

02-029

BUREAU OF BANKING Chapter 140

Regulation 40

(Also OFFICE OF CONSUMER CREDIT REGULATION - Chapter 245)

STUDENT LOAN DISCLOSURES

SUMMARY:

In 1999, the Maine Legislature enacted P.L. 1999, c. 443, "An Act to Provide for the 1999 and 2000 Allocations of the State Ceiling on Private Activity Bonds," effective June 9, 1999. Section 2 of the law amended 10 M.R.S.A. § 363(8), entitled "Allocation for educational bonds," which applies to lenders or issuers of student loans resulting from an allocation of the state private activity bond ceiling. 10 M.R.S.A. § 363(8)(A) authorizes the Bureau of Banking and the Office of Consumer Credit Regulation to promulgate a joint rule establishing uniform disclosure requirements for any such student loans, and further establishing sanctions for noncompliance.

I. AUTHORITY

This rule is promulgated pursuant to the authority granted to the Bureau of Banking and the Office of Consumer Credit Regulation, within the Department of Professional and Financial Regulation, pursuant to 9-A M.R.S.A. § 8-104(1) and 10 M.R.S.A. § 363(8)(A).

II. PURPOSE

This rule establishes disclosure and procedural requirements regarding the terms and conditions for student loan products offered by lenders and issuers resulting from an allocation of the State ceiling. Its purpose is to ensure that student loan borrowers are provided with complete disclosures so that they may make informed choices among the various products available.

III. APPLICABILITY

Pursuant to 10 M.R.S.A. § 363, this rule applies only to student loans made on or after August 1, 2000 that are funded in whole or in part with proceeds of tax-exempt bonds utilizing state ceiling.

IV. DEFINITIONS

For purposes of this rule, the following terms have the following meanings:

- A. **"Administrator"** means the Bureau of Banking, if the issuer or lender is a financial institution or credit union established pursuant to state or federal law; for all other lenders and issuers, "Administrator" means the Office of Consumer Credit Regulation.
- B. **"Advertisement"** means a commercial message in any medium that promotes, directly or indirectly, any student loan subject to this rule. The Administrator shall be guided by the definition of "advertisement" set forth in Regulation Z, 12 C.F.R. § 226.2(a)(2) and the Official Staff Commentary thereto.
- C. **"Issuer"** means any entity designated to receive a portion of the State ceiling allocated for educational bonds pursuant to 10 M.R.S.A. § 363(8).
- D. **"Lender"** means the entity to which the debt is initially payable on the face of the promissory note.
- E. **"State ceiling"** has the same meaning as set forth in 10 M.R.S.A. § 361(5).

V. REQUIREMENTS AND PROCEDURES FOR DISCLOSURE OF THE TERMS OF STUDENT LOANS RESULTING FROM AN ALLOCATION OF THE STATE CEILING.

- A. **Required disclosures.** The terms and conditions of any student loan subject to this rule shall be disclosed pursuant to either:
 - 1. The regulations of the U.S. Department of Education, Office of Postsecondary Education, 34 C.F.R. § 682.205 (July 1, 1999 edition) ^[1]; or
 - 2. The provisions of Federal Truth-in-Lending Regulation Z, 12 C.F.R. Part 226 (January 1, 1999 edition)^[2] and the Official Staff Commentary to the same.
- B. **Additional disclosures.** In addition to the disclosures required in § V(A) of this regulation, and at the same time such disclosures are provided, the lender must fully disclose the terms and conditions of obtaining any interest rate discount or other discount or savings.
- C. **Provision of sample disclosures to Administrator.** Prior to advertising, offering, or making available any student loan product subject to this rule, an issuer or lender must provide to the Administrator examples of the disclosures that must be made to loan recipients or obligors pursuant to this regulation. If a student loan product subject to this rule is modified, any revised disclosures must be provided by the issuer or lender to the Administrator prior to advertising, offering or making available the modified product. In addition, upon request of the Administrator to an issuer or lender, a lender or issuer must provide to the Administrator a projection of the approximate number or percentage of loan obligors who are likely to benefit from the discounts, including the source of the information and the basis for any projections. Sample

disclosures and other information provided to the Administrator pursuant to this paragraph shall be available to the public at any time after the initial advertising, offering or making available of the student loan product to which it applies.

VI. ADVERTISING

- A. All advertisements for student loans subject to this rule shall conform to the requirements of federal Regulation Z, 12 C.F.R., Part 226, section 226.24, "Advertising," including subsection
 - a. ("Actually available terms"); subsection
 - b. ("Advertisement of rate of finance charge"); subsection
 - c. ("Advertisement of terms that require additional disclosures"); and subsection
 - d. ("Catalogs and multiple-page advertisements").
- B. Any advertisement that includes a reference to an interest rate discount or other discount or savings must fully describe all of the terms and conditions of obtaining such discount or savings. Any advertisement must also include a statement that a projection of the number or percentage of loan obligors who are likely to benefit from the discount is available from the advertiser upon request. If requested, the advertiser must provide such a projection.
- C. A lender or issuer may not utilize advertising that is inaccurate, misleading or which misrepresents student loan products. Inaccurate or misleading advertising includes, but is not limited to, advertising that makes any statement or claim which cannot be substantiated, which incorrectly represents the terms and conditions of the product offered, or which has a tendency or capacity to deceive.
- D. All claims, including claims of certain dollar amounts saved, made of a comparative nature must be capable of substantiation, must be verified by the regulated institution prior to the appearance of the advertising, and must be substantiated upon request of the Administrator.

VII. SANCTIONS AND ENFORCEMENT

The provisions of the Maine Consumer Credit Code, Title 9-A MRSA, including Article 5, Remedies and Penalties, Article 6, Administration (Part 1, Powers and Functions of Administrator) and Article 8, Truth-in-Lending, shall apply to violations of this regulation. In addition, if the lender is a financial institution, a violation of this rule shall constitute an unfair and deceptive trade practice, enforceable in accordance with Title 9-B, chapter 24.

BASIS STATEMENT:

10 M.R.S.A. § 363(8)(A) authorizes the Bureau of Banking and the Office of Consumer Credit Regulation to promulgate a joint rule to establish uniform

disclosure requirements for student loans resulting from an allocation of the State ceiling and to establish sanctions for noncompliance. The law requires that recipients or obligors of such loans be provided with a description of any interest rate or other offered discounts that clearly identifies all the terms and conditions of obtaining any discount, and any other appropriate disclosures as determined by the agencies. The law also requires that lenders provide examples of the disclosures to the designated regulatory agencies.

This rule adopts the disclosure requirements established by federal Truth-in-Lending Regulation Z and the Department of Education. These federal rules are well-established disclosure requirements that are familiar to lenders and are suited for the student loan products that are subject to this rule. The rule is designed to minimize regulatory burden and to provide lenders with some flexibility by enabling them to choose between the two permissible disclosure methods, based upon their existing disclosure programs, their historic lending practices and the needs or requirements of the secondary market. As advertising is often the first source of information about such products, the rule establishes certain disclosure requirements with respect to the advertisement of student loan products subject to this rule. Consistent with the Legislature's intent to implement these requirements promptly, but in recognition of the need for time to develop and provide the disclosures, this rule establishes an effective date of August 1, 2000.

Responses to Comments

In response to the proposed rule, the agencies received three comments from interested parties. The first was a letter dated January 21, 2000 from H. Donald DeMatteis, on behalf of the Commission on the Ceiling on Tax-Exempt Bonds (the "Bond Commission letter"). The second was a letter dated February 17, 2000 from Craig H. Nelson, Esq. representing the Maine Educational Loan Authority and the Maine Educational Loan Marketing Association. Attorney Nelson supplemented his initial letter with correspondence dated February 22, 2000. (Collectively these letters are referred to as "MELA/MELMAC Letters I and II.")

- **Bond Commission letter.** The Bond Commission letter makes 3 recommendations.
 - **Recommendation #1.** The State should attempt to require all student lenders that offer discount loan programs comply with the disclosure and advertising provisions of the rule.
 - **Response:** This proposal is currently beyond the scope of this rule and the authorizing statute. The underlying law, 10 MRSA §363, sub-§8, relies on the nexus between the disclosure and advertising requirements, and the use of bonds issued under the State's tax-exempt bond ceiling. The rule applies to any private lenders which utilize bond cap

under the "loans to lenders" program or similar arrangement. Extending the disclosure requirements, including state-specific advertising requirements, to all lenders that issue discounted student loan products could give rise to challenges of federal preemption. Therefore, no change to the rule has been made in response to this comment.

- **Recommendation #2.** Information regarding the terms and conditions of any discounts should be available to borrowers during the "shopping" phase of the student loan process. Further, the information should permit calculation of the "potential true interest rate," in which the value of the discount is reduced by the probability that an average student would not qualify for the discount.
 - **Response:** The rule is designed to make information available to students during the "shopping" phase in at least two ways. First, all advertising must present a complete picture of the costs involved. For example, for those lenders who select the option of complying with federal Regulation Z, the rule requires that an advertisement that contains a monthly repayment figure, must also include information on the Annual Percentage Rate (APR) and the term (length) of the loan. In addition, any reference to a discounted rate must include a description of "all the terms and conditions of obtaining such discount"

Further, copies of all disclosures must be provided to the regulatory agencies prior to the loan product being advertised, offered or made available in this State. The rule has been amended to clarify that those disclosures are available to the public at any time after the product is advertised or offered.

With respect to the suggestion that a new measure of the cost of credit ("potential true interest rate" or "estimated true interest rate") be developed, the agencies decline to formally require such a computation at this time. However, if the information on the note rate, the offered discount and the probability that the student will receive the benefit of the discount are all made available to the public (see Recommendation #3 and response below), meaningful comparative information can be developed.

- **Recommendation #3.** The State (through the Finance Authority of Maine [FAME], the Department of Education or the credit regulatory agencies) should compile and distribute comparative

information on student lending products, available discounts and the probability that students will benefit from the discount.

- **Response:** The Finance Authority of Maine (FAME) has, for a number of years, printed and distributed a comparative chart listing the various student loan products, including the terms and conditions of obtaining any offered discounts. As additional information (including projections of the percentage of borrowers who are likely to benefit from those discounts) is gathered by the agencies, that information would be available to the public. For those reasons, there is no need to amend the proposed rule to further address this recommendation.
- **B. MELA/MELMAC letters I and II.** The first MELA/MELMAC letter urges the agencies to make the rule effective for the 2001 bond allocation process, but not for the current (2000) loan year. Citing the language of the underlying statute (10 MRSA §363, sub-§8, as enacted by PL 1999, c. 443), and the fact that printed material is being distributed at the same time that this rule is being considered, the comment suggests that the required disclosures be made a condition of a lender's or issuer's "future qualification for receiving an allocation" of student loan bond cap. The second MELA/MELMAC letter suggests specific language, which would require that documents be filed with the state agencies "no later than 90 days prior to said issuer or lender next applying for an allocation of the state ceiling" for student loans.
 - **Response:** The agencies must weigh the lenders' desire for a transitional period against the need to make important information available to the largest number of students and parents. Statutory authorization for this rule was passed on an emergency basis in June of 1999, signaling the Legislature's intent to make it applicable as soon as possible. The agencies do not feel that delaying implementation of the rule in the manner suggested by the commenter would be consistent with the Legislature's intent in enacting the statute. Therefore, the rule has been amended to establish an effective date of August 1, 2000. After August 1, 2000, disclosures and advertising for any loans which are funded through bonds, utilizing present or past state bond ceiling allocations, must comply with provisions of this rule.

EFFECTIVE DATE: August 1, 2000

[1] Copies of 34 C.F.R. § 682.205 may be obtained at cost from the Bureau of Banking or the Office of Consumer Credit Regulation or from the U. S.

Department of Education, Office of Postsecondary Education, Washington, D.C. 20202. In addition, a copy may be obtained via the Internet at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.

[2] Copies of 12 C.F.R. Part 226 may be obtained at cost from the Bureau of Banking or the Office of Consumer Credit Regulation, or from the Federal Reserve Bank of Boston, 600 Atlantic Avenue, Boston, Massachusetts 02106 tel. (617) 973-3000. In addition, a copy may be obtained via the Internet at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.