

PSC-ED-FSA-TISD

**Moderator: Angie Beatty
September 10, 2010
11:03 am CT**

Coordinator: Welcome and thank you for standing by. At this time all participants are in a listen only mode.

Today's conference is being recorded. If you have any objections you may disconnect at this time.

I would like to introduce your host for today's conference, Marianna Deeken. You may begin.

Marianna Deeken: Thank you very much. Hello everyone and welcome to the Private Loans Disclosures Webinar. I would like to welcome you and greet you with either a good morning or a good afternoon, depending upon your time zone.

Mine - as I said, my name is Marianna Deeken. I'm a Training Officer with Federal Student Aid in the Seattle regional office. And I will be moderating today's session.

Today's Webinar will be conducted in listen only mode. That means that your line will be mute throughout the entire process. There's absolutely no way that

given the number of participants that we have that we're able to take verbal questions.

If you have a question during the Webinar however, you need to click on the Q and A button on the menu bar at the top of your screen. The menu bar will then come up - will then allow you to have a little window open.

And it's a little new window that will appear on your screen. Click in the top blank field to type your question and then click ask. Please remember to include a slide number if your question pertains to a particular slide.

And we'll - there are four of us, or three of us, or four of us behind the scenes that will be answering questions throughout the Webinar. Joining, doing that with me today will be Greg Martin from Philadelphia, Jamie Malone from Chicago and Mike Roberts from Atlanta.

I also would like to note that our focus today is on the private education loan disclosure requirements for schools. And I know we have some of our lender and guarantee agency colleagues and perhaps others on the line that are not from schools.

And we just want you to know that our focus is schools. If you have particular questions about your responsibilities under these new disclosures we'd recommend that you contact either the Federal Reserve Board or your own legal council at your company because we are really not equipped to answer those kind of questions today. As I said, our focus will be on schools.

Otherwise we will have some time at the end for questions. And I will read them for Gail and who is our presenter today. And she'll, and we'll also review

some of the most commonly asked questions. And we'll review some of those questions and answers at the end if we have some time.

If you want to download a copy of the slides, click the handouts icon near the top right corner of your screen. It's the icon that looks like three little pieces of paper.

It will open another box and it will, the handout is there. And you need to download it to your computer. And then you are able to print it out.

Otherwise, we hope you enjoy today's Webinar. And I'm going to turn it over to Gail McLarnon from our Office of Post Secondary Education to begin today's Webinar. Thanks and Gail.

Gail McLarnon: Well thank you Marianna and welcome everybody to today's Webinar on Private Education Loans. We're going to jump right in to the first slide and talk a little bit about what we'll be talking about today.

Basically we're going to be discussing private education loan disclosures and requirements subject to regulation by the Department of Education. And that's going to include information on preferred lender arrangement disclosures and preferred lender arrangement lists.

We'll go over the many provisions of the code of conduct that applies to institutions, and not only institutions in the preferred lender arrangement, but institutions that participate in our Title IV loan program.

Then we'll talk about private loan disclosures and the private loan self certification form as well.

We're also going to be talking about disclosures and requirements subject to regulation by the Federal Reserve Board. That's going to include a little background on the Truth in Lending Act.

We're going to talk about private education loan disclosures that have to be made by private education lenders. And that of course includes institutions of higher education as private education lenders.

And we'll talk about the self-certification form for private education loans that was developed jointly by the Department and the Federal Reserve Board.

Already you can see some of the similarity between the requirements regulated by the Department and the Federal Reserve Board as they relate to private education loans.

The passage of the Higher Education Opportunity Act was the impetus for the new student loan disclosure requirements. And as you all know, it also reauthorized the Higher Education Act.

This was Public Law 110-315 and the Department did develop a comprehensive dear colleague letter on the HEOA that includes information about private education loan disclosures and also every other provision of the Higher Education Act reauthorization.

It's a large document. I've got a link here on Slide 2. I highly recommend it to you if you're looking for information on the HEOA.

As I just mentioned, the HEOA reauthorized the Higher Education Act, and it established new institution-based disclosure requirements for both Title IV and private education loans.

The HEOA amended the Truth in Lending Act. And we use shorthand when we refer to the Truth in Lending Act. We call it the TLA. And that's how we'll be referring to the Truth in Lending Act as we walk through these slides today.

So the HEOA amended the TLA and established new private education loan disclosures. And importantly, the HEOA amended both the Higher Education Act and the TLA to prohibit certain education lending practices.

So by amending both the Higher Education Act and the TLA, Congress has set up basically joint oversight of private education loans between the Board, Federal Reserve Board and the Department of Education. With the majority of that responsibility for private education loan regulation continuing to reside with the Federal Reserve Board.

I just would note that the Department and the Board have worked together through the implementation process of the HEOA. And we continue to consult when questions arise.

One of the key developments in the evolution of institutional-based loans private loan disclosure requirements of course was the elimination of the FFEL program as of June 30, 2010.

And this was with the passage of the Healthcare and Education Reconciliation Act of 2010. This is legislation that combined key elements of the Obama Administration's healthcare and education proposals.

And the most ambitious of which in terms of higher education was the elimination of FFEL and the move to 100% direct loans.

With the elimination of FFEL also came the elimination of many of the institutionally based disclosures related to participation in a preferred lender arrangement with FFEL lenders.

Sao when we look at disclosures that are the responsibility of an institution of higher education, now we are talking exclusively about private education loans.

Although as originally written by Congress and implemented by the Department in regulation, these disclosures would apply, excuse me, to FFEL loans as well.

I call this my why slide. The new disclosures that resulted from passage of the HEOA are numerous. And you have to ask why did Congress feel the need to legislate in this way?

Well, as I just mentioned, we had reauthorization in 2008, and it had been 10 years since we had our last reauthorization. That was in 1998, the '98 amendments.

And in those intervening years, a lot of was going on in higher education. And that included during those years investigations by New York Attorney General Cuomo, investigations by the Senate Education Committee into alleged inappropriate relationships between lenders and financial aid offices.

There were alleged trips, gifts to get onto a school's preferred lender list, things like that. And really these - the concern was that the borrower was getting lost in the shuffle of the relationships that existed at the time between schools and preferred lenders - schools and lenders rather.

So basically we have Congress inserting a whole raft of new requirements in the statute in the form of disclosures. And basically these disclosures ensure that we have an informed student loan borrower, that we have borrower choice of lender, that we have transparency and high ethical standards in the student lending process.

And finally that the selection of a preferred lender is now based on the best interest of the borrower, not the best interest of the lender and the school. So we have now a system very much focused on the borrower.

Mirroring the statutory framework is the regulatory framework. The Department of Education regulated private regulated disclosures on Title IV HEOA loans and the private education loans.

And we opened up a whole new section on the regulations to do this. This is - these regulations are contained in 34CFR 601. And of course you all know that we are required to develop our regulations through a negotiated rule making process.

The Federal Reserve Board regulated required disclosures on private education loans. And they defined certain key terms. We did not have any choice in some of the terms that we use in the Department of Education's regulations because some of these terms were contained within the Truth in Lending Act. And we had no jurisdiction over developing those definitions.

And finally the Department and the Board have a joint responsibility to develop private loan, the private loan self-certification form. So again we see Congress providing for increased transparency by providing for joint over site

of private education loans through the Department and the Federal Reserve Board's regulatory authority.

So the regulations of both agencies have to be taken into account by institutions of higher education for compliance purposes.

After passage of the HEOA, the Department began to plan immediately for implementation. I know many of you in the audience may have been involved in the negotiations, either as a negotiator or as an observer.

We've formed five teams to begin the process, with Team 2 handling the school-based issues which included the new loan disclosures. This slide you can see our milestones in that process. Final regulations were published on October 28, 2009, effective July 1, 2010.

The Federal Reserve Board, here you see a Federal Reserve Board milestone slide. They of course are not required to negotiate their rules. And as you can see from the slide, the Board published final rules on August 14, 2009 with mandatory compliance for their rules on August, rather February 14, 2010.

Their final rules replace prior special rules for student credit extensions in Regulation Z. Just to point out, the Federal Reserve Board categorizes their regulations under alphabet numbers.

And these regulations are on - extensions of credit are under Regulation Z. And I've also got a link here for you to Regulation Z. It's really important that you read these regulations as an institution of higher education just like you would the Department regulations.

And also I would recommend that you take a look at their preamble as well. Just like our preamble, there's a lot of excellent information in there, a lot of good guidance that you can learn a lot from.

Let's take a look at the Department of Education rules that impact private education loans by starting with some of the key terms that are contained in 6, 34CFR 601.

The first term I'd like to talk about is covered institution. And that is defined as an institution of higher education, as that term is defined in the HEOA Section 102, that receives any federal funding at all.

So now we have the term covered institution that includes an institution of higher education that received Dollar 1 of federal funding, not just institutions that participate in the Title VI programs and receive Title IV funding, the casting somewhat of a broader net here.

The information and loan disclosures required by regulation and statute also apply to institution affiliated organizations. And that term is defined as an entity directly or indirectly related to a covered institution that recommends, promotes or endorses education loans.

Lender is defined as an eligible FFEL lender. The Department or a private education lender or any other person engaged in the business of securing, making or extending education loans on behalf of the lender.

Notice that private education lender that reference to TLA within this definition. So we do begin to see these cross-references between the Higher Education Act and the TLA, as we look at these terms that we use in the new regulations.

The definition of lender was actually negotiated by Team 1. And that was the team that handled general and lender-based loan issues. And this definition is a strict reflection of statutory language.

The definition of private education, a lender, is a financial institution, federal credit union or any other person engaged in the business of soliciting, making or extending private education loans.

This is a term again, as you can see from the definition of lender that is contained in the TLA. So this was not subject to negotiation by the Department. Again, it's defined in TLA, cross-referenced in the Higher Education Act.

I do want to emphasize that this is a term that does include private education lender, includes institutions of higher education that make loans to their students as long as they meet the definition of creditor and - that the Board has adopted as their definition of private education lender. We'll talk a lot more about that as we get further along into the presentation.

Okay, private education loan, again another term in the TLA, is a non-Title IV loan provided by a private education lender expressly for post secondary educational expenses.

Private education loan does not include an extension of credit under opened end - open-end consumer credit plans or secured by real property. Open-end extensions of credit being credit cards secured by real property bank mortgages.

In regulating the definition of private education loan, the Federal Reserve Board interpreted the statutory term to include a couple of exceptions. So under the final rules published by the board, the term private education loan does not include extension of credit in which the institution of higher education, and this is the only extent of the only creditor that to which the board applied these exceptions.

Institution of higher - institutions of higher education, when they are lender and they extend credit that is an extension of credit 90 days or less. And by this they are - they generally are referring to emergency loans that institutions make to their students, even if interest and fees are charged.

The second extension of credit that they excluded were extensions of credit on which interest is not applied to the credit balance. The term is one year or less, even if payable in more than four installments.

And by this they are referring to institutional billing plans. And we'll talk a lot more about this later on as we get into the Federal Reserve Board's regulations.

The definition of education loan, a FFEL loan, a direct loan or a private education loan. The definition of preferred lender. This was perhaps the most hotly debated issue of the negotiations.

And the term is defined as an arrangement or agreement between a lender and covered - a lender and covered institution in which a lender provides education loans to the students at the school or the family of those students.

And the covered institution recommends, promotes or endorses the education loan products of the lender. Again going forward, from July 1, 2010

institutions will have preferred lender arrangements only with private education lenders.

Private educa - preferred lender arrangements do not include arrangements involving the direct loan program, direct loan program loans or loans originated through the plus auction pilot program.

Course plus auction pilot program never got off the ground. So we don't have to worry about that. But the exclusion of direct loans from and the Department by extension of the Department from preferred lender arrangements is contained on the statutory definition in the HEOA.

The Department did not expand this definition to include or require written or verbal agreements. Statute doesn't address how preferred lender arrangement comes about, nor does it specify that a written or verbal agreement must exist.

We were persuaded however, and this was during negotiations, to carve out a few exceptions to the definition. This is based on the fact that we believe implicit in the definition of a preferred lender arrangement is the understanding that the lender and the covered institution are not on in the same entity.

So we agreed to exclude private education loans made by an institution to its own students if the loans were funded by the covered institutions own funds or donor directed contributions.

I want to stop here just a minute to talk about institutions own funds. We do have quite a lengthy preamble discussion in our final rules about institutions owns funds and what we mean by that.

And in our preamble we clarified that an institution would be considered to be using its own funds if the loan was made using funds that include but or not necessarily limited to tuition and fee revenue, investment income, endowment funds, borrowed money or a line of credit.

As long as the institution does not sell or collateralize the private education loan for two years from the date the loan was fully disbursed. Nor does the covered institution engage in an arrangement tying the sale of a private education loan to a lender after that two-year period.

Well you might wonder why we were so concerned about an institution using its own funds. And why did we need to make this clarification? We had a long discussion at the negotiating table about the use of borrowed money or lines of credit.

And the Department was concerned that an institution might borrow money to make or use this line of credit to make private education loans. And then sell those loans back to the lender that lent them the money.

Basically having the institution act as a pass-through for lenders and creating a loophole that could be used to avoid a preferred lender arrangement. So I just wanted to make clear what we mean by institutions own funds.

Am I getting ahead of myself here? Okay let's see, I think I may have lost my place here, sorry. I apologize. Okay, moving forward. We have a couple of other exclusions in the preferred lender arrangement.

We also agreed that a preferred lender arrangement does not include private education loans made by an institution of higher education to students attending the institution.

If the private education loan is made under Title VII or VIII of the Public Service Act. These are the held profession loans. Or if the loan is made by an institute - that is made by the institution is a state-funded financial aid program, if the terms and conditions of the loan include a loan forgiveness option for public service.

I want to stop here for just a minute as well. We've gotten a lot of questions about state-funded financial aid programs. Basically as long as the institution is making the loan that is funded under a state funded loan program, they would be exempt from the preferred lender arrangement.

However, if the state loan program that makes loans to your students is run by the state, then they are not excluded from the requirements associated with a preferred lender arrangement.

We realize that state loan programs are different from state to state. Many run by the state, some run through schools. But in order for it - in order for these not to be included under the preferred lender arrangement, it has to be made through the school.

If schools don't want to be considered to be participating in a preferred lender arrangement but they still wish to provide some information on private loans to their students, the Department has extended the guidance contained in GEN80-06 to private education loan.

And that guidance is that a covered institution won't be considered to be participating in a preferred lender arrangement if it provides borrowers with a neutral comprehensive list of private education lenders that have made loans within the past three to five year time period.

And as long as they include a disclosure that the borrower can choose from any lender. And also that the institution does not recommend any lender and made to the borrower.

Something new that we added that wasn't included in GEN08-06 was a comparison of the private education loan terms and conditions. That's your option. You're not required to do that. But as part of this comprehensive list, you may go ahead and provide the terms and conditions of the loans if you wish.

You can also refer your borrowers to a third party service - a third party entity, excuse me, if that third party entity maintains a neutral, comprehensive list. And you won't be considered to be in a preferred lender arrangement as long as you ensure that the third party is providing a list that's broad in scope.

That does not endorse any lender and the lender does not pay to be placed on the list or pay the third party entity a fee based on any loan volume generated.

Okay, let's take a look at disclosure requirements for institutions that are participating in a preferred lender arrangement with a preferred lender, a private education lender, excuse me.

Covered institutions or their affiliates that are participating in a preferred lender arrangement must disclose on their Website and all information and materials that describe private education loans the following materials.

The maximum aid available under Title IV, and you're going to see this referenced to disclosing aid in a borrower's possible eligibility for Title IV aid again and again.

And this is because Congress was concerned that borrowers were going directly to private education lenders and not first borrowing under Title IV where the terms and conditions of the loans are often much more beneficial to the borrower.

Will have to make the disclosures required under TLA 128 E11 for private education loans offered by covered institutions and the disclosures required by TLA 128 E1 for private loans offered by institution affiliated organizations.

You're going to see more references to these TLA Sections 128E1 and E11 as we walk through these slides today. Basically these provisions constitute a laundry list of disclosures regarding the terms and conditions of private education loans.

And the HEOA and the regulations use this cross-reference frequently. So I just want you to know rather than walk through the many disclosures required in each of these two TLA sections that these sections basically represent a laundry list of disclosures associated with these private education loans.

What do we mean by informational materials? Well we mean publications, mailings, electronic messages or materials that are distributed to prospective and current students.

And that describe or discuss the available financial aid opportunities. Links to a Website containing this information are okay, as long as the point of contact at the school is also provided so that potential borrowers can obtain this information in printed form.

The disclosures have to be provided annually for each type of private education loan offered and pursuant to your preferred lender arrangement for consideration before a student borrows.

Again, the goal here is to help students make an informed decision when they're applying for private education loans. This makes it easier. These disclosures make it easier for borrowers to compare financial aid that's available at different schools.

For any year in which an institution participates in a preferred lender arrangement with regard to private education loans, it must compile, maintain and make available for students attending the institution a list of lenders of private education loans that the institution recommends, promotes or endorses.

So institutions lender list have to contain not less than two unaffiliated private education lenders. And it needs to disclose for each lender the reasons the institution includes these lenders on the list, particularly with respect to the terms and conditions of the loan.

One question I get a lot from schools is especially in these days of tight credit is what if I can't find two unaffiliated private education lenders to make loans at my schools?

Basically our response, the department's response to that is as long as you make a good-faith effort and continue to make a good-faith effort to obtain those two unaffiliated private institution lenders we will take that into consideration.

Continuing with the preferred lender list disclosure requirements the school must state that the student does not have to borrow from a lender on the list.

And they have to state the method and criteria used to choose lenders to ensure lenders are selected on the basis of the best interest of the borrower. Again it's emphasis on the borrower.

And finally institutions must compile their preferred lender list without prejudice and again for the sole benefit of students attending the institution.

The private institution loan disclosures on this slide have to be made regardless of whether an institution participates in a preferred lender arrangement.

And they include that covered a institution or affiliate that provides information, any information on private education loans has to provide the prospective borrower with TLA - the TLA disclosures contained in 128E1, again this reference, cross-referencing the TLA.

And also they have to inform borrowers of their possible eligibility for Title IV loans. And that Title IV loan terms and conditions may be more favorable than private education loans, again the emphasis on Title IV and trying to get the borrower to turn first to federal student aid.

And finally private education - private loan disclosures excuse me, must be presented in a manner that is distinct from Title IV information.

Just wanted to mention that if you are providing that neutral third - neutral comprehensive list to your students, you would be required to make these disclosures because you are providing information on private education loans and lenders when you provide that neutral list.

Covered institutions or affiliates that participate in a preferred lending arrangement with a private education lender cannot agree to any co-branding of loans by the lender.

The Federal Reserve Board has a similar provision in their rules. So basically covered institutions or affiliates that are participating in the preferred lender arrangement with a lender 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.

And the institution has to ensure the lender's name is displayed in all information and documentation related to the loan.

One exception is if the lenders use of the name of the institution is a credit union that - that shares the institution's name.

If the name of the covered institution is part of the name of the credit - or credit union rather, the prohibition against using the institution's name does not apply.

There is a requirement for a preferred lender arrangement annual report. Covered institutions and affiliates that are participating in the preferred lender arrangement must submit to the Department of Education an annual report that includes for each private education lender in the arrangement disclose - the disclosures provided on the institution's preferred lender list and detailed reasons why the entity participates in a preferred lender arrangement with each private education lender including why the terms and conditions of each loan provided pursuant to that arrangement are beneficial to borrowers. And

you must ensure the report is made available to the public and current and prospective students.

Just a note on this annual report requirement, the department has not determined a submission date for the annual report.

We have not determined where you should send this annual report. We haven't determined the date of the - the date you should send the annual report.

So basically this requirement is on hold for the present, so again no requirement yet that you submit that annual report.

The next 20 or so slides describe the new code of conduct provisions that were added to Section 487E of the Higher Education Act. And we'll go over these - this code now.

Basically this is a list of prohibited activities. Recall that when we discussed the reasons Congress required so many new disclosures.

Well the code of conduct is an extension of this concern in Congress about the lack of transparency, the inappropriate relationships between lenders and financial aid officers and the need to return the focus of the process back to the borrower.

So under these new code of conduct requirements institutions and their affiliates have to develop a code of conduct with respect to private education laws with which the institution's agents must comply. The code must prohibit conflicts of interest between an institution's agents and lenders.

The institution has to publish the code of conduct on its - or prominently on its Web site. It must administer and enforce the code by requiring all of the covered institutions agents to be annually informed of the code's provisions.

You're going to note that some of these provisions of the code are really more appropriate and would address more of the relationships between FFEL lenders and institutions. They may not fully apply to relationships with private education lenders.

Nevertheless it is a statutory requirement to administer and enforce the code for all institutions that participate in a preferred lender arrangement. And that includes preferred lending arrangements with private education lenders.

Okay, also subject to the code are institution affiliated organizations that preferred - participate in a preferred lender arrangement.

They too must comply with the code of conduct. They must comply with the code that's developed by the covered institution with which they are affiliate - affiliated. And if the affiliate has a Web site they have to publish the code prominently on that Web site.

The institution affiliated organization also must administer and enforce the code by requiring all of their agents to be annually informed of the code's provisions.

Well let's talk about what's in the code. The code of conduct first - a first provision of the code, a code must prohibit revenue sharing agreements or 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 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. So revenue sharing is not - is prohibited under the code of conduct.

The code of conduct prohibits employees of a Financial Aid Office from receiving gifts from a lender, GA, or loan servicer.

The term gift is a defined term and it means any gratuity, favor, discount, entertainment, hospitality, loan, or other item valued at more than a de minimus amount.

Again, the concern here being that favors or benefits that were the relation - the basis for a relationship between a school and a lender instead of the best interest of the borrower.

Moving forward with the - a definition of gift, a gift also include services, transportation, lodging, or meals whether provided in-kind, by purchase of a ticket, payment in advance or by reimbursement.

As is often the case in a student financial assistance we have exceptions to our definitions and rules. The term gift does not include standard material activities or programs on issues related to a loan.

It does not include food, refreshments, or training that are part of a training session to improve surface - service if training contributes to the professional development of an agent.

Further, defining what a 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.

The term gift does not include entrance and exit counseling if school staff are in control and counseling does not promote the products of any lender.

And finally 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 nor does it include state education grants, scholarships, or financial aid funds administered on behalf of the state.

Okay covered institutions code of conduct must also prohibit consulting or other contracting arrangements between the institution's agent and any lender.

And again we have some exceptions here. An agent not employed in your 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.

An agent not employed in your 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 you have a written policy by which the agent must recuse herself from decisions regarding private education loans.

An officer, employee or contractor of a lender or servicer of private loans may serve on a board of directors or 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 education loans.

Again, transparency in the process here, full disclosure of everybody's relationships are the goals of these particular exceptions.

Covered institutions code of conduct must prohibit directing borrowers to particular lenders or delaying loan certification.

So you cannot for first-time borrowers, assign through award packaging or other methods the borrower's loan to a particular lender.

You cannot recuse, certify, or delay certification of any loan based on the borrower's selection of a particular lender.

And just a word about delaying certification. We realize that you have relationships with many lenders, some long-standing and maybe facilitated by electronic communication.

If a borrower chooses a lender that you don't do business with very often we won't regard it as a delay of certification if it takes a little longer to do business with some of these folks, some of these lenders who you don't often do business with.

The code of conduct has to prohibit offers of funds for private loans. And this includes funds for opportunity pooled loans.

An exchange for a promise of a specified number of private education loans, a specified loan volume, or a private, or rather a preferred lender arrangement for such loans.

The regulations do include a definition of opportunity loans. And that term is defined as 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.

In other words the institution is adopting some of the risks associated with these loans.

Covered institutions 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 or accepting professional development training for aid officers, counseling, financial literacy, or debt management materials for borrowers as long as materials disclose that the lender has prepared or provided the materials and staffing on a short-term nonrecurring basis to assist with aid related functions during an emergency.

And finally the 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 entity except the employee may be reimbursed for reasonable expenses incurred while serving on such boards, commissions or groups.

So again a summary of the code of conduct, again focusing on a list of prohibitions and keeping the focus of the process on the borrower.

We also have some new program participation agreement requirements as a result of HEOA. Basically they are set forth on the next couple of slides.

The first is that an institution must develop, publish and administer and enforce a code of conduct as we just went over, all the many provisions with

respect to loans made under Title IV - with respect to loans made under Title IV, the HEOA programs in accordance with 601.21 and also private education loans.

Basically is - this is not only a requirement of participating in a preferred lender relationship, it is a requirement to participate in our Title IV loan program.

The next participation agreement that was added was that for any year an institution has a preferred lender arrangement the institution must annually compile, maintain, and make available to students a list of private education loans the institution recommends.

And finally as a condition of participation in our programs, an institution must upon request of an enrolled or admitted student applicant of a private education loan provide the applicant with a self-certification form and the information needed to complete that form.

The intent of the self-certification form for private loans is to prevent over-borrowing by borrowers and provide for a more educated private education loan consumer. Again focus on the borrower and an informed borrower at that.

This is a form that can be provided directly through the Financial Aid Office or other designated office or it can be posted on the Web site for download.

Once the form and the information have been disseminated by the institution there is no requirement that the institution tracks the status of that loan. And there's no requirement that the institution update the form if the information on the form changes.

There's a separate provision in the Higher Education Act that required the department in consultation with the Federal Reserve Board to develop this self-certification form for private education loan which satisfies one - Section 128 E3 of the TLA which requires that before a private education lender can consummate a private education loan the lender has to obtain that self-certification form from the applicant.

So there's sort of a circular process here, an institution provides the form to the borrower, the borrower in turn gives that form to the lender.

The covered institution at which the applicant is enrolled or admitted must provide the form to the applicant again.

The statute requires that the form contain only certain information. And the next few slides cover what is contained on the form.

Again, another disclosure to the borrower that the applicant may qualify for federal state or institutional aid and is encouraged to discuss aid availability with financial aid officials at the applicant's institution, disclose that a private education loan may affect the applicant's eligibility for federal, state, or institutional aid, and disclose that information - the information the applicant is required to provide on the form is available at the Financial Aid Office really trying to point the borrower to the Financial Aid Office for more information.

Information provided with a self-certification form includes the applicant's cost of attendance, the applicant's estimated financial assistance, and the difference between the cost of attendance and the estimated financial assistance. And finally it has a place for the applicant's signature.

Again the concern here is that the applicant for a private education loan is aware of the cost that he or she may want to finance with that private education loan, again trying to prevent over-borrowing.

I want to mention that this form is included in Dear Colleague GEN10-1. It was the very first dear colleague letter that we published this year. It is accompanied by a cover letter and it gives you a little more guidance on how you need to disseminate and use this form.

And finally we had added to the HEOA a new standard of administrative capability. And that is that to begin and continue to participate in Title IV higher education programs an institution must report annually to the department any reasonable reimbursements paid by a private education lender as that term is defined in the TLA to any employee in the Financial Aid Office or who otherwise is responsible for education loans or other financial aid at the institution.

We did include a definition of reasonable in our regulations. And that is a reimbursement that's in accordance with state or federal government reimbursement policies.

This is another requirement that the department has not yet determined, delivery dates, to whom in the department you send it.

So again, another requirement that is on hold. You will not need to report this information to us until we tell you when. And we'll most likely do that in either a federal registry notice, some kind of standard announcement, dear colleague letter electronic announcement that you get from the department.

Okay let's move on to the other portion of the presentation that focuses on the Federal Reserve Board's responsibility with regard to private education loans.

As we said earlier the Higher Education - the Opportunity Act also amended the TLA, the Truth in Lending Act. Basically the TLA, the purpose has been to provide consumers with meaningful disclosures about the cost of consumer credit. That's always been the function of the Truth in Lending Act basically implementing - implemented for all lenders by the Federal Reserve Board's Regulation Z, again naming their regulations after letters of the alphabet.

If you'd like a more concrete site that you can find these regulations in 12CFR226. The way I generally get to the boards regulations is just to do a Google search 12CFR 226 and it will take you right there.

Basically the official staff commentary within their regulations gives you examples and additional guidance to follow much like the Department of Education's preamble to our - and NPRMs and final regulations.

And interestingly the board allows creditors that follow the regulation and commentary in good faith to be insulated from liability.

A little background on the TLA. TLA requires closed and non-revolving credit disclosures to be made before confirmation of the extension of credit.

Before the HEOA amendments, model disclosure forms were pretty standard for all types of closed end credit including with some minor exceptions student loans.

So student loan disclosures look very similar to those that - lenders had to make for auto loans and other installment kinds of loans.

So basically we're looking at under the new regulations, regulations specifically targeted to private education loans.

Let's do a little bit of an overview of the final rule. The new disclosure requirements are tailored again as I said, to private education loan specifically.

The disclosures occur at three points in the process -- on or with an application, after loan approval, and at confirmation of the loan.

The disclosures that accompany the application are general in nature. Disclosures at loan approval are specific to the borrower. And disclosures at confirmation are very similar to the approval disclosures.

Note that a consumer has 30 days to accept a loan during which time minimal changes can be made to the terms and conditions.

And finally the consumer has a right to cancel within a three day - within three days of receiving the final disclosure. It's kind of like a right of rescission. And that a loan - and the loan cannot be disbursed until that three day period has elapsed.

The Federal Reserve Board rules require that the lender obtain a private loan self-certification form we just discussed before consummating the loan that includes institutions of higher education.

You must disseminate and obtain the private loan self-certification from a borrower if that borrow is borrowing from your institution before you can consummate the loan.

The rules contain a model application approval and final disclosure forms that the board developed through a one on one focus group process.

I think you'll find those forms extremely helpful. They are included in the board's final regulations. So you can go right to their rule, look at those forms and adapt them for use at your institution.

The final rules contain a prohibition on co-branding much like the prohibition contained in the department's regulations.

And finally the regulations - the requirements for the provision of information by creditors to educational institutions with preferred lender arrangements are - and included as well.

Let's look at who is covered by these new regulations. The new regulations cover private education lenders. And remember that that is a financial institution, federal credit union or any other person engaged in the business of soliciting, making, or extending private education loans.

But interestingly the Federal Reserve Board instead of using that term private education lenders, use the term they had already defined in Regulation Z. And that is the definition of the term creditor.

The board believed that the term creditor in compassed the definition of private education lender. So the board's final rules apply to creditor - creditors excuse me, as that term is defined in Regulation Z.

And again institutions of higher education have long been considered creditors under Regulation Z.

Let's take a look at what a - what the definition of creditor is then. 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.

What does regularly extends credit mean? Regularly extends credit means extending any type of consumer credit more than 25 times in the preceding calendar year.

So as an institution of higher education, if you fit into this definition you are in fact a creditor and subject to these new rules by the Federal Reserve.

The final rules apply to private education loans made in whole or in part for post secondary educational purposes or rather expenses. And that is tuition and fees, books and supplies, miscellaneous personal expenses, room and board, allowance for loan origination fees, et cetera, et cetera basically adapting and adopting rather the Higher Education Act definition of expenses, educational expenses in Section 472.

The educational expenses must be incurred at the covered institution, a covered educational institution which under the fed's rules means all institutions of higher education as well as unaccredited institutions.

The rules cover loans issued expressly for post secondary educational expenses to a borrower regardless of whether the rule - the loan is provided through the education - educational institution that the student attends or directly to the borrower from a private education lender.

The exclusions loans not covered under these regulations, federal student loans, Title IV student loans, open end revolving credits, and credit cards, real estate secured loans, bank mortgages.

Again two exceptions from the regulations that we talked about earlier, this is the short term extension of credit emergency loans, credit extensions of 90 days or less. Fees are okay on these short term extensions and extensions of credit on which interest 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, and this of course is institutional billing plans.

Want to let you know, even though those extensions of credit might be exempt under the new regulations specified specifically developed for private education loans, that does not mean they are not required, you are not required to make some disclosures on them and that would be the disclosures, the old disclosures actually, the original truth in lending disclosures under 12 CFR 226.17 and 18.

The next two slides we're going to get into some detail on the disclosures required under the board's regulations, but before we get real specific I wanted to make some general statements about the Federal Reserve Board's disclosures.

General information about the board's disclosures for private education loans have to be, the disclosures have to be clear and conspicuous. They have to be grouped together, segregated from everything else and not contain information not directly related to the disclosures.

Application disclosures that are delivered electronically are not subject to E-Sign's consent requirements, however approval and final acceptance

disclosures are subject to E-Sign consensus requirements if they are delivered electronically.

This is all contained in the Federal Reserve Board's regulations but I think it's important, it's worth pointing out, especially with regard to obtaining consumer consent when complying with some of these disclosure requirements.

Okay. Let's talk about some of the details under these disclosures. Let's begin with the application disclosures. These are made on or with an application or a solicitation where no application is required. These disclosures contain general information about the loan. That is interest rates, fees and default or late payment costs, payment terms, eligibility requirements, the rights of the consumers, self-certification form information, things of that nature.

These disclosures also provide information about federal student loan alternatives including interest rates on each type of Title IV loan that the student may qualify for Title IV loans and that the student can obtain more information from the department and that the school the student attends may have school-specific loan benefits not included on the form.

Again this repetition of the availability of Title IV, the terms and conditions of Title IV and pushing the bar to maximize their eligibility and afford those Title IV loans.

Approval disclosures are provided after approval of the application for the loan or with any notice of approval to the consumer. Approval disclosures contain transaction specific rate and term information including the information currently required by Section (128.E.2) of the (TLF).

Approval disclosures then provide borrower-specific information like the borrower's interest rate, the borrower's fees, the borrower's loan amounts and the borrower's repayment terms. So the terms are very borrower-specific at this point.

The consumer has 30 days to accept a private education loan from the date the approval disclosure is received. The borrower can accept earlier at any time during that 30-day period.

For example the borrower can accept the same day that he or she receives the disclosures or the borrower can accept 29 days after receiving the disclosure, but at any rate the exact date on which the acceptance period expires must be made crystal clear to the borrower.

There are limitations on the changes that can be made to the rate and terms of a private education loan during that 30-day acceptance period. Permissible changes, and what we mean by permissible is that no re-disclosure is required, are a rate change based on an index.

For example a variable rate might be tied to an index that goes up and down so if the index goes up or down during that 30-day acceptance period it is acceptable to make that change to the terms of the loan.

Unequivocally better changes can be made, and that means a change that would benefit the borrower like a lower interest rate or elimination of fees associated with a private education loan.

Permissible changes include the withdrawal of the offer, total withdrawal of the offer of a private education loan completely if the creditor believes for any

reason that a consumer committed fraud in obtaining the loan or the loan would be prohibited by law.

Permissible changes include reducing loan amount based on a school certification or information from the borrower indicating a decrease in financial need. This is another, again another reflection of Congress concern about over borrowing of private loans. Other changes are permitted to the extent that the consumer would have received them if the consumer had applied for a reduced loan amount.

More permissible changes to the terms and conditions of a private education loan during the 30-day acceptance period but these changes would require you to, just make re-disclosures.

Changes to accommodate a request by the consumer such a lower or higher loan amount, for instance the consumer was approved for \$8,000 but now the, the consumer wants \$12,000 and this might be the cause for a different terms and conditions. In this case a new approval disclosure and a new 30-day acceptance period is required.

However the creditor, interestingly, has to leave the original offer on the table and until, and leave that offer on the table until the new offer is accepted. For instance if the lender says sure, I'll give you \$12,000 but I'm raising your interest and your fees, then the borrower can go back to the, to the original offer that was on the table in the first place.

Final disclosures very similar to the approval disclosure in that it contains the borrowers interest rate, fees, repayment terms, cancellation rights, etc., the final disclosure must be provided after the borrower accepts the loan, within

the 30-day period following the date on which the consumer received the approval disclosures and at least 30 days before disbursement.

The borrower is entitled to at least three days to cancel the loan after receiving the final disclosures. This 30-day period cannot be waived by the consumer, nor can it be waived by the creditor. All private education loans have this cancellation clause no matter what. So only after that 30-day period has elapsed may the lender disburse the loan.

Again right to cancel, we just talked about this. Self-certification form, the regulations of the Federal Reserve Board also include regulations on the self-certification form.

The lender of course, the creditor has to obtain a signed, completed form from the borrower of a private education loan before consummating a loan and as I said earlier, institution of higher education was not excluded from this requirement by the board in their final regulations so institutions also have to receive this form back from the borrower before they can consummate the loan.

The board did provide some flexibility around how to obtain, how the creditor obtains this form and this is guidance that they include in their preamble discussion and the lender can receive the form directly from the consumer or the lender can receive the form from the school at which the borrower is enrolled and in attendance.

This probably, this would most likely occur with an institution and a lender to have a relationship whereby the institution is certifying loans for that lender. The lender may also provide the form to the consumer with the required information already on the form.

But if the lender presents the form in this manner the information on the form must be obtained from the school. In all cases the school will be providing the information to fill out the form, again there will be some flexibility around how the form makes its way back to the lender.

Federal Reserve Board regulations prohibit co-branding of private education loans, much like the Department of Education's regulations. This means that the lender cannot use a school's name, logo, mascot, etc., in a way that implies that the, an endorsement by the school.

The Reserve Board does include a safe, a couple of safe harbors and one is that marketing does not imply an endorsement if there's a clear and conspicuous disclosure that the school does not endorse the loan and there is an outright exception for actual endorsements if clear and conspicuous, there is a clear and conspicuous disclosure that the creditor and not the school is making the loan.

And finally the Federal Reserve Board has rules on the provision of information by creditors that have a preferred lender arrangement with a covered institution. The creditor must provide the institution with certain information about the creditor's applications disclosures for each type of private education loan that the lender offers to students attending the covered institution.

Now this is for a period starting on July 1 of the current award year and ending on June 30th of the following award year. The deadline to provide this information is the later of April 1 for the next award year or within 30 days of entering into a preferred lender arrangement or learning about a preferred lender arrangement.

And that basically covers the slides that we have today on private education loans and I understand that our regional folks have been answering your questions as you go along today but I'd be happy to address any questions that remain or that haven't been answered.

Marianna Deeken: Great Gail thanks. There are just a few questions that seem to keep popping up and so I think everyone would probably benefit from your clarification of those issues.

And the first one is the difference between a private education loan and a monthly billing or some sort of tuition billing program and are those considered under the private education loan rules?

Gail McLarnon: Yeah. The private education rules published by the Federal Reserve Board made, as I said earlier, two exceptions to extensions of credit made by institutions of higher education only.

That was the only creditor that they made some exceptions for and basically they accepted, see if I can find the slide here, they excluded extensions of credit of 90 days or less and generally this is the way their regulation is written, their preamble is a little more reader friendly. Extensions of credit for 90 days or less are generally referred to in their preamble as emergency loans. Emergency loans made by the institution.

If you're charging fees on that that's fine, the only criteria is the extension of credit for 90 days or less. The second exclusion are extensions of credit on which 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. And this is generally referred to as the institutional billing plan.

So these are the two extensions of credit that won't be subject to the new private loan specific disclosure requirements the board has just done final regs on.

Remember I did, there was a caveat and that was that these loans, while not perhaps subject to the new private education loan disclosures may be subject to the current or the old private education loan disclosure. If you will remember one side to the (unintelligible) disclosures we talked about if they had previously used and they are contained in 12 CFR 226.17 and 18.

Marianna Deeken: Great. Thanks. And another clarification that, and of course we found this the other day as well, the issue of when is it the institution's own funds?

Gail McLarnon: Right. I did, we did have, let's see if I can find that slide. That was a big issue at the table when we were trying to hammer out the conditions of a preferred lender arrangement and up there, yep. Sorry.

Basically as I said during the narrative we have a full preamble discussion on the issue of institution's own funds. We did go into a discussion and sort of a definition of what we consider to be institutions own funds and we allow institutions to borrow funds in order to make private education loans to their students because we recognized frankly that that's a standard, that's a standard business procedure. All kinds of institutions, businesses have lines of credit, borrow money in order to, in order to, you know engage in day-to-day business activities as do institutions of higher education.

So we said okay to the borrowing of funds to make private education loans to an institution student, but again we did put some caveats around the use of borrowed money and making loans with those, with borrowed funds and that

was that you had to hold on, basically had to hold on to those loans for two years and you couldn't sell them or engage in an agreement to sell them at the end of that two year period.

And the concern was that schools would act as a pass through for lender funds. Schools would borrow money from a lender, make the loans because that's technically the institution's own fund, and then turn right around and sell the loan. So, and use that process as a loophole from the preferred lender arrangement requirement.

So basically that is why we, that is the discussion we put in the preamble and that's what the issue is around loans funded by an institution's own funds.

Marianna Deeken: Thanks Gail. The other big issue that came up was the difference in terms of, you know if I use an outside website, but it just refers you to some outside Web site, is that okay, is that really a preferred lender. Or what if I don't recommend anybody but I have brochures in my lobby from two lenders or what if there are only two lenders who will loan to my students and so therefore I do let them know about that and whether or not those constituted preferred lender agreements?

So if you could maybe refer, or provide a little bit more clarity around those issues?

Gail McLarnon: Okay. Preferred lender arrangements, as I said during the presentation was the discussion around the negotiated rulemaking table around the definition of preferred lender arrangements was probably the most intense of all of the issues that we discussed over that three-month period.

Obviously you've seen the presentation, if you've looked at the regulations in the statute you know that the disclosures associated with participating in a preferred lender arrangement are numerous, they're burdensome. And so the definition of what constituted the preferred lender arrangement became a very important topic, rightly so.

The Department took a very, very broad interpretation of the definition of preferred lender arrangement. We stuck with the statutory definition basically, although as I said we were persuaded to carve out a few exceptions to the definition.

In terms of institutions recommending and endorsing loans again, a very broad interpretation of what constitutes a preferred lender arrangement because we heard back in the day all kinds of the nod and wink kind of stories between lenders and financial aid officers. There were no written agreements perhaps, not even oral agreements, there was just a lot of I don't know, questionable activities going on, so we did not want to narrow that definition.

So institutions that are distributing information from lenders, if those lenders are making loans to the students at your school and you're providing on your table to students information about these lenders we would, we would take that seriously. We would not call that in other words a neutral comprehensive list of lenders that have made loans to the students at your school.

All of that being said, we recognize burden associated with preferred lender arrangements and that's one of the reasons that we extended the guidance in GEN 08-06 to private education loans. And at the time we were discussing this, this is applicable to FFEL loans as well because recall when we were negotiating and when we developed these regulations the FFEL program was still alive and well.

Basically recognizing the institutions may still want to help their students to a certain degree we extend the basic guidance in this dear colleague letter which is that you can provide a neutral, and again neutral, this means you're not recommending or endorsing any particular lender, comprehensive, it means these comprehensive lists means a list of lenders who have provided loans to the students at your school for the last three to five years.

But the fact that you don't recommend any lender, that they can choose anybody that they want to choose, natural outgrowth of that is can I ask a third party entity to do this function for me. Well you need to be a little careful here because the answer to that question is yes.

You can but the third party has to be providing that list in the same way you would provide it and by that we mean a neutral comprehensive list, and that's a lender the borrower doesn't have to borrow from a lender on that list and that no lenders are recommended and most importantly that the lenders don't pay to be placed on this list or they don't pay a fee to be based on loan volume generated.

If that's the case then you're in a preferred lender arrangement. If there's fees involved by lenders and you're telling your borrowers to go to this Web site then that is not kosher in online.

Marianna Deeken: Thanks Gail. That was a great explanation.

Another source of confusion and as it always is, and it's a question we continually get is if a school does not have a preferred arrangement, doesn't really deal that much with private loans do they still have to deal with the code of conduct?

Gail McLarnon: Well yes. Thank you.

Marianna Deeken: Yes.

Gail McLarnon: We get that question a lot too and remember the code of conduct is applicable to institutions in the preferred lender arrangement but it's also a new program participation agreement requirement.

And basically a code of, the participation agreement with, between the department and institution, institutions of higher education, is a long list of things that you will comply with in order to participate in our program.

The code of conduct is a condition of participation in the Title IV (unintelligible) loan program. Not only a requirement if you've got a preferred lender arrangement with a private education lender but a condition to participate in Title IV loan programs.

So regardless of whether you're in a relationship you have to have a code of conduct and I think I tried to emphasize as we went through the code, some of the provisions in the code are more applicable to the days when you had relationships with FFEL lenders. We're not real sure how much of the things that FFEL lenders used to do that private education lenders will do for you, we're not sure how much of that's going to translate.

But and of course in the direct loan program and the Perkins loan program a lot of that stuff is not applicable, but again regardless, the department hasn't got the authority to change the statutory language which requires the code as a participation agreement requirement.

So yes, the answer is you have (unintelligible)...

Marianna Deeken: Is yes.

Gail McLarnon: ...all the things associated with the code that you've seen on these slides.

Marianna Deeken: And if you participate in any of the loan programs including direct and/or Perkins...

Gail McLarnon: Correct. I mean...

Marianna Deeken: ...it's required.

Gail McLarnon: Basically in that case what are you going to be doing? You're going to be posting the code on your Web site, you're going to be making sure your agents are aware of it and to the degree that any of those provisions might apply yes, but realistically speaking would those provisions require that your direct loan relationship with the department? Probably not. Perkins loans? Probably not. Private education lenders, yes, but they're not a Title IV lender.

So again, it's a little, it's a little redundant or circuitous if you will but you do, nonetheless, have to have a code of conduct.

Marianna Deeken: Thanks. And we do have a couple of questions around the issue at schools, under the disclosure stage you need to note or let students know that direct loans, for example, may offer better terms.

But in that there are some lenders that are now able to offer maybe, one commenter actually noted that there are a couple of lenders that are offering somewhat better terms than what the department is offering at you know,

perhaps a lower interest rate or perhaps you know better cancellation provisions.

And so how do they let students know, I mean how do you, if the student says well I got a better deal, say well direct loans may offer you a better deal? And isn't part of that dependent upon how that private lender, I mean they may not give every student that same deal I think is?

Gail McLarnon: Correct. Yeah. That's correct. It really depends on the school, how the school is treating that information. If the school is, the school's got to tell the students or rather well student borrowers, about Title IV loan programs, that's just required, it's statutory.

And if there's a better deal out there the school could recommend that lender to the student and then if that lender is making loans to the students at that school there would be a preferred lender arrangement.

If the school provides a neutral, comprehensive list of all of the lenders and compares the terms and conditions, which is your option, that's another way to let the borrower know that there are better deals out there. But again, it depends on the way that information is presented.

Marianna Deeken: Great. Thank you. We have a, someone who is asking if we have seen anything on a Web site that maybe is like a best practice, but we don't typically monitor that sort of activity do we here at the department?

Gail McLarnon: No we don't.

Marianna Deeken: It's really up to schools to reach out to their colleagues through their state or professional associations and share best practices in terms of links to sites and

we don't generally endorse them or even approve them, we just, we don't monitor that at all.

Gail McLarnon: That's correct. In fact we do not recommend anybody in particular that's up to schools.

Marianna Deeken: Great. Well that is about all the questions and in fact we are just about out of time so I'd like to thank everyone in the audience for giving up 90 minutes of their time to spend with us.

I'd like to thank Gail for giving us her time from the Department of, I'm sorry, from the Office of Post Secondary Education to work with us in terms of presenting this on private loan, the Private Loan Disclosure Act. All of the sudden I've just lost my train of thought altogether. So anyway, thank you everyone and we look forward to seeing you next time.

Gail McLarnon: Thank you.

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