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The Honorable Joseph P. Frey  
Associate Commissioner  
Office of Higher Education  
New York State Education Department  
Room 977, Education Building Annex  
Albany, NY 12234

Dear Mr. Frey:

Following up on our meeting last month, these comments reflect the views of the New York Bankers Association on the preliminary draft regulations designed to implement the Student Lending, Accountability, Transparency and Enforcement (SLATE) Act. We greatly appreciated the opportunity that you provided to our members to meet and discuss the implementation of the regulations and their effect on lending institutions. We strongly agree with the Department's stated intention to incorporate, in any regulations ultimately proposed, language included in SLATE that clarifies the applicability of certain provisions of the Act. In this regard, we believe it particularly important that the regulations apply only to student loans, as defined, and remain inapplicable to other types of financial relationships between educational and lending institutions and between lending institutions and their customers. Our Association is comprised of the community, regional and money center commercial banks and thrift institutions doing business in New York State. Our members have assets in excess of \$9 trillion and more than 300,000 New York employees.

General Comments:

We greatly appreciate the Department's willingness to incorporate provisions of SLATE into any regulations proposed. Of primary importance, section 621 of SLATE's prohibition on gift giving specifies that lending institutions may not offer or provide gifts "in exchange for any advantage or consideration provided to such lending institution related to its educational loan activities." Identical language is included in section 622's prohibition of receipts by covered institutions. The incorporation of this language in section 145-10.2 of the draft regulations will

serve both to clarify that only those gifts that relate to student lending activities and that are intended to provide an advantage or consideration to the lending institution are covered. These limitations are important to ensure that other contributions by lending institutions, such as for construction loans for educational buildings, naming rights, endowments, free or reduced cost financial services and other relationships are not restricted by this prohibition.

We have also urged that any proposed regulations take into account federal regulations that have been or are being adopted under the Higher Education Act of 1965, as amended. Because the language of SLATE varies in some respects from the federal regulations, while the intent appears to be virtually identical, it would be appropriate, we believe, for the Department to incorporate a specific recognition of federal regulations in its proposal. This could be accomplished through the inclusion of language such as: "Compliance with regulations adopted under the Higher Education Act of 1965, as amended, shall be considered compliance with these regulations." Such a provision would ease compliance burdens on lenders who otherwise might be subject to confusion and possible misinterpretation of ambiguous regulatory language.

#### Specific Comments:

With respect to issues left unaddressed after our meeting, we would have these additional specific comments:

**Definition of Affiliate:** Federal regulations provide a clear and succinct definition of "affiliate" that provides unambiguous guidance to lenders on which of their corporate family members are covered by the regulations. 34 CFR section 682.212 (h)(3). The definition is already being used by lenders to comply with federal student loan regulations. We urge that it be adopted by the Department.

**Definition of Educational loan:** The tentative draft regulations define educational loan and then exclude several types of real estate and open-end credit loans if they are used to finance higher education expenses. This definition relies on an after-the-fact inquiry into circumstances that will not be known by the lender at the time a loan is made. We would therefore suggest a more straightforward exclusion of all "credit secured by real estate or open-end credit." This exclusion relies on traditional banking terminology and can easily be judged by a lender at the time a loan is made. It would not exclude any traditional student loan credit, all of which is unsecured and closed-ended.

**Definition of Preferred lender list:** We urge that the Department consider providing a safe harbor for lending institutions that choose not to be covered by these regulations by not providing preferred lender lists to their students. The definition of preferred lender list in the tentative draft regulations includes any list of "suggested" or "recommended" lending institutions. Merely compiling a list of available student lenders, without more, could be considered "suggesting" the

use of those lending institutions. We would therefore request that the Department consider adding a sentence to the effect that merely compiling a list of all educational lenders known to be available to make loans without discrimination among the lenders on the list should not cause a covered institution to be considered as providing a "preferred lender list."

**Underwriting High Risk Loans:** Our Association would respectfully suggest that the Department delete references to the annual submission of underwriting standards from section 145-10.5 (c) of the draft tentative regulations. Although very few, if any, of our members engage in making "high risk loans" or "opportunity loans," underwriting standards are confidential and often set forth in highly competitive documents that lending institutions would strongly resist seeing subject to public information laws. There also appears to be no authority in SLATE for the Department to request this information. The Department should, in its place, request that individual lenders engaging in this type of student lending discuss with the Department what information would satisfy the Department's legitimate need for information with respect to these types of loans.

In summary, we appreciate the Department's willingness to meet and discuss our concerns with regard to the tentative draft regulations. We look forward to commenting on the proposed regulations when they become available. We would be willing to meet further with the Department to discuss these comments or other issues raised during the regulatory process.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Smith". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping tail.

Michael P. Smith