

Session #32

Student Loan Consumerism

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Today's Topics

- Disclosures and requirements subject to regulation by the Department of Education:
 - Title IV, HEA loan disclosures
 - Certain private education loan disclosures
 - New Program Participation Agreement Requirements

Today's Topics

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

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 Truth-In-Lending Act (TILA) and established private education loan disclosures
- HEOA amended both HEA and TILA to prohibit certain education lending practices

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

Regulatory Framework

- ED and FRB jointly determine minimum disclosures for loans offered through a FFEL preferred lender arrangement and develop model form
- 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

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 defined in FRB regulation

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 4 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 issued to a student 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 issued to a student attending a covered institution if the private education loan is:
 - Made under title VII or VIII of the Public Service Act
 - Made under a State-funded financial aid program, if the terms and conditions of the loan include a loan forgiveness option for public service



Minimum Disclosures for Entities Participating in a PLA

- By 2/14/2010 ED, in consultation with FRB, must determine minimum disclosures that lenders, covered institutions and affiliates that participate in an FFEL PLA must provide to prospective borrowers
- Must include information in TILA §128(e)(1)
- ED must develop a model disclosure form containing minimum disclosures for use by entities in a FFEL PLA

Preferred Lender Arrangement (PLA) Disclosures

- Covered institution or an institution-affiliated organization participating in a PLA must disclose on its website and all “informational materials” that describe education loans:
 - Maximum amount of aid available under title IV
 - Information on model disclosure form

PLA Disclosures (cont.)

- Statement that entity will process a FFEL loan from any eligible lender, if the entity participates in FFEL
- Disclosures required by TILA §128(e)(11) for each private loan offered pursuant to a PLA
- Disclosures required under TILA §128(e)(1) for 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 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 3 unaffiliated FFEL lenders and **clearly** and **fully disclose** for each lender:
 - Minimum loan disclosures as determined by ED
 - 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

Preferred Lender List Requirements

- Institution must not deny or otherwise impede the borrower's choice of lender or unnecessarily delay loan certification under title IV of HEA for borrowers who choose a lender not included on the list
- If institution recommends, promotes, or endorses private education loans, list must contain not less than two unaffiliated private education lenders

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 their possible eligibility for title IV loans and that the terms/conditions of title IV loans may be more favorable than private education loans

Private Education Loan Disclosures

- Private loan disclosures must be presented in a manner distinct from title IV loan info
- Upon an enrolled/admitted student's request for a private education loan self-certification form, institution must provide to applicant, in written or electronic form:
 - Self-certification form developed by ED
 - The information required to complete the form, to the extent the institution possesses such 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 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 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 each FFEL or private education loan 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 Web site
- 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 Web site

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 FFEL program loan or private education loan to students at the school; and

- 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 from 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 FFEL loan or 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 FFEL or 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 any lender **except**:
 - An agent not employed in the institution's financial aid office and not responsible for FFEL or private education loans may perform paid or unpaid service on a board of directors of a lender, GA or servicer

Code of Conduct Exceptions

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

Code of Conduct Exceptions

- An officer, employee, or contractor of a lender, GA, or servicer of FFEL or 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 FFEL or 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
 - Refuse to certify, or delay certification of, any loan based on the borrower's selection of a particular lender or GA



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 FFEL 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 as long as materials disclose that lender prepared or provided the materials
 - Staffing on a short-term, nonrecurring basis to assist with aid-related functions during an emergency

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 FFEL or private education loans, and who serves on an advisory board, commission, or group established by a lender, GA or group of lenders and GAs, from receiving anything of value from such entities, except the employee may be reimbursed for reasonable expenses incurred while serving on such boards, commissions or groups

Direct Loan Disclosures

- Covered institutions that participate in the Direct Loan Program must disclose information in the model disclosure form developed by ED, or a comparable form designed by the institution, to current and prospective students
- If the institution provides information regarding private education loans to a prospective borrower, concurrently provide information in the model disclosure form

Program Participation Agreement Requirements

- Institutions must develop, publish, administer and enforce a code of conduct with respect to loans made, insured, or guaranteed under the title IV, HEA loan programs
- For any year an institution has a PLA, annually compile, maintain and make available to students, a list of lenders for loans made, insured, or guaranteed under title IV, HEA loan programs

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

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/provided by a private education lender or group of lenders defined in TILA §140(d) to any employee in the financial aid office or who otherwise is responsible for education loans or other financial aid at the institution
 - “Reasonable” reimbursement = in accordance with State or Federal government reimbursement policies



Self-Certification Form for Private Education Loans

- ED, in consultation with FRB, must develop a self-certification form for private education loans to satisfy §128(e)(3) of the TILA which requires that before a private education lender can consummate a private education loan, the lender must obtain the self-certification form from the 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
 - A private education loan may affect applicant's eligibility for Federal, State or institutional aid
 - Information applicant is required to provide 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

Truth-in-Lending Act Rules for Private Education Loans

Please note that the following material is presented only for educational purposes and constitutes only the opinions of the individual presenter. The material does not represent an opinion, interpretation, or position of the Board of Governors of the Federal Reserve System or its staff.

Background on Final Rule

- Implements the Higher Education Opportunity Act of 2008 (HEOA)
- Amended the Truth in Lending Act (TILA)
- Board published final rules for private education loans on 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

Truth-in-Lending Act (TILA) Background

- Purpose is to provide consumers with “meaningful” disclosures about the cost of “consumer credit”
- Implemented for all lenders by the Federal Reserve Board’s 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 (cont.)

- 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 minor exceptions, student loans
- So 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 3-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 Department of Education
- 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

“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

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 4 installments
 - BUT ...

Coverage – Loans (cont.)

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

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 redisclosure required):
 - Rate may change based on index
 - Unequivocally beneficial changes



Limitations on Changes (cont.)

- 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 (cont.)

- Permissible changes (no redisclosure 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 (cont.)

- Permissible changes (redisclosure 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 3 days before disbursement
- ALSO includes TILA disclosures

Right to Cancel

- Consumer may cancel within 3 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

Conclusion

- Mandatory compliance for applications received on or after Feb. 14, 2010

Contact Information

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

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