ITT Educational Services, Inc.

May 26, 2009

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

via: Federal eRulemaking Portal
Re: Docket No. R-1353

Dear Ms. Johnson:

The 106 ITT Technical Institutes across the country appreciate the opportunity to comment on proposed Regulation Z, Docket Number R-1353, to implement the amendments to the Truth in Lending Act ("TILA") made by the Higher Education Opportunity Act ("HEOA"). While ITT supports the principles behind the TILA amendments and the HEOA relating to private student loans, ITT is concerned that the proposed regulations present implementation issues that could result in unintended negative consequences for student borrowers.

ITT Technical Institutes offer both professional and technology-based programs of study at the associate, baccalaureate and master's degree levels in both residential settings and in a distance learning environment. Programs are offered under the auspices of the School of Information Technology, the School of Electronics Technology, the School of Drafting and Design, the School of Business, the School of Criminal Justice and the School of Health Sciences. The 65,000 students attending an ITT Technical Institute campus or online seek an environment that allows them to balance family, school and work as they embark upon an education that can help them develop knowledge and skills that they can use to prepare for careers and help them contribute to their communities. The majority of students attending ITT Technical Institutes are working adults seeking to move from an unskilled job to a career requiring technical and professional education.

In drafting the proposed regulation, the Federal Reserve has carefully tried to balance the policy goals of the new law with real-world considerations relating to weighing the benefit of the regulation for the protected class against the burden of compliance for affected institutions. ITT supports this approach and suggests that the Federal Reserve use this approach to make the following changes to the proposed regulation:

- Modify the definition of "creditor" to exclude higher education institutions with respect to installment payment plans or institutional loans made to borrowers for attendance at the institution, but retain the application of Subpart C to such loans or payment plans if the institution otherwise meets the definition of "creditor"; and

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- Modify the definition of "private student loan" to exclude student loans made by a covered higher education institution for attendance at the institution, so that these loans would be subject to the Subpart C requirements but not those of Subpart F.

If the Federal Reserve believes that not all institutional loans should be exempted, ITT Technical Institutes suggest that at the very least, payment plans and loans that do not charge interest should be exempted.
Suggested language for the definition of "creditor" and "private student loan" follows (with new language underlined):

> (17) *Creditor* means:
> (i) A person (A) who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a downpayment), and (B) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.
> (ii) For purposes of §§ 226.4(c)(8) (discounts), 226.9(d) (Finance charge imposed at time of transaction), and 226.12(e) (Prompt notification of returns and crediting of refunds), a person that honors a credit card.
> (iii) For purposes of subpart B, any card issuer that extends either open-end credit or credit that is not subject to a finance charge and is not payable by written agreement in more than four installments.
> (iv) For purposes of subpart B (except for the credit and charge card disclosures contained in §§ 226.5a and 226.9(e) and (f), the finance charge disclosures contained in §§ 226.6(a) and 226.7(d) through (g) and the right of rescission set forth in § 226.15) and subpart C, any card issuer that extends closed-end credit that is subject to a finance charge or is payable by written agreement in more than four installments.
> (v) Notwithstanding subparagraph (i) above, an institution of higher education that participates in the federal student aid programs pursuant to Title IV of the Higher Education Act is not a creditor with respect to [non-interest-bearing] installment payment plans or institutional loans made to borrowers for attendance at the institution; provided, however, that the provisions of Subpart C and §226.38(a)(6) shall apply to such payment plans or institutional loans, if the institution otherwise meets the definition of creditor.
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> (5) *Private education loan* means a loan made by a creditor that:
> (i) Is not made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 USC 1070 *et seq.*);
> (ii) Is extended to a consumer expressly, in whole or in part, for postsecondary educational expenses~~, regardless of whether the loan is provided by the education institution that the student attends~~ regardless of whether the loan is certified by the institution or is a direct to consumer loan; and
> (iii) Does not include open-end credit or any loan that is secured by real property or a dwelling.

The policy goals that led to the HEOA provisions affecting private student loans were (1) to ensure that borrowers of student loans have the necessary information to make good choices, and (2) to prevent lenders from entering into inappropriate relationships with higher education institutions that put the interests of the institution above those of the students. The HEOA took a two-pronged approach – it placed new restrictions and requirements on lenders and higher education institutions participating in the federal student aid programs through the Higher Education Act, and it placed new obligations and restrictions on private lenders who make educational loans through the TILA.

The Federal Reserve Board proposes to use the current definition of "creditor" in Regulation Z at 12 CFR 226.2(a)(17) as the definition of "private education lender" for the new Subpart F related to private education loans. This proposal is problematic in that it could encompass the activities of higher education institutions that provide financing plans for the benefit of their students. The problems caused by this broad interpretation arise in part from the regulations being developed by the U.S. Department of Education to implement the HEOA, which relies on definitions from TILA as implemented by the Federal Reserve in Regulation Z, and in part from the provisions of the new Subpart F.

Higher education institutions may come within the definition of "creditor" by trying to be responsive to their students' financial needs, both short-term to bridge the students until their student aid is disbursed and longer-term for need that is not met by their aid packages. It has long been the case that the federal student financial aid programs do not provide enough funding to pay for the full cost of education for many students. The current economic climate has increased the number of students who have unmet financial need, because college savings accounts have been faced with the same loss of value as the broader markets, and it has become increasingly hard for less credit-worthy individuals to borrow. In addition, the new requirement for a 30-day period before disbursement of a private student loan will increase the number of students who need assistance to carry them over until their loan is disbursed.

The higher education institution may assist students by providing flexibility in meeting their financial obligations through institutional loan programs or installment payment plans. These alternative payment mechanisms allow the student to avoid the need to obtain private educational loans from third-party lenders. For example, ITT Technical Institutes offer their students non-interest-bearing payment plans that allow them to make affordable payments during each term of their educational program; the Institutes provide the TILA disclosures under Subpart C of Regulation Z to their borrowers with respect to these plans. However, if institutional loan programs and payment plans were to expose institutions to the more extensive requirements of the TILA amendments made by the HEOA, many higher education institutions, including the ITT Technical Institutes, would be forced to reconsider whether to offer these options to students because the burden associated with complying with the Department of Education regulations and subpart F of Regulation Z would cause significant costs to the institutions and impose significant restrictions and risks on them.

To understand this issue, it is important to understand how these institutional payment mechanisms work. There are several models with a number of variations that an institution may use depending on the needs of its students, its financial situation, and other administrative factors.

One model for an institutional payment plan is to allow students to make monthly payments during the course of a term based on an installment payment plan. In many cases, such payment plans do not charge interest, although some impose a modest administrative charge. Many higher education institutions use such payment plans and schedule no more than four payments, which exempts them from the definition of "creditor." However, a student may choose to schedule more than four payments based on his or her financial situation, and the higher education institution may wish to accommodate such students. For example, it is not uncommon for a student to choose to make an affordable monthly or weekly payment toward tuition charges based on earnings from current employment throughout an academic year.

As a matter of public policy, it would not make sense to require higher education institutions to make all of the disclosures and follow the complex set of rules that will apply to private education loans with respect to payment plans that charge no interest and help those students avoid more costly debt. Requiring higher education institutions to comply with the provisions in proposed Subpart F in this circumstance could cause colleges to stop providing this service for their students. This would likely result in the students using other methods to pay their school charges, such as credit cards, home equity loans, or withdrawals from their 401(k) plans, that are much more expensive for the students.

In addition to installment payment plans, some institutions have institutional loan programs that allow their students to borrow at more favorable rates than they could get in the private loan market to pay their educational expenses. These institutional loan programs are also critically important for borrowers who are not considered credit-worthy by the private lenders, whose lending criteria have become increasingly strict during the current economic recession. Higher education institutions should be excluded from the definition of "private education lender" so that they will be able to continue to offer these benefits to their students.

Including institutional loans within the definition of "private student loan" would require the institution to comply with a number of provisions that would be problematic. For example, the 30-day cooling-off period that is required by the new provisions would make it impossible for an institutional loan to be disbursed to a student in time to pay their charges for the current term. The prohibition on co-branding would also be an obvious problem. But most problematic would be complying with the code of conduct prohibitions in the Title IV regulations.

The code of conduct provisions prohibit an institution from entering into a revenue-sharing arrangement with a lender. If the institution itself is the lender, there is no way to avoid sharing revenue. In addition, under the code of conduct provisions, the institution would not be able to pay the employees in its financial aid office or other employees who process and service the loans. Extending the coverage of the term "private student loan" to include institutional loans would not further the congressional purpose in passing the underlying legislation. The abuse which Congress was trying to remedy related to relationships between lenders and institutions under which institutions steered borrowers toward particular lenders in return for some benefit to the institutions. That is not the case with institutional loans. Colleges provide these loans to assist their students. It is incidental to their primary business of education, not a primary part of their business. It would be to the benefit of the student borrowers for institutional loans to be excluded from the definition of "private student loan."

However, this does not mean that we believe that borrowers should not get appropriate disclosures with institutional loans. Our suggestion is that institutional loans continue to be covered under the current Subpart C of Regulation Z and, in addition, be covered by section 226.38(a)(6) so that students would be given the disclosure relating to the federal Title IV student loans.

These recommended changes fulfill the policy goals of providing good consumer information to borrowers of student loans while not imposing an undue burden on higher education institutions that choose to assist their students in paying their educational costs.

Thank you for the opportunity to comment on this important regulatory proposal.

Sincerely,

Clark D. Elwood
Executive Vice President, Chief Administrative
Officer, General Counsel and Secretary