, Inc., ITT Educational Services Inc., and Career Education Corporation, now make private loans directly to their students. Corinthian Colleges has told investors that it plans to make \$130 million in such loans this year even though it expects 56 to 58 percent of the borrowers to default. The company considers these loans good investments because they will increase enrollment and with it a profitable flow of federal grant and loan dollars that outweighs the planned write-offs. Financial analysts describe these schools as having "significant internal lending exposure" (Height Analytics report, September 23, 2009).

To effectively protect consumers, the CFPA must have full authority to regulate private student loans regardless of the institution offering them. For consumers, a private student loan can pose the same serious risks whether issued by a financial institution or by a school. The CFPA should apply and enforce standards based upon the product and not the issuing institution.

We are concerned that educational services might inadvertently fall within the scope of the services covered by the exemption for merchants, retailers and sellers, and thus loans made directly by schools would be outside the CFPA's jurisdiction. Indeed, the

exemption might even prevent the CFPB from enforcing existing rules for such loans covered by the Truth in Lending Act (TILA).

TILA already exempts small, incidental extensions of credit from regulatory burdens. TILA's definition of creditor, as interpreted in Regulation Z, provides exemptions for incidental creditors, and TILA's definition of private education loan provides exemptions for school payment plans and short-term extensions of credit. The CFPB's authority should be consistent with these TILA definitions.

Thank you for your leadership and consideration of our views. Links to additional information about loans by for-profit colleges, including Congressional testimony, are provided below. Should you or your staff have any questions regarding our position, please contact Pauline Abernathy with the Institute for College Access & Success at 510-559-9509.

Sincerely,

American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of State Colleges and Universities
American Association of University Women (AAUW)
Americans for Fairness in Lending
Americans for Financial Reform*
Campus Progress Action
Center for Responsible Lending
Common Cause
Consumer Action
Consumer Federation of America
Consumers Union
Consumer Watchdog
Dēmos: A Network for Ideas & Action
Empire Justice Center
The Greenlining Institute
Institute for College Access & Success and the Project on Student Debt
NAACP
National Association of College Admission Counseling
National Association of Consumer Advocates
National Association of Consumer Bankruptcy Attorneys
National Center for Public Policy and Higher Education
National Consumer Law Center (on behalf of its low income clients)
National Consumers League
National Council of La Raza
National Education Association
New York Public Interest Research Group (NYPIRG)
U.S. Public Interest Research Group
United States Student Association
USAction
Woodstock Institute

Further information about loans made by for-profit colleges and private loans:

Testimony of Lauren Asher, President of The Institute for College Access & Success before the House Judiciary Committee Subcommittee on Commercial and Administrative Law, September 23, 2009: <http://judiciary.house.gov/hearings/pdf/Asher090923.pdf>

Testimony of Michael Calhoun, President of Center for Responsible Lending, before House Committee on Financial Services, September 30, 2009: <http://www.responsiblelending.org/mortgage-lending/policy-legislation/congress/cfpa-calhoun-testimony.pdf>

“For-Profit Colleges’ Increased Lending Prompts Concerns,” by Justin Pope, The Associated Press, August 15, 2009: http://www.usatoday.com/news/education/2009-08-15-profit-college-lending_N.htm

“Corinthian Colleges, Inc. F4Q09 (Qtr End 06/30/09) Earnings Call Transcript:” <http://seekingalpha.com/article/158257-corinthian-colleges-inc-f4q09-qtr-end-06-30-09-earnings-call-transcript?source=bnet>

“Stimulus Wreckage: Despite having been accused of deceptive business practices by the attorney general, former students, and ex-employees, Corinthian Colleges are getting millions in federal stimulus dollars,” *SF Weekly*, September 30, 2009: <http://www.sfweekly.com/2009-09-30/news/stimulus-wreckage/>

“Private Loans: Facts and Trends,” The Institute for College Access & Success, August 2009: http://projectonstudentdebt.org/files/pub/private_loan_facts_trends_09.pdf

* A large number of organizations are working together to advance Americans for Financial Reform’s (AFR) common interest in an accountable, transparent and secure financial system, and to accomplish our shared policy goals. Because the organizations involved and the issues addressed are diverse, not every organization works on or has a policy position on every specific issue. We are unanimous in our call for change to repair our nation’s broken financial system, establish integrity in the financial markets, and facilitate productive economic activity that benefits all segments of our communities.