March 18, 2013

Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20006

Re: Request for Information Regarding Financial Products Marketed to Students Enrolled in Institutions of Higher Education (Docket No. CFPB-2013-0003)

Dear Ms. Jackson,

The American Financial Services Association ("AFSA") welcomes the opportunity to respond to the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") request for information regarding financial products marketed to students enrolled in institutions of higher education ("Request"). AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers.

Most AFSA members do not market financial products directly to students enrolled in institutions of higher education. Some AFSA members who may market financial products to students are already restricted from using certain types of marketing practices on college campuses by the Credit Card Accountability Responsibility and Disclosure Act of 2009 ("CARD Act"). The CARD Act also made agreements between credit card issuers and institutions of higher education subject to public disclosure.

Therefore, our letter focuses on the concerns that AFSA has with some of the language in the press release about the Request.

"Best Interest" and "Good Deal" Language in the Press Release

On Jan. 31, the CFPB announced the Request in a press release, stating that the Bureau, "intends to use the information gathered to determine whether these arrangements are in the best interest of students." The release included a quote from CFPB Director Richard Cordray, "The Bureau wants to find out whether students using college-endorsed banking products are getting a good deal." [1]

AFSA is concerned that the "best interest" and "good deal" language in the press release suggests that the CFPB will create a new legal standard for products marketed to students. The

[1] http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-launches-inquiry-on-campus-financial-products/

language in the press release suggests a new obligation to do more than avoid unfair, deceptive, and abusive acts or practices. It suggests an affirmative fiduciary-like obligation to enter into business arrangements or offer products or services only if the product or service is subjectively in the student's best interest or is a good deal for the student. Therefore, we ask that the CFPB clarify that the language in the press release does not create a new legal obligation.

First, creation of such a new legal obligation is contrary to section 1031 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), which authorizes the CFPB to take action to prevent financial services companies from "committing or engaging in an unfair, deceptive, or abusive act or practice." It does not authorize the creation of a quasi-fiduciary duty upon financial service providers. An abusive act or practice is defined in section 1031 as an act or practice that "materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service" or "takes unreasonable advantage of (a) a lack of understanding on the part of the consumer …; (b) the inability of the consumer to protect the interests of the consumer in selection or using a consumer financial product or service; or (c) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer."[2] These standards offer consumers, including students, more than enough protection without imposing a fiduciary-like standard that has never existed in American jurisprudence.

Second, these terms are extremely vague on their face because a "good deal" standard can be read to impose an obligation that differs from student to student. For example, a product may be a "good deal" for one student, but not for another, or it may be a "good deal" at one price point, but not at another.

Third, a "best interest" standard would create a compliance burden, since it would not necessarily require evidence that the student believed the financial firm was acting in his or her "best interest," that the belief was "reasonable" or that the financial services company took "unreasonable advantage" of the student. Evaluating whether a product or service is in the student's "best interest" is also more difficult than making an assessment about whether it is "unfair," a standard that requires evidence of "substantial harm" that is "unavoidable" and does not have offsetting benefits.

We understand that the "best interest" and "good deal" language is not in the Federal Register notice. However, the Federal Register notice did state that the CFPB is seeking, "information on how current and future partnerships or other arrangements between institutions of higher education (including their affiliated entities) and financial institutions could be structured to promote positive financial decision-making among young consumers."[3] A formal, legal "best interest" or "good deal" standard is not necessary, and in fact would be counterproductive and particularly unworkable and unfair to financial service providers.

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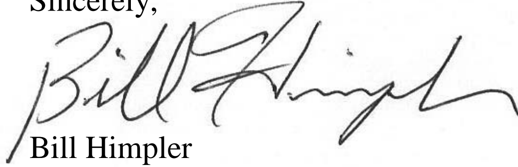
[2] Dodd-Frank Act § 1031, 12 U.S.C. § 5531
[3] 78 FR 8114

We look forward to working with the CFPB on these issues. Please contact me by phone, 202-466-8616, or e-mail, bhimpler@afsamail.org, with any questions.

Sincerely,



Bill Himpler
Executive Vice President
American Financial Services Association