From: FinAid Page LLC, Mark Kantrowitz

Subject: Reg Z - Truth In Lending

Comments:

Docket No. R-1353
Attn: Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Greetings,

I am writing to offer my comments on the Federal Trade Commission''s proposed amendments to Regulation Z (Truth in Lending), Docket No. R-1353.

My name is Mark Kantrowitz. I am the publisher of FinAid.org and FastWeb.com, the two most popular web sites for clear and objective student financial aid and scholarship information, advice and tools. I try to act as a catalyst for improvements in student financial aid, always with a consumer focus. I have previously provided assistance to the Federal Trade Commission in Project ScholarScam, including declarations and other testimony in several FTC cases, and testified in support of the College Scholarship Fraud Prevention Act of 2000. I provide student aid policy analysis and insights to various members of Congress, US Department of Education staff, and college financial aid administrators. I testified before the Senate Committee on Banking, Housing and Urban Affairs last year concerning the impact of the credit crisis on student loans, leading to the passage of the Ensuring Continued Access to Student Loans Act of 2008. I have also provided assistance to various state attorneys general in matters connected with student loans and student financial aid, including the Iowa Attorney General''s review of the state loan agency''s practices. The latter is relevant to your current set of proposed amendments to Regulation Z (Truth in Lending) and may be found at www.state.ia.us/government/ag/latest_news/releases/oct_2008/9-25-08.pdf

I also recommend that you consider the recommendations in the Consumers Union report, Helping Families Finance College: Improved Student Loan Disclosures and Counseling, July 2007, which can be found at www.consumersunion.org/pdf/CU-College.pdf

The following comments represent my personal and professional opinion. They do not necessarily reflect the position of my employer or any other individual or entity.

Please contact me at by email if you need any additional information or wish to discuss these comments further.

Sincerely,

Mark Kantrowitz
Publisher of FinAid.org and FastWeb.com

1. General Comment:

Many students are new to borrowing and accordingly lack sufficient experience and financial sophistication to identify and interpret the impact of student loan terms. As a result they may be influenced by the selective disclosure or highlighting of information about loan programs, leading them to reach inaccurate conclusions about the cost and benefits of particular loan programs.

Some students also do not understand how interest rates translate into loan costs. For example, on the collegegold.com web site we have a quiz question that reads:

> Think you understand how interest affects a loan? Answer this multiple choice question:
>
> The total amount paid back (both principle and interest) for a $10,000 loan with a 10-year term at 10% interest is:

A. $1,000
B. $11,000
C. $15,858
D. $18,100
E. $20,000
F. $32,479

Only 25% of respondents chose C, the correct answer. 24% chose E, 15% chose B, 14% chose A, 12% chose F, and 11% chose D. Thus it is not sufficient to merely inform students about the interest rates and other terms of the loans. Rather, it is necessary to take the added step of providing standardized examples that interpret the terms and illustrate the practical impact of the loan terms on the monthly payment, total interest paid over the life of the loan and total payments over the life of the loan.

It is not uncommon for lenders to compare loan programs with different loan terms or to disclose monthly payment amounts without disclosing the total cost of the loan. For example, consider a comparison of a $20,000 private student loan with a 10% interest rate and 20-year term with a $20,000 unsubsidized Stafford loan with a 6.8% interest rate and a 10-year term. The private student loan has a monthly payment of $193, which might seem less expensive than the $230 monthly payment on the Stafford loan. It is not uncommon for lenders to inappropriate characterize the lower monthly payment as "saving" money. But the total interest paid over the life of the private student loan is $26,323, much more than the $7,619 in total interest paid on the Stafford loan. The total cost of the loan (both total payments and total interest) must be prominently disclosed alongside the monthly payment in the same size and font, especially in any comparison of costs of two or more loan programs. It should not be buried in a footnote.

The factors that matter most to consumers are:

- How much money they can get net from the loan
- How much the loan will cost per month
- How much the loan will cost over the life of the loan

Thus the most important pieces of information that should be disclosed are:

- the total of all monthly payments over the life of the loan, expressed as a dollar amount
- the total interest paid over the life of the loan, expressed as a dollar amount
- the total of all fees charged to the borrower, expressed as a dollar amount (and also as a percentage, if applicable)
- the actual interest rate(s) charged to the borrower, both the current percentage and the interest rate formula
- the term of the loan in years

Curiously, when the total interest paid over the life of the loan exceeds the amount borrowed it seems to trigger greater scrutiny of loan terms by prospective borrowers. It is therefore important that this figure be included in addition to the total payments over the life of the loan and that this figure be located near the amount borrowed to facilitate such a comparison.

I also recommend including standardized examples so that borrowers can easily compare the cost of different loans. One possibility would be a disclosure of the monthly payment and total of all monthly payments on a $10,000 loan at the maximum interest rate and fees charged by the lender and assuming that the loan is borrowed by a first-year student enrolled in a four-year institution over 10 and 20 year terms. I propose using a $10,000 loan amount because it is easy to calculate loan payment and cost figures for other loan amounts by multiplying those figures by appropriate fractions. The amount should be adjusted, as needed, to ensure that the consumer receives $10,000 net of any fees. (For example, if a loan has a 6% origination fee deducted from the disbursement, the amount of the loan should be divided by 100% - 6% = 94% to arrive at a loan amount of $10,638.30. 6% of this figure is $638.30, yielding $10,000 to the consumer after the origination fee is deducted. This ensures that the total cost of loan, total interest paid and monthly payment figures are relative to the same net baseline amount received by the borrower.) The standardized examples should be designed to reflect the most expensive variation on the loan terms, such

as the maximum interest rate and in-school deferment of payments of principal and interest.

APR is inadequate for comparing the cost of loans with different loan terms because all else being equal, the loan with the longer loan term will have a lower APR despite having a higher total cost. In addition, interest rates and the APR are difficult for consumers to interpret. A much better approach involves the provision of concrete and specific examples that express the cost of the loan in terms of dollar amounts on an apples-to-apples basis. However, this should supplement, not supplant, the inclusion of APR figures on the disclosure forms. APR does have some utility in distinguishing between loans that have different fee structures.

2. Omission of information about federal loan alternatives from the Final Disclosure form.

I commend the FTC for conducting consumer testing for the purpose of evaluating the proposed model disclosure forms. This is a useful technique for identifying problems. However, the sample size the FTC used in consumer testing is not statistically significant and as such is inadequate to evaluate the sufficiency of the information disclosed in addition to the necessity of the information disclosed. As such it should not be used to evaluate the need (or lack thereof) for disclosure of the federal loan alternatives on the Final Disclosure form.

FastWeb conducted a Student Loan Survey from October 23, 2008 through November 13, 2008. The survey was mentioned in four regular FastWeb newsletters sent to 6,079,974 college students and 1,007,853 parents of college students. There were a total of 1,202 responses by the cutoff date, yielding a confidence interval of +/- 2.83% at the 95% confidence level for the US college student population as a whole. The survey included a question about why families borrowed private loans instead of federal loans. 24.7% of respondents indicated that they were unaware of federal loan options and 15.0% indicated that they were not poor as reasons why they did not borrow from the federal loan programs.

This is consistent with my own experience in talking with thousands of borrowers over the past decade who are encountering financial difficulty. There are three common refrains with these borrowers: (1) they were unaware of how much they had borrowed, (2) they were unaware of how much their debt would cost, and (3) they were unaware of their eligibility for federal education loans. It is not uncommon for families to believe that they are ineligible for federal education loans because those loans are "only available to the poor". It is therefore important to repeatedly emphasize that the unsubsidized Stafford loan and the PLUS loan are available without regard to financial need, even to "wealthy" families.

So long as the inclusion of the disclosures do not overwhelm

the families with too much information, it is better to err on the side of repeating the information about federal loan availability than to omit it.

3. The FTC proposes to use the more precise definition of business day in 226.2(a)(6) in connection with the right to cancel. However, some creditors might happen to be closed on one or more of those days, such as Saturdays and non-federal holidays. I suggest merging the two for the purpose of the right to cancel, requiring that the business days (precise definition) be restricted to business days during which the creditor''s offices are open to the public for carrying on substantially all of its business functions, including exercising the right to cancel.

4. While consumers do experience some confusion over the difference between interest rates and APR, it is still necessary to disclose the APR in close proximity to the interest rate. One possibility would involve disclosing the APR in parentheses immediately after any disclosure of the interest rate, such as 6.0% (6.3% APR) It is not uncommon for private student loans to change the interest rates or require a second set of fees when a loan enters repayment. The interest rates at repayment are often higher than the initial interest rates. This use of teaser rates is sufficiently prevalent that it should be addressed by the FTC''s proposed regulations. (The use of multiple rates parallels prior practice for federal student loans, where Stafford loans originated prior to July 1, 2006 had different interest rates during the in-school/grace periods and repayment periods.) The FTC should require disclosure of all interest rates applicable to the loan, along with the overall APR.

5. The FTC should clarify the relationship of "student credit plans" to "qualified education loans" as defined in 26 USC 221(d)(1). For example, are all qualified education loans automatically considered student credit plans and so subject to Regulation Z?

6. Most students obtain multiple education loans during the course of their education, often from the same lender. The FTC should address whether the disclosures are required for subsequent education loans from the lender to the same borrower. I recommend requiring the disclosures at least once a year, if not before each and every loan, given that loan terms change frequently throughout the year.

7. The FTC''s substitution of "creditor" (12 CFR 226.2(a)(17) for "private education lender" establishes a loophole for new entrants into private education lending. Several credit unions, for example, have started offering private student loans for the first time in 2009. The FTC should clarify that the definition of credit for the purpose of these amendments applies to any lender that intends to extend credit more than 25 times in the current or preceding calendar year. Also, it is not uncommon for one lender to private label another

lender''s private student loan product. The FTC should clarify that the disclosure rules apply also to persons or entities that are merely marketing another lender''s private student loan product. Otherwise lenders could rely on marketers to circumvent the intent of the regulations. In addition, the FTC should clarify that these regulations do apply to peer-to-peer education lenders.

8. Unaccredited institutions are not eligible for federal student aid, including federal education loans. It is therefore not uncommon for such institutions to provide private education loans to their students, especially during the pendency of the accreditation process. Such institutions should be included in the definition of covered educational institution. One has to assume that Congress defined "covered educational institution" in terms of "any educational institution that offers a postsecondary educational degree, certificate or program of study" and not in terms of any Title IV eligible institution to specifically include any unaccredited or non-participating educational institutions.

   A key concern is student overborrowing due to an insufficient awareness of the terms of their loans and the impact of those terms on the loan cost. The unaccredited nature of some institutions of higher education does not obviate this or other policy goals for adequate disclosure to consumers.

9. It is not uncommon for lenders to market home equity loans and lines of credit and personal unsecured loans as alternatives to federal and private education loans. While it is reasonable for mixed-use loans like credit cards to be excepted from the disclosure requirements of section 226.38(a), it is not reasonable to except mixed-use loans from the disclosure requirements when such loans are marketed for use in paying for postsecondary education expenses or when such loans are used predominantly for postsecondary education expenses. The FTC should establish a reasonable standard for when a mixed-use loan should be subjected to the disclosure requirements, such as when the consumer indicates that they intend to use the loan to pay for postsecondary education expenses or amounts intended for such expenses exceed a specified threshold. The FTC should require creditors of mixed-use loans that are marketed for use in financing postsecondary education expenses to include an application question asking whether the consumer intends to use the loan for such a purpose, and to mandate the disclosures if the consumer responds in the affirmative.

10. It is not uncommon for borrowers and/or cosigners to be unaware of the extent of their repayment obligation. When there are multiple consumers obligated on the debt, as discussed in section 226.37(f), the disclosures should be provided to each consumer and not just the consumer with the primary obligation to repay the debt. Willingness to cosign a loan, for example, should not be dependent on inadequate disclosure to the cosigner. It is essential that all

signatories on a promissory note have been adequately informed concerning the terms of the loan and the financial impact of those terms.

11. The FTC should consider whether to address concerns about cumulative debt. Many students borrow education loans piecemeal and may not be aware of the total amount of debt they are assuming. This is a problem frequently mentioned by

    students who have borrowed excessively for their education, that they were unaware of the total amount of debt they had assumed. Should creditors that have provided multiple loans to a borrower be required to disclose the aggregate debt made to the borrower?

12. 226.38(a)(2) discusses fees "required to obtain the private education loan". This language would appear to exclude fees required at a later time, such as fees required when the loan enters repayment, collection charges on defaulted loans, and fees charged to obtain or renew a deferment or forbearance. Since such fees are common on private education loans and have a material impact on the cost of the loans, disclosure of such fees should be mandatory, especially to the extent that such fees are not discretionary. Even when the fees are discretionary, the existence of such fees is often buried deep within the bowels of the promissory note and the amount of such fees is often not specified in advance.

13. The FTC''s comment 226.38(a)(4)-3 proposes to use the maximum initial interest rate for calculating the total cost of loan. Since it is not uncommon for private student loans to use a lower teaser rate as the initial rate, this comment should be revised to require the use of the higher of the initial or any subsequent rates charged to the borrower during the term of the loan, based on the applicable index figures in effect at about the time the disclosure is sent to the borrower. A distinction should be drawn between rate resets on the initial interest rate formula (which are generally not predictable) and predetermined changes to the interest rate formula that typically occur at loan status changes, such as entering repayment.

    The assumption of a maximum rate of 21% when the maximum rate cannot be determined is adequate. However, the FTC may wish to substitute a maximum rate of 24% because a 21% ceiling may be too low based on historical peak rates on private student loans. In addition, using a higher assumed maximum rate would encourage lenders to institute lower interest rate caps in order to have their loans characterized more favorably under the disclosures.

14. The FTC should clarify that the use of a two-year deferral period assumption is permitted for students attending a community college or other two-year postsecondary education program. The term ''undergraduate'' is often used to encompass both 2-year and 4-year programs.

The use of a four-year deferral period assumption is preferable to the use of an average-life in deferment assumption, even though the latter reflects the impact of the actual life of each year''s loans in a four-year program, because it reflects the maximum possible cost of a loan to the borrower. There are two key goals: one involves providing the borrower with a reasonable estimate of the worst-case cost of the loan, and the other involves providing the borrower with a standardized figure with which to compare costs on different loans on an apples-to-apples basis. These goals entail conflicting average and maximum assumptions. Perhaps the FTC should address each of these goals separately.

The FTC proposes to allow creditors to assume the maximum deferment period for a loan in calculating the total cost examples if the maximum period is less than two years. If the FTC intends to include standardized $10,000 loan amount examples, it should require a uniform deferment period regardless of the actual deferment period in order to ensure that the cost figures are comparable among different loan programs. Otherwise a lender might artificially reduce the available deferment period in order to make their loans appear to be less expensive due to a smaller amount of capitalized interest.

15. With regard to eligibility, the FTC should require the disclosure of any income-related requirements, including minimum income thresholds and debt-to-income ratios. It is not uncommon for cosigners to assume that the lender adequately evaluated their ability to repay the debt, only to discover later that they are even less capable of repaying the debt than the primary borrower. For example, I have on several occasions heard from grandparents on fixed income who cosigned for a grandchild''s private student loans. Full disclosure will help consumers to evaluate whether the lender''s eligibility criteria adequately assess their ability to repay the debt.

16. The intention of the disclosure requirement about the availability of federal education loans is to ensure that consumers are aware of their federal borrowing options since federal loans are cheaper, more available and have better repayment terms than private student loans. The FTC''s proposal to allow the substitution of a "Federal Loan Alternatives" label is inadequate, as it does not convey the advantages of federal education loans, such as are discussed in the US Department of Education''s "Federal Aid First" campaign at
http://federalstudentaid.ed.gov/federalaidfirst/index.html

At the very least the table displaying the alternatives should be in the same format as the Repayment Options & Sample Costs table and include total cost figures to permit a clear comparison that shows how the federal loan alternatives

are less expensive. But ideally there should also be a sentence that states that federal education loans are usually less expensive and have better repayment terms than private student loans.

According to data from the 2007-08 National Postsecondary Student Aid Study (NPSAS), 26.0% of undergraduate students and 32.6% of graduate students who borrowed private student loans did not borrow the Federal Stafford loan. This clearly demonstrates the need to retain this disclosure. The following illustrates the percentage of undergraduate private student loan borrowers who do not borrow from the Federal Stafford loan program when disaggregated by level and control of institution.

Public Colleges	41.4%
Private Non-Profit Colleges	17.6%
Private For-Profit Colleges	8.2%
4-year Institutions	20.9%
Public 4-year	32.1%
Private Non-Profit 4-year	17.5%
Private For-Profit 4-year	3.8%
2-year Institutions	41.0%
Public 2-year	61.1%
Private Non-Profit 2-year	15.2%
Private For-Profit 2-year	2.9%
[2-year Institutions	30.7%
Public [2-year	45.4%
Private Non-Profit [2-year	35.3%
Private For-Profit [2-year	30.0%

The form should also disclose other key differences between federal and private student loans, such as the various discharge provisions on federal loans (e.g., death and total disability, closed school, identity theft). In addition the form should disclose that private student loans can generally not be discharged in bankruptcy unlike other forms of non-federal consumer debt.

17. The FTC proposes to except creditors from the prohibition on using a covered educational institution''s name, logo, mascot or other words or symbols readily identified with the institution, to imply that the institution endorses the loans offered by the creditor when the institution has indeed endorsed the loans in a preferred lender arrangement. The FTC should clarify that this exception does not apply to referencing a covered educational institution in a way that implies that the educational institution is offering or making the loan rather than the creditor (e.g., "University of ABC Loan" as opposed to "Creditor''s Loan for ABC University Students"). Such a reference goes beyond implying endorsement to misleading the consumer as to the nature of the loan. Most consumers assume (sometimes incorrectly) that an institutional loan will be less expensive than private student loans offered by third party creditors. Congress clearly intended to preclude this practice as indicated in 20

USC 1019a(a)(2). The FTC should also clarify that the proposed safe harbor does not apply to such a misleading use of a covered educational institution''s name, as it is not possible to unring a bell through the use of subsequent clear and conspicuous statements. (For example, one could conceive of a creditor purchasing a Google adwords advertisement with a misleading use of a covered educational institution''s name. Correcting this through a subsequent noncontiguous notice as to the true identity of the lender is inadequate, as the consumer has already formed an inaccurate impression of the nature of the loan product and is therefore primed for further confusion.)

The FTC should consider clarifying that the exception for use of a creditor''s own name when that name includes the name of a covered educational institution does not permit use of just the part of the creditor''s name that comprises the covered educational institution''s name. For example, if the creditor''s name is "XYZ University FCU", the creditor may not refer to a loan as the "XYZ University Loan" but rather must include sufficient elements of the creditor''s name so as to clearly distinguish it from the covered educational institution, namely "XYZ University FCU Loan".

18. It seems reasonable to permit a consumer to accept a loan before receipt of modified disclosures when the creditor modified the terms of the loan in response to a consumer''s request if and only if the terms of the modified loan clearly reduce the borrower''s cost, such as just reducing the loan amount without changing the interest rates and fees. If the impact is not clearly a reduction in cost (e.g., a reduction in loan amount coupled with an increase in the interest rate, or a reduction in the interest rate coupled with an increase in the fees) then acceptance should be delayed until consumer receipt of the new disclosures.

19. With regard to circumstances under which it would be appropriate for a creditor to withdraw a loan offer during the 30 day period, the examples cited by the FTC (fraud on the loan application, change in borrower enrollment status) seem reasonable. Other reasonable circumstances could include a change in borrower qualifications which would cause the borrower to no longer be eligible for the loan according to the disclosed eligibility criteria in effect the date the borrower was approved for the loan. Common examples include death of the borrower or anything which would cause the borrower to be considered in default on the debt subsequent to consummation of the loan.

20. The FTC should clarify that requiring a refund of up-front or other loan discounts (e.g., fee waivers) upon loan cancellation represents a fee charged specifically for canceling the loan and as such would violate the requirement that the creditor allow cancellation without penalty.

21. The FTC asks whether creditors should be required to accept

cancellation requests until midnight (in which time zone?) or a reasonable deadline in connection with the three-day buyer''s remorse period. Given the short time period for the consumer to cancel the loan, the FTC should require three full business days.

22. Education loans sometimes include a complex array of discounts that can make calculating the total cost of the loan difficult. Accordingly, the FTC should not waive the requirement that the creditors provide information to the educational institutions about the total cost of the loans.

23. The H-18, H-19 and H-20 model forms should include the creditor''s telephone number and web site along with the name and address information.

    In the H-18 model form the fees should be listed under the interest rates, not below the explanatory material concerning the determination of the interest rates. The current placement makes it easy to overlook. The detail in the Repayment Options & Sample Costs table should include the highest monthly payment.

    Several of the font sizes on the model forms are too small. The font sizes should be sufficiently large so as to be readable on a faxed copy of the form.

24. The proposal to allow creditors to not list specific factors affecting the interest rate but rather to include a generalized statement that "your interest rate will be based on your creditworthiness and other factors" is too vague and non-specific. All factors that affect the interest rate should be disclosed. Otherwise, why bother including this statement at all? One could argue that the FTC should mandate the disclosure of the tiering of the interest rates and fees.

Mark Kantrowitz
FinAid Page LLC