

# Session 32

## Student Loan Consumerism

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# Today's Topics

- Private Education Loan Disclosures and requirements subject to regulation by the Department of Education:
  - Preferred Lender Arrangements
  - Code of Conduct
  - Private Loan Disclosures and Self-Certification Form

# Today's Topics

- Disclosures and requirements subject to regulation by the Federal Reserve Board:
  - Truth in Lending Act (TILA) background
  - Private education loan disclosures
  - Self-certification form

# The Higher Education Opportunity Act (HEOA)

- Enacted August 14, 2008
- Public Law 110-315
- Dear Colleague Letter GEN-08-12
- <http://www.ifap.ed.gov/dpcletters/GEN0812FP0810.html>

# THE HEOA – Statutory Framework

- HEOA reauthorized the Higher Education Act (HEA) and established new institution-based disclosure requirements
- HEOA amended TILA and established private education loan disclosures
- HEOA amended both HEA and TILA to prohibit certain education lending practices

# Health Care & Education Reconciliation Act of 2010

- Combined key elements of Obama Administration's healthcare & education proposals
- Public Law 111-152 – March 30, 2010
- Eliminates the origination of new loans under the Federal Family Education Loan Program as of June 30, 2010

# Federal & Private Loan Disclosures: Background

- New HEOA institutional and private loan disclosures and requirements ensure:
  - An informed student loan borrower
  - Borrower choice of lender
  - Transparency and high ethical standards in the student lending process
  - Selection of preferred lender based on best interest of borrowers

# Regulatory Framework

- Department of Education (ED) regulated required disclosures on Title IV, HEA loans and private education loans– 34 CFR 601
- Federal Reserve Board (FRB) regulated required disclosures on private education loans and defines certain “key” terms
- ED and FRB jointly develop private loan self-certification form

# ED Negotiated Rulemaking: Implementing the HEOA

- TEAM II – School-based loan disclosures
- Concluded negotiations in May 2009
- Reached consensus
- NPRM published July 28, 2009
- 30 day comment period
- Final Rules published October 28, 2009
- Final Rules effective July 1, 2010

# Federal Reserve Board Background on Final Rule

- Implements the HEOA which amended TILA
- FRB final rules published Aug. 14, 2009
- Compliance mandatory for applications received on or after Feb. 14, 2010
- Replaces prior special rules for student credit extensions in Reg. Z
- <http://edocket.access.gpo.gov/2009/pdf/E9-18548.pdf>

# HEOA Loan Disclosures

## Key Terms—34 CFR 601.2

- Covered institution—an IHE, defined in HEA §102, that receives any Federal funding
- Institution-affiliated organization—entity directly or indirectly related to a covered institution that recommends, promotes, or endorses education loans

# HEOA Loan Disclosures

## Key Terms

- Lender—an eligible FFEL lender, ED, a private educational lender (§140 of the TILA) or any other person engaged in the business of securing, making or extending education loans on behalf of lender
- Private education lender is a financial institution, Federal credit union or any other person engaged in the business of soliciting, making or extending private education loans

# HEOA Loan Disclosures

## Key Terms

- Private education loan—(§140 of the TILA) is a non-Title IV loan provided by a private educational lender expressly for postsecondary educational expenses
- A private education loan does not include an extension of credit under an open-end consumer credit plan or secured by real property

# HEOA Loan Disclosures

## Key Terms

- A private education loan does not include an extension of credit in which the educational institution is the lender if:
  - The extension of credit is 90 days or less
  - Interest will not be applied to credit balance and term is one year or less, even if payable in more than four payments
- Education loan—a FFEL Loan, a Direct Loan or a private education loan

# HEOA Loan Disclosures

## Key Terms

- Preferred lender arrangement—an arrangement or agreement, between a lender and covered institution, in which a lender provides education loans to students/families and the covered institution recommends, promotes or endorses the education loan products of the lender

# HEOA Loan Disclosures

## Key Terms

- Preferred lender arrangement (cont.) –
  - Includes arrangements between a lender and an institution-affiliated organization
  - Does not include arrangements involving:
    - Direct Loan Program loans
    - Loans originated through PLUS auction pilot program

# HEOA Loan Disclosures

## Key Terms

- Preferred lender arrangement (cont.)
  - Does not include private education loans *made by a covered institution* to students attending a covered institution if the private education loan is:
    - Funded by covered institution's own funds
    - Funded by donor-directed contributions

# HEOA Loan Disclosures: Key Terms

- Preferred Lender Arrangement (cont.)
  - Does not include private education loans *made by a covered institution* to students attending a covered institution if the private education loan is made under:
    - Title VII or VIII of Public Service Act
    - A State-funded financial aid program, if the terms and conditions of the loan include a loan forgiveness option for public service



# Applicability of GEN-08-06 to Private Education Loans

- GEN-08-06 guidance applies to private education loans
  - Covered institution not considered in a preferred lender arrangement if it provides borrowers with neutral, comprehensive list of private education lenders that have made loans within a 3-5 year time period and a statement that borrower can choose any lender
  - Covered institution cannot recommend any lender and may include a comparison of the private loan terms and conditions



# Applicability of GEN-08-06 to Private Education Loans

- GEN-08-06 guidance (cont.)
  - Covered institutions may refer borrowers to a 3<sup>rd</sup> party entity that maintains neutral, comprehensive list and not be in a preferred lender arrangement if institution ensures that the list is broad in scope, does not endorse any lender and lender does not pay to be placed on the list or pay the 3<sup>rd</sup> party entity a fee based on loan volume generated



# Preferred Lender Arrangement (PLA) Disclosures

- Covered institution/institution-affiliated organization participating in a PLA must disclose on its website and all “informational materials” that describe private education loans:
  - Maximum amount of aid available under Title IV

# PLA Disclosures

- PLA must disclose on its website and all “informational materials” that describe private education loans (cont.):
  - Disclosures required by TILA §128(e)(11) for private loans offered by covered institutions
  - Disclosures required by TILA §128(e)(1) for private loans offered by institution-affiliated organizations

# PLA Disclosures (cont.)

- “Informational materials” = publications, mailings, electronic messages or materials:
  - Distributed to prospective/current students
  - Describe/discuss available financial aid opportunities
- Disclosures must be provided annually for each type of private education loan offered pursuant to a PLA for consideration before a student borrows

# Preferred Lender List Requirements

- Institution's preferred lender list must contain not less than two unaffiliated private education lenders and **clearly** and **fully disclose** for each lender:
  - Reasons institution includes lenders on list, particularly with respect to loan terms/conditions favorable to borrower

# Preferred Lender List Requirements

- That students do not have to borrow from lender on list
- Method and criteria used to choose lenders to ensure lenders selected on basis of best interest of borrowers
- Institution's must compile preferred lender list without prejudice and for sole benefit of students attending the institution

# Private Education Loan Disclosures

- Covered institution or affiliate that provides information on private education loans, **regardless of participation in a PLA**, must:
  - Provide prospective borrower with TILA disclosures under §128(e)(1)
  - Inform borrowers of possible eligibility for Title IV loans & that Title IV loan terms/conditions may be more favorable than private education loans
- Private loan disclosures must be presented in manner distinct from Title IV loan information

# Private Education Loan PLAs

- Covered institutions or affiliates that participate in a PLA with a lender of private education loans:
  - Cannot agree to the lender's use of the name, emblem, mascot, or logo of the institution or affiliate or pictures, words or symbols identified with the institution or affiliate in the marketing of private education loans in a way that implies the loan is offered or made by the institution or affiliate
  - Must ensure the lender's name is displayed in all information and documentation related to the loan

# PLA Annual Report

- Covered institution/affiliate participating in a PLA:
  - Must submit to ED an annual report that includes for each private education lender in the arrangement:
    - Disclosures provided on institution's preferred lender list

# PLA Annual Report

- PLA Annual Report must contain:
  - Detailed reasons why entity participates in a PLA with each private education lender including why terms and conditions of each loan provided pursuant to a PLA are beneficial to borrowers
  - Must ensure the report is made available to the public, and current and prospective students

# Code of Conduct Requirements

- Covered institution that participates in a PLA must develop a code of conduct with respect to private education loans with which the institution's agents must comply
- Code of conduct must prohibit conflicts of interest between institution's agents and lenders

# Code of Conduct Requirements

- The institution must publish code of conduct prominently on its website
- Administer and enforce the code by requiring all the covered institution's agents to be annually informed of the code's provisions

# Code of Conduct-Institution Affiliated Organizations

- Institution-affiliated organizations that participate in a PLA must:
  - Comply with the code of conduct developed by the covered institution with which it is affiliated
  - If the affiliate has a Web site, publish the code of conduct prominently on its website

# Code of Conduct-Institution-Affiliated Organizations

- Institution-affiliated organizations that participate in a PLA must:
  - Administer and enforce the code of conduct by requiring all the affiliate's agents to be annually informed of the code's provisions

# Code of Conduct Covered Institution

- Covered institution's code of conduct must prohibit revenue-sharing arrangements with any lender
- Revenue sharing is an arrangement under which:
  - A lender provides or issues a private education loan to students at the school;  
and



# Code of Conduct Covered Institution

- The school recommends the lender or loan products of the lender and in exchange, the lender pays a fee or provides other material benefits, including revenue or profit sharing, to the institution



# Code of Conduct Covered Institutions

- Covered institution's code of conduct must prohibit employees of the financial aid office receiving gifts from a lender, GA or loan servicer
- The term "gift" means:
  - Any gratuity, favor, discount, entertainment, hospitality, loan, or other item valued at more than a de minimus amount



# Code of Conduct Covered Institutions

- The term “gift” includes:
  - Services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or by reimbursement

# Code of Conduct Covered Institutions

- The term “gift” does **not** include:
  - Standard material, activities, or programs on issues related to a loan
  - Food, refreshments, or training that are part of a training session to improve service if training contributes to professional development of agent

# Code of Conduct Covered Institutions

- The term “gift” does not include:
  - Favorable terms, conditions, and borrower benefits on a private education loan provided to a student employed in the financial aid office if terms are comparable to those provided to all student employees
  - Entrance/exit counseling if school staff are in control and counseling does not promote the products of any lender

# Code of Conduct Covered Institutions

- The term “gift” does not include:
  - Philanthropic contributions from a lender, servicer or GA not related to or made in exchange for any advantage related to private education loans
  - State education grants, scholarships, or financial aid funds administered on behalf of a state



# Code of Conduct Exceptions

- Covered institution's code of conduct must prohibit consulting or other contracting arrangements between the institution's agent and lenders **except**:
  - An agent not employed in the institution's financial aid office and not responsible for private education loans may perform paid or unpaid service on a board of directors of a lender or servicer

# Code of Conduct Exceptions

- An agent not employed in an institution's financial aid office but who is responsible for private loans may perform paid or unpaid service on a board of directors of a lender or servicer if the institution has a written policy by which the agent must recuse herself from decisions regarding private loans

# Code of Conduct Exceptions

- An officer, employee, or contractor of a lender or servicer of private loans may serve on a board of directors, or serve as a trustee, of an institution if the institution has a written conflict of interest policy that the board member or trustee must recuse themselves from decisions regarding private loans



# Code of Conduct Covered Institutions

- Covered institution's code of conduct must prohibit directing borrowers to particular lenders or delaying loan certifications. The institution must not:
  - For first-time borrowers, assign, through award packaging or other methods, the borrower's loan to a particular lender or

# Code of Conduct Covered Institutions

- Code of conduct must prohibit directing borrowers to particular lenders or delaying loan certifications (cont.)
  - The institution must not refuse to certify, or delay certification of, any loan based on the borrower's selection of a particular lender



# Code of Conduct Covered Institutions

- Covered institution's code of conduct must prohibit offers of funds for private loans, including funds for opportunity pool loans, in exchange for a promise of a specified number of private education loans, a specified loan volume or a preferred lender arrangement for such loans

# Code of Conduct Covered Institutions

- An “opportunity pool loan” means a private education loan that involves a payment, directly or indirectly, by the institution of points, premiums, additional interest or financial support to the lender for the purpose of the lender extending credit to the student

# Code of Conduct Covered Institutions

- Covered institution's code of conduct must prohibit assistance with call center or financial aid office staffing from a lender except an institution is not prohibited from requesting/accepting:
  - Professional development training for aid officers

# Code of Conduct Covered Institutions

- An institution is not prohibited from requesting/accepting:
  - Counseling, financial literacy, or debt management materials for borrowers if materials disclose that lender prepared or provided the materials
  - Staffing on a short-term, nonrecurring basis to assist with aid-related functions during emergencies

# Code of Conduct Covered Institutions

- Covered institution's code of conduct must prohibit any employee of the financial aid office, or who has responsibilities with respect to private education loans, and who serves on an advisory board, commission, or group established by a lender or group of lenders from receiving anything of value from such entities, except the employee may be reimbursed for reasonable expenses

# Program Participation Agreement Requirements

- Institutions must develop, publish, administer and enforce a code of conduct with respect to loans made under the Title IV, HEA loan programs in accordance with §601.21
- For any year an institution has a PLA, annually compile, maintain and make available to students, a list of private education loans the institution recommends



# Program Participation Agreement Requirements

- Institutions must, upon request of an enrolled or admitted student applicant of a private education loan, provide the applicant with the self-certification form and the information needed to complete it

# Self-Certification Form for Private Education Loans

- ED, in consultation with FRB, developed self-certification form for private education loans to satisfy TILA §128(e)(3) which requires that before a private education lender can disburse a private education loan, the lender must obtain self-certification from applicant
- The covered institution at which the applicant is enrolled or admitted must provide the form to the applicant



# Contents of Private Loan Self-Certification Form

- Form must contain only disclosures that:
  - Applicant may qualify for Federal, state or institutional aid and is encouraged to discuss aid availability with financial aid officials at applicant's institution
  - Private education loan may affect applicant's eligibility for Federal, state or institutional aid
  - Information required on form is available at financial aid office

# Contents of Private Loan Self-Certification Form

- Information provided with self-certification form:
  - Applicant's cost of attendance (COA)
  - Applicant's estimated financial assistance (EFA)
  - Difference between the COA and EFA
- Form must include place for applicant's signature

# Standards of Administrative Capability

- To begin and continue to participate in title IV, HEA programs an institution must:
  - Report annually to ED any “reasonable” reimbursements paid by a private education lender(s) to any employee in the financial aid office or who otherwise is responsible for education loans or other financial aid at the institution
  - “Reasonable” means in accordance with state or Federal government reimbursement policies



# TILA

- Purpose is to provide consumers with “meaningful” disclosures about the cost of “consumer credit”
- Implemented for all lenders by the Federal Reserve Board’s (FRB) Regulation Z, 12 CFR 226
- An official staff commentary gives examples and additional guidance
- Creditors that follow the regulation and commentary in good faith are insulated from liability



# TILA Background

- TILA requires “closed-end” (non-revolving) credit disclosures be made before consummation
- Before HEOA amendments, model disclosure forms were standardized for all types of closed-end credit including, with some exceptions, student loans
- Student loan disclosures looked similar to those for auto loans and other installment loans



# Overview of Final Rule

- New disclosures and timing rules:
  - Disclosures on or with an application
  - Disclosures after loan approval
  - Consumer's 30-day acceptance period
    - No changes to rate or terms with some exceptions
  - Disclosures at consummation
  - Consumer's three-day right to cancel
    - Creditor must not disburse funds

# Overview of Final Rule (cont.)

- Self-certification form before consummation
- Model disclosure forms developed through consumer testing and in consultation with the ED
- Prohibition on co-branding in marketing
- Provision of information by creditors to educational institutions with Preferred Lender Arrangements

# Coverage – Lenders

- Applies to “creditors” as defined in Reg. Z
- Includes educational institutions that meet the definition of “creditor”
  - However, some types of credit provided by educational institutions are not covered by the private education loan rules

# Definition of Creditor

- A “creditor” means a person who “regularly extends” consumer credit that:
  - Is subject to a finance charge; or
  - Is payable by written agreement in more than four installments
- And is the person to whom the obligation is initially payable

# Definition of Creditor

- “Regularly extends credit” means extending any type of consumer credit more than 25 times in the preceding calendar year



# Coverage – Loans

- Covers loans made in whole or in part for “postsecondary educational expenses” ...
- at “covered educational institutions”
  - Includes all “institutions of higher education”
  - Includes unaccredited institutions

# Coverage – Loans (cont.)

- Excludes:
  - Federal student loans (Title IV loans)
  - Open-end (revolving) credit
  - Real-estate secured loans
  - Two types of credit extensions made by educational institutions

# Coverage – Loans (cont.)

- Excludes credit extended by educational institutions if:
  - The term of the credit extension is 90 days or less; OR
  - An interest rate will not be applied to the credit balance and the term is one year or less, even if the credit is payable in more than four installments
  - BUT ...

# Coverage – Loans (cont.)

- Exclusions applicable to credit extended by educational institutions are only exempt from the new private education loan rules, not from all of Reg. Z
- As a result, disclosures under the Truth in Lending Act may still be required under 12 CFR 226.17 and 226.18

# Application Disclosure

- On or with an application or a solicitation where no application is required
- Contains general information about the range of rates, fees and other terms that apply
- Also provides information about federal student loan alternatives

# Approval Disclosure

- Provided after approval on or with any notice of approval to the consumer
- Transaction-specific rate and term information
  - including the information currently required by TILA

# Acceptance Period

- Consumer has 30 days to accept from the time the approval disclosure is received
  - Can accept earlier
- Disclosure must state exact date on which acceptance period expires

# Limitation on Changes

- Creditor cannot change rate or terms with few exceptions
- Permissible changes (no re-disclosure required):
  - Rate may change based on index
  - Unequivocally beneficial changes

# Limitations on Changes

- Permissible changes (no redisclosure required):
  - Offer may be withdrawn if:
    - Creditor has reason to believe the consumer committed fraud; OR
    - If the extension of credit would be prohibited by law

# Limitations on Changes

- Permissible changes (no re-disclosure required):
  - Reducing loan amount based on school certification or information from the consumer indicating decrease in financial need
- Other changes to terms permitted only to the extent that consumer would have received them if the consumer had applied for the reduced loan amount

# Limitations on Changes

- Permissible changes (re-disclosure required):
  - Changes may be made to accommodate a request by the consumer
  - New disclosure and 30 day acceptance period required for new terms
  - Creditor must leave original offer open unless/until new offer accepted

# Final Disclosure

- Very similar to approval disclosure
- After acceptance and at least three days before disbursement
- ALSO includes TILA disclosures

# Right to Cancel

- Consumer may cancel within three business days of receipt of final disclosure form
- Funds may not be disbursed until cancellation period expires

# Self-Certification

- Lender must obtain signed, completed form before consummation
- Lender may receive form from consumer or from school
- Lender may provide the form to the consumer and lender may fill in the data

# Co-Branding Prohibited

- Prohibits use of school's name, logo, mascot, etc. in a way that implies endorsement
- Safe harbor: Marketing does not imply endorsement if there is a clear and conspicuous disclosure that school does not endorse
- Exception for actual endorsements if clear and conspicuous disclosure that creditor and not school is making loan

# Provision of Information

- Creditors who have preferred lender arrangements with a covered educational institution must provide institution with certain information from the creditor's application disclosures
- Deadline is the later of April 1 for next award year OR within 30 days of entering (or learning about) a preferred lender arrangement

# Contact Information

I appreciate your feedback and comments. I can be reached at:

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