

HEA Student Loan Sunshine Provisions

(Title I, Sections 151-154)

Statutory Language:

Title I . . .

PART E--LENDER AND INSTITUTION REQUIREMENTS RELATING TO EDUCATION LOANS

SEC. 151. DEFINITIONS.

(1) AGENT- The term `agent' means an officer or employee of a covered institution or an institution-affiliated organization.

(2) COVERED INSTITUTION- The term `covered institution' means any institution of higher education, as such term is defined in section 102, that receives any Federal funding or assistance.

(3) EDUCATION LOAN- The term `education loan' (except when used as part of the term `private education loan') means--

(A) any loan made, insured, or guaranteed under part B of title IV;

(B) any loan made under part D of title IV; or

(C) a private education loan.

(4) ELIGIBLE LENDER- The term `eligible lender' has the meaning given such term in section 435(d).

(5) INSTITUTION-AFFILIATED ORGANIZATION- The term `institution-affiliated organization'--

(A) means any organization that--

(i) is directly or indirectly related to a covered institution; and

(ii) is engaged in the practice of recommending, promoting, or endorsing education loans for students attending such covered institution or the families of such students;

(B) may include an alumni organization, athletic organization, foundation, or social, academic, or professional organization, of a covered institution; and

(C) notwithstanding subparagraphs (A) and (B), does not include any lender with respect to any education loan secured, made, or extended by such lender.

(6) LENDER- The term `lender' (except when used as part of the terms `eligible lender' and `private educational lender')--

(A) means--

(i) in the case of a loan made, insured, or guaranteed under part B of title IV, an eligible lender;

(ii) in the case of any loan issued or provided to a student under part D of title IV, the Secretary; and

(iii) in the case of a private education loan, a private educational lender as defined in section 140 of the Truth in Lending Act; and

(B) includes any other person engaged in the business of securing, making, or extending education loans on behalf of the lender.

(7) **OFFICER-** The term `officer' includes a director or trustee of a covered institution or institution-affiliated organization, if such individual is treated as an employee of such covered institution or institution-affiliated organization, respectively.

(8) **PREFERRED LENDER ARRANGEMENT-** The term `preferred lender arrangement'--

(A) means an arrangement or agreement between a lender and a covered institution or an institution-affiliated organization of such covered institution--

(i) under which a lender provides or otherwise issues education loans to the students attending such covered institution or the families of such students; and

(ii) that relates to such covered institution or such institution-affiliated organization recommending, promoting, or endorsing the education loan products of the lender; and

(B) does not include--

(i) arrangements or agreements with respect to loans under part D of title IV; or

(ii) arrangements or agreements with respect to loans that originate through the auction pilot program under section 499(b).

(9) **PRIVATE EDUCATION LOAN-** The term “private education loan” has the meaning given the term in section 140 of the Truth in Lending Act.

SEC. 152. RESPONSIBILITIES OF COVERED INSTITUTIONS, INSTITUTION-AFFILIATED ORGANIZATIONS, AND LENDERS.

(a) **Responsibilities of Covered Institutions and Institution-Affiliated Organizations-**

(1) **DISCLOSURES BY COVERED INSTITUTIONS AND INSTITUTION-AFFILIATED ORGANIZATIONS-**

(A) **PREFERRED LENDER ARRANGEMENT DISCLOSURES-** In addition to the disclosures required by subsections (a)(27) and (h) of section 487 (if applicable), a covered institution, or an institution-affiliated organization of such covered institution, that participates in a preferred lender arrangement shall disclose--

(i) on such covered institution's or institution-affiliated organization's website and in all informational materials described in subparagraph (C) that describe or discuss education loans--

(I) the maximum amount of Federal grant and loan aid under title IV available to students, in an easy to understand format;

(II) the information required to be disclosed pursuant to section 153(a)(2)(A)(i), for each type of loan described in section 151(3)(A) that is offered pursuant to a preferred lender arrangement of the institution or organization to students of the institution or the families of such students; and

(III) a statement that such institution is required to process the documents required to obtain a loan under part B of title IV from any eligible lender the student selects; and

(ii) on such covered institution's or institution-affiliated organization's website and in all informational materials described in subparagraph (C) that describe or discuss private education loans--

(I) in the case of a covered institution, the information that the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(11) of the Truth in Lending Act (15 U.S.C. 1638(e)(11)), for each type of private education loan offered pursuant to a preferred lender arrangement of the institution to students of the institution or the families of such students; and

(II) in the case of an institution-affiliated organization of a covered institution, the information the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(1) of the Truth in Lending Act (15 U.S.C. 1638(e)(1)), for each type of private education loan offered pursuant to a preferred lender arrangement of the organization to students of such institution or the families of such students.

(B) PRIVATE EDUCATION LOAN DISCLOSURES- A covered institution, or an institution-affiliated organization of such covered institution, that provides information regarding a private education loan from a lender to a prospective borrower shall—

(i) provide the prospective borrower with the information the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(1) of the Truth in Lending Act (15 U.S.C. 1638(e)(1)) for such loan;

(ii) inform the prospective borrower that--

(I) the prospective borrower may qualify for loans or other assistance under title IV; and

(II) the terms and conditions of loans made, insured, or guaranteed under title IV may be more favorable than the provisions of private education loans; and

(iii) ensure that information regarding private education loans is presented in such a manner as to be distinct from information regarding loans that are made, insured, or guaranteed under title IV.

(C) INFORMATIONAL MATERIALS- The informational materials described in this subparagraph are publications, mailings, or electronic messages or materials that--

(i) are distributed to prospective or current students of a covered institution and families of such students; and

(ii) describe or discuss the financial aid opportunities available to students at an institution of higher education.

(2) USE OF INSTITUTION NAME- A covered institution, or an institution-affiliated organization of such covered institution, that enters into a preferred lender arrangement with a lender regarding private education loans shall not agree to the lender's use of the name, emblem, mascot, or logo of such institution or organization, or other words, pictures, or symbols readily identified with such institution or organization, in the marketing of private education loans to students attending such institution in any way that

implies that the loan is offered or made by such institution or organization instead of the lender.

(3) USE OF LENDER NAME- A covered institution, or an institution-affiliated organization of such covered institution, that enters into a preferred lender arrangement with a lender regarding private education loans shall ensure that the name of the lender is displayed in all information and documentation related to such loans.

(b) Lender Responsibilities-

(1) DISCLOSURES BY LENDERS-

(A) DISCLOSURES TO BORROWERS-

(i) FEDERAL EDUCATION LOANS- For each education loan that is made, insured, or guaranteed under part B or D of title IV (other than a loan made under section 428C or a Federal Direct Consolidation Loan), at or prior to the time the lender disburses such loan, the lender shall provide the prospective borrower or borrower, in writing (including through electronic means), with the disclosures described in subsections (a) and (c) of section 433.

(ii) PRIVATE EDUCATION LOANS- For each of a lender's private education loans, the lender shall comply with the disclosure requirements under section 128(e) of the Truth in Lending Act (15 U.S.C. 1638(e)).

(B) DISCLOSURES TO THE SECRETARY-

(i) IN GENERAL- Each lender of a loan made, insured, or guaranteed under part B of title IV shall, on an annual basis, report to the Secretary--

(I) any reasonable expenses paid or provided under section 435(d)(5)(D) or paragraph (3)(B) or (7) of section 487(e) to any agent of a covered institution who--

(aa) is employed in the financial aid office of a covered institution; or

(bb) otherwise has responsibilities with respect to education loans or other financial aid of the institution; and

(II) any similar expenses paid or provided to any agent of an institution-affiliated organization who is involved in the practice of recommending, promoting, or endorsing education loans.

(ii) CONTENTS OF REPORTS- Each report described in clause (i) shall include--

(I) the amount for each specific instance in which the lender provided such expenses;

(II) the name of any agent described in clause (i) to whom the expenses were paid or provided;

(III) the dates of the activity for which the expenses were paid or provided; and

(IV) a brief description of the activity for which the expenses were paid or provided.

(iii) REPORT TO CONGRESS- The Secretary shall summarize the information received from the lenders under this subparagraph in a report and transmit such report annually to the authorizing committees.

(2) CERTIFICATION BY LENDERS- Not later than 18 months after the date of enactment of the Higher Education Opportunity Act--

(A) in addition to any other disclosure required under Federal law, each lender of a loan made, insured, or guaranteed under part B of title IV that participates in one or more preferred lender arrangements shall annually certify the lender's compliance with the requirements of this Act; and

(B) if an audit of a lender is required pursuant to section 428(b)(1)(U)(iii), the lender's compliance with the requirements under this section shall be reported on and attested to annually by the auditor of such lender.

SEC. 153. LOAN INFORMATION TO BE DISCLOSED AND MODEL DISCLOSURE FORM FOR COVERED INSTITUTIONS, INSTITUTION-AFFILIATED ORGANIZATIONS, AND LENDERS PARTICIPATING IN PREFERRED LENDER ARRANGEMENTS.

(a) Duties of the Secretary-

(1) DETERMINATION OF MINIMUM DISCLOSURES-

(A) IN GENERAL- Not later than 18 months after the date of enactment of the Higher Education Opportunity Act, the Secretary, in coordination with the Board of Governors of the Federal Reserve System, shall determine the minimum information that lenders, covered institutions, and institution-affiliated organizations of such covered institutions participating in preferred lender arrangements shall make available regarding education loans described in section 151(3)(A) that are offered to students and the families of such students.

(B) CONSULTATION AND CONTENT OF MINIMUM DISCLOSURES- In carrying out subparagraph (A), the Secretary shall--

(i) consult with students, the families of such students, representatives of covered institutions (including financial aid administrators, admission officers, and business officers), representatives of institution-affiliated organizations, secondary school guidance counselors, lenders, loan servicers, and guaranty agencies;

(ii) include, in the minimum information under subparagraph (A) that is required to be made available, the information that the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(1) of the Truth in Lending Act (15 U.S.C. 1638(e)(1)), modified as necessary to apply to such loans; and

(iii) consider the merits of requiring each covered institution, and each institution-affiliated organization of such covered institution, with a preferred lender arrangement to provide to prospective borrowers and the families of such borrowers the following information for each type of education loan offered pursuant to such preferred lender arrangement:

(I) The interest rate and terms and conditions of the loan for the next award year, including loan forgiveness and deferment.

(II) Information on any charges, such as origination and Federal default fees, that are payable on the loan, and whether those charges will be--

(aa) collected by the lender at or prior to the disbursement of the loan, including whether the charges will be deducted from the proceeds of the loan or paid separately by the borrower; or

(bb) paid in whole or in part by the lender.

(III) The annual and aggregate maximum amounts that may be borrowed.

(IV) The average amount borrowed from the lender by students who graduated from such institution in the preceding year with certificates, undergraduate degrees, graduate degrees, and professional degrees, as applicable, and who obtained loans of such type from the lender for the preceding year.

(V) The amount the borrower may pay in interest, based on a standard repayment plan and the average amount borrowed from the lender by students who graduated from such institution in the preceding year and who obtained loans of such type from the lender for the preceding year, for--

(aa) borrowers who take out loans under section 428;

(bb) borrowers who take out loans under section 428B or 428H, who pay the interest while in school; and

(cc) borrowers who take out loans under section 428B or 428H, who do not pay the interest while in school.

(VI) The consequences for the borrower of defaulting on a loan, including limitations on the discharge of an education loan in bankruptcy.

(VII) Contact information for the lender.

(VIII) Other information suggested by the persons and entities with whom the Secretary has consulted under clause (i).

(2) REQUIRED DISCLOSURES- After making the determinations under paragraph (1), the Secretary, in coordination with the Board of Governors of the Federal Reserve System and after consultation with the public, shall--

(A)(i) provide that the information determined under paragraph (1) shall be disclosed by covered institutions, and institution-affiliated organizations of such covered institutions, with preferred lender arrangements to prospective borrowers and the families of such borrowers regarding the education loans described in section 151(3)(A) that are offered pursuant to such preferred lender arrangements; and

(ii) make clear that such covered institutions and institution-affiliated organizations may provide the required information on a form designed by the institution or organization instead of the model disclosure form described in subparagraph (B);

(B) develop a model disclosure form that may be used by covered institutions, institution-affiliated organizations, and preferred lenders that includes all of the information required under subparagraph (A)(i) in a format that--

(i) is easily usable by students, families, institutions, institution-affiliated organizations, lenders, loan servicers, and guaranty agencies; and

(ii) is similar in format to the form developed by the Board of Governors of the Federal Reserve System under paragraphs (1) and (5)(A) of section 128(e), in order to permit students and the families of students to easily compare private education loans and education loans described in section 151(3)(A); and

(C) update such model disclosure form periodically, as necessary.

(b) Duties of Lenders- Each lender that has a preferred lender arrangement with a covered institution, or an institution-affiliated organization of such covered institution, with respect to education loans described in section 151(3)(A) shall annually, by a date

determined by the Secretary, provide to such covered institution or such institution-affiliated organization, and to the Secretary, the information the Secretary requires pursuant to subsection (a)(2)(A)(i) for each type of education loan described in section 151(3)(A) that the lender plans to offer pursuant to such preferred lender arrangement to students attending such covered institution, or to the families of such students, for the next award year.

(c) Duties of Covered Institutions and Institution-Affiliated Organizations-

(1) PROVIDING INFORMATION TO STUDENTS AND FAMILIES-

(A) IN GENERAL- Each covered institution, and each institution-affiliated organization of such covered institution, that has a preferred lender arrangement shall provide the following information to students attending such institution, or the families of such students, as applicable:

(i) The information the Secretary requires pursuant to subsection (a)(2)(A)(i), for each type of education loan described in section 151(3)(A) offered pursuant to a preferred lender arrangement to students of such institution or the families of such students.

(ii)(I) In the case of a covered institution, the information that the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(11) of the Truth in Lending Act (15 U.S.C. 1638(e)(11)) to the covered institution, for each type of private education loan offered pursuant to such preferred lender arrangement to students of such institution or the families of such students.

(ii) In the case of an institution-affiliated organization, the information the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(1) of the Truth in Lending Act (15 U.S.C. 1638(e)(1)), for each type of private education loan offered pursuant to such preferred lender arrangement to students of the institution with which such organization is affiliated or the families of such students.

(B) TIMELY PROVISION OF INFORMATION- The information described in subparagraph (A) shall be provided in a manner that allows for the students or the families to take such information into account before selecting a lender or applying for an education loan.

(2) ANNUAL REPORT- Each covered institution, and each institution-affiliated organization of such covered institution, that has a preferred lender arrangement, shall--

(A) prepare and submit to the Secretary an annual report, by a date determined by the Secretary, that includes, for each lender that has a preferred lender arrangement with such covered institution or organization--

(i) the information described in clauses (i) and (ii) of paragraph (1)(A); and
(ii) a detailed explanation of why such covered institution or institution-affiliated organization entered into a preferred lender arrangement with the lender, including why the terms, conditions, and provisions of each type of education loan provided pursuant to the preferred lender arrangement are beneficial for students attending such institution, or the families of such students, as applicable; and

(B) ensure that the report required under subparagraph (A) is made available to the public and provided to students attending or planning to attend such covered institution and the families of such students.

(3) CODE OF CONDUCT-

(A) IN GENERAL- Each covered institution, and each institution-affiliated organization of such covered institution, that has a preferred lender arrangement, shall comply with the code of conduct requirements of subparagraphs (A) through (C) of section 487(a)(25).

(B) APPLICABLE CODE OF CONDUCT- For purposes of subparagraph (A), an institution-affiliated organization of a covered institution shall--

(i) comply with the code of conduct developed and published by such covered institution under subparagraphs (A) and (B) of section 487(a)(25);

(ii) if such institution-affiliated organization has a website, publish such code of conduct prominently on the website; and

(iii) administer and enforce such code of conduct by, at a minimum, requiring that all of such organization's agents with responsibilities with respect to education loans be annually informed of the provisions of such code of conduct.

SEC. 154. LOAN INFORMATION TO BE DISCLOSED AND MODEL DISCLOSURE FORM FOR INSTITUTIONS PARTICIPATING IN THE WILLIAM. D. FORD FEDERAL DIRECT LOAN PROGRAM.

(a) Provision of Disclosures to Institutions by the Secretary- Not later than 180 days after the development of the model disclosure form under section 153(a)(2)(B), the Secretary shall provide each institution of higher education participating in the William D. Ford Direct Loan Program under part D of title IV with a completed model disclosure form including the same information for Federal Direct Stafford Loans, Federal Direct Unsubsidized Stafford Loans, and Federal Direct PLUS loans made to, or on behalf of, students attending each such institution as is required on such form for loans described in section 151(3)(A).

(b) Duties of Institutions-

(1) IN GENERAL- Each institution of higher education participating in the William D. Ford Direct Loan Program under part D of title IV shall--

(A) make the information the Secretary provides to the institution under subsection (a) available to students attending or planning to attend the institution, or the families of such students, as applicable; and

(B) if the institution provides information regarding a private education loan to a prospective borrower, concurrently provide such borrower with the information the Secretary provides to the institution under subsection (a).

(2) CHOICE OF FORMS- In providing the information required under paragraph (1), an institution of higher education may use a comparable form designed by the institution instead of the model disclosure form developed under section 153(a)(2)(B).

Title IV...

Guaranty Agency Requirements

(Title IV, Section. 428(b)(3))

(3) RESTRICTIONS ON INDUCEMENTS, PAYMENTS, MAILINGS, AND ADVERTISING. A guaranty agency shall not (A) offer, directly or indirectly, premiums, payments, stock or other securities, prizes, travel, entertainment expenses, tuition payment or reimbursement, or other inducements to (i) any institution of higher education or the employees of an institution of higher education in order to secure applicants for loans made under this part; or (ii) any lender, or any agent, employee, or independent contractor of any lender or guaranty agency, in order to administer or market loans made under this part (other than a loan made as part of the guaranty agency's lender-of-last-resort program pursuant to section 428(j)), for the purpose of securing the designation of the guaranty agency as the insurer of such loans; (B) conduct unsolicited mailings, by postal or electronic means, of student loan application forms to students enrolled in secondary schools or postsecondary educational institutions, or to the families of such students, except that applications may be mailed, by postal or electronic means, to students or borrowers who have previously received loans guaranteed under this part by the guaranty agency; (C) perform, for an institution of higher education participating in a program under this title, any function that such institution is required to perform under this title, except that the guaranty agency may perform functions on behalf of such institution in accordance with section 485(b); (D) pay, on behalf of an institution of higher education, another person to perform any function that such institution is required to perform under this title, except that the guaranty agency may perform functions on behalf of such institution in accordance with section 485(b); or (E) conduct fraudulent or misleading advertising concerning loan availability, terms, or conditions. It shall not be a violation of this paragraph for a guaranty agency to provide technical assistance to institutions of higher education comparable to the technical assistance provided to institutions of higher education by the Department."

Lender Disclosure Requirements

(Title IV, Section 433)

SEC. 433. STUDENT LOAN INFORMATION BY ELIGIBLE LENDERS.

(a) REQUIRED DISCLOSURE BEFORE DISBURSEMENT. Each eligible lender, at or prior to the time such lender disburses a loan that is insured or guaranteed under this part (other than a loan made under section 428C), shall provide thorough and accurate loan information on such loan to the borrower in simple and understandable terms. Any disclosure required by this subsection may be made by an eligible lender by written or electronic means, including as part of the application material provided to the borrower, as part of the promissory note evidencing the loan, or on a separate written form provided to the borrower. Each lender shall provide to each borrower a telephone number, and may provide an electronic address, through which additional loan information can be obtained. The disclosure shall include (1) a statement prominently and clearly displayed and in bold print that the borrower is receiving a loan that must be repaid; (2) the name of the eligible lender, and the address to which communications and payments should be sent; (3) the principal amount of the loan; (4) the amount of any charges, such as the origination fee and Federal default fee, and whether those fees will be (A) collected by the lender at or prior to the disbursement of the loan; (B) deducted from the proceeds of the loan; (C) paid separately by the borrower; or (D) paid by the lender;

- (5) the stated interest rate on the loan;
 - (6) for loans made under section 428H or to a student borrower under section 428B, an explanation
 - (A) that the borrower has the option to pay the interest that accrues on the loan while the borrower is a student at an institution of higher education; and
 - (B) if the borrower does not pay such interest while attending an institution, when and how often interest on the loan will be capitalized;
 - (7) for loans made to a parent borrower on behalf of a student under section 428B, an explanation
 - (A) that the parent has the option to defer payment on the loan while the student is enrolled on at least a half-time basis in an institution of higher education;
 - (B) if the parent does not pay the interest on the loan while the student is enrolled in an institution, when and how often interest on the loan will be capitalized; and
 - (C) that the parent may be eligible for a deferment on the loan if the parent is enrolled on at least a half-time basis in an institution of higher education;
 - (8) the yearly and cumulative maximum amounts that may be borrowed;
 - (9) a statement of the total cumulative balance, including the loan being disbursed, owed by the borrower to that lender, and an estimate of the projected monthly payment, given such cumulative balance;
 - (10) an explanation of when repayment of the loan will be required and when the borrower will be obligated to pay interest that accrues on the loan;
 - (11) a description of the types of repayment plans that are available for the loan;
 - (12) a statement as to the minimum and maximum repayment terms which the lender may impose, and the minimum annual payment required by law;
 - (13) an explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan;
 - (14) a statement that the borrower has the right to prepay all or part of the loan, at any time, without penalty;
 - (15) a statement summarizing circumstances in which repayment of the loan or interest that accrues on the loan may be deferred;
 - (16) a statement summarizing the circumstances in which a borrower may obtain forbearance on the loan;
 - (17) a description of the options available for forgiveness of the loan, and the requirements to obtain loan forgiveness;
 - (18) a definition of default and the consequences to the borrower if the borrower defaults, including a statement that the default will be reported to a consumer reporting agency; and
 - (19) an explanation of any cost the borrower may incur during repayment or in the collection of the loan, including fees that the borrower may be charged, such as late payment fees and collection costs.
- (b) REQUIRED DISCLOSURE BEFORE REPAYMENT. Each eligible lender shall, at or prior to the start of the repayment period on a loan made, insured, or guaranteed under section 428, 428B, or 428H, disclose to the borrower by written or electronic means the information required under this subsection in simple and understandable terms. Each eligible lender shall provide to each borrower a telephone number, and may provide an electronic address, through which additional loan information can be obtained. The disclosure required by this subsection shall be made not less than 30 days nor more than 150 days before the first payment on the loan is due from the borrower. The disclosure shall include
- (1) the name of the eligible lender or loan servicer, and the address to which communications and payments should be sent;
 - (2) the scheduled date upon which the repayment period is to begin or the deferment period under section 428B(d)(1) is to end, as applicable;
 - (3) the estimated balance owed by the borrower on the loan or loans covered by the disclosure (including, if applicable, the estimated amount of interest to be capitalized) as of the scheduled date on which the repayment period is to begin or the deferment period under 428B(d)(1) is to end, as applicable;

(4) the stated interest rate on the loan or loans, or the combined interest rate of loans with different stated interest rates;

(5) information on loan repayment benefits offered for the loan or loans, including

(A) whether the lender offers any benefits that are contingent on the repayment behavior of the borrower, such as

(i) a reduction in interest rate if the borrower repays the loan by automatic payroll or checking account deduction;

(ii) a reduction in interest rate if the borrower makes a specified number of on-time payments; and

(iii) other loan repayment benefits for which the borrower could be eligible that would reduce the amount of repayment or the length of the repayment period;

(B) if the lender provides a loan repayment benefit

(i) any limitations on such benefit;

(ii) explicit information on the reasons a borrower may lose eligibility for such benefit;

(iii) for a loan repayment benefit that reduces the borrower's interest rate

(I) examples of the impact the interest rate reduction would have on the length of the borrower's repayment period and the amount of repayment; and

(II) upon the request of the borrower, the effect the reduction in interest rate would have with respect to the borrower's payoff amount and time for repayment; and

(iv) whether and how the borrower can regain eligibility for a benefit if a borrower loses a benefit;

(6) a description of all the repayment plans that are available to the borrower and a statement that the borrower may change from one plan to another during the period of repayment;

(7) the repayment schedule for all loans covered by the disclosure, including

(A) the date the first installment is due; and

(B) the number, amount, and frequency of required payments, which shall be based on a standard repayment plan or, in the case of a borrower who has selected another repayment plan, on the repayment plan selected by the borrower;

(8) an explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan and of the availability and terms of such other options;

(9) except as provided in subsection (d)

(A) the projected total of interest charges which the borrower will pay on the loan or loans, assuming that the borrower makes payments exactly in accordance with the repayment schedule; and

(B) if the borrower has already paid interest on the loan or loans, the amount of interest paid;

(10) the nature of any fees which may accrue or be charged to the borrower during the repayment period;

(11) a statement that the borrower has the right to prepay all or part of the loan or loans covered by the disclosure at any time without penalty;

(12) a description of the options by which the borrower may avoid or be removed from default, including any relevant fees associated with such options; and

(13) additional resources, including nonprofit organizations, advocates, and counselors (including the Student Loan Ombudsman of the Department) of which the lender is aware, where borrowers may receive advice and assistance on loan repayment.

(c) SEPARATE NOTIFICATION. Each eligible lender shall, at the time such lender notifies a borrower of approval of a loan which is insured or guaranteed under this part, provide the borrower with a separate notification which summarizes, in simple and understandable terms, the rights and responsibilities of the borrower with respect to the loan, including a statement of the consequences of defaulting on the loan and a statement that each borrower who defaults will be reported to a consumer reporting agency. The requirement of this subsection shall be in addition to the information required by subsection (a) of this section.

(d) SPECIAL DISCLOSURE RULES ON PLUS LOANS, AND UNSUBSIDIZED

LOANS. Loans made under sections 428B and 428H shall not be subject to the disclosure of projected monthly payment amounts required under subsection (b)(7) if the lender, in lieu of such disclosure, provides the borrower with sample projections of monthly repayment amounts, assuming different levels of borrowing and interest accruals resulting from capitalization of interest while the borrower, or the student on whose behalf the loan is made, is in school, in simple and understandable terms. Such sample projections shall disclose the cost to the borrower of

(1) capitalizing the interest; and
(2) paying the interest as the interest accrues.

(e) REQUIRED DISCLOSURES DURING REPAYMENT.

(1) PERTINENT INFORMATION ABOUT A LOAN PROVIDED ON A PERIODIC BASIS. Each eligible lender shall provide the borrower of a loan made, insured, or guaranteed under this part with a bill or statement (as applicable) that corresponds to each payment installment time period in which a payment is due and that includes, in simple and understandable terms

(A) the original principal amount of the borrower's loan;
(B) the borrower's current balance, as of the time of the bill or statement, as applicable;

(C) the interest rate on such loan;

(D) the total amount the borrower has paid in interest on the loan;

(E) the aggregate amount the borrower has paid for the loan, including the amount the borrower has paid in interest, the amount the borrower has paid in fees, and the amount the borrower has paid against the balance;

(F) a description of each fee the borrower has been charged for the most recently preceding installment time period;

(G) the date by which the borrower needs to make a payment in order to avoid additional fees and the amount of such payment and the amount of such fees;

(H) the lender's or loan servicer's address and tollfree phone number for payment and billing error purposes; and

(I) a reminder that the borrower has the option to change repayment plans, a list of the names of the repayment plans available to the borrower, a link to the appropriate page of the Department's website to obtain a more detailed description of the repayment plans, and directions for the borrower to request a change in repayment plan.

(2) INFORMATION PROVIDED TO A BORROWER HAVING DIFFICULTY MAKING PAYMENTS. Each eligible lender shall provide to a borrower who has notified the lender that the borrower is having difficulty making payments on a loan made, insured, or guaranteed under this part with the following information in simple and understandable terms:

(A) A description of the repayment plans available to the borrower, including how the borrower should request a change in repayment plan.

(B) A description of the requirements for obtaining forbearance on a loan, including expected costs associated with forbearance.

(C) A description of the options available to the borrower to avoid defaulting on the loan, and any relevant fees or costs associated with such options.

(3) REQUIRED DISCLOSURES DURING DELINQUENCY. Each eligible lender shall provide to a borrower who is 60 days delinquent in making payments on a loan made, insured, or guaranteed under this part with a notice, in simple and understandable terms, of the following:

(A) The date on which the loan will default if no payment is made.

(B) The minimum payment the borrower must make to avoid default.

(C) A description of the options available to the borrower to avoid default, and any relevant fees or costs associated with such options, including a description of deferment and forbearance and the requirements to obtain each.

(D) Discharge options to which the borrower may be entitled.

(E) Additional resources, including nonprofit organizations, advocates, and counselors (including the Student Loan Ombudsman of the Department), of which the lender

is aware, where the borrower can receive advice and assistance on loan repayment.

(F) COST OF DISCLOSURE AND CONSEQUENCES OF NONDISCLOSURE.

(1) NO COST TO BORROWERS. The information required under this section shall be available without cost to the borrower.

(2) CONSEQUENCES OF NONDISCLOSURE. The failure of an eligible lender to provide information as required by this section shall not

(A) relieve a borrower of the obligation to repay a loan in accordance with the loan's terms; or

(B) provide a basis for a claim for civil damages.

(3) RULE OF CONSTRUCTION. Nothing in this section shall be construed as subjecting the lender to the Truth in Lending Act with regard to loans made under this part.

(4) ACTIONS BY THE SECRETARY. The Secretary may limit, suspend, or terminate the continued participation of an eligible lender in making loans under this part for failure by that lender to comply with this section."

(b) EFFECTIVE DATES.

(1) REGULAR DISCLOSURE REQUIREMENTS AND DISCLOSURE REQUIREMENTS TO BORROWERS HAVING DIFFICULTY MAKING PAYMENTS.

Paragraphs (1) and (2) of section 433(e) of the Higher Education Act of 1965, as amended by subsection (a), shall apply with respect to loans for which the first payment is due on or after July 1, 2009.

(2) DISCLOSURE REQUIREMENTS FOR BORROWERS WITH DELINQUENT LOANS. Section 433(e)(3) of the Higher Education Act of 1965, as amended by subsection (a), shall apply with respect to loans that become delinquent on or after July 1, 2009.

(G) the date by which the borrower needs to make a payment in order to avoid additional fees and the amount of such payment and the amount of such fees;

(H) the lender's or loan servicer's address and tollfree phone number for payment and billing error purposes; and

(I) a reminder that the borrower has the option to change repayment plans, a list of the names of the repayment plans available to the borrower, a link to the appropriate page of the Department's website to obtain a more detailed description of the repayment plans, and directions for the borrower to request a change in repayment plan.

(2) INFORMATION PROVIDED TO A BORROWER HAVING DIFFICULTY MAKING PAYMENTS. Each eligible lender shall provide to a borrower who has notified the lender that the borrower is having difficulty making payments on a loan made, insured, or guaranteed under this part with the following information in simple and understandable terms:

(A) A description of the repayment plans available to the borrower, including how the borrower should request a change in repayment plan.

(B) A description of the requirements for obtaining forbearance on a loan, including expected costs associated with forbearance.

(C) A description of the options available to the borrower to avoid defaulting on the loan, and any relevant fees or costs associated with such options.

(3) REQUIRED DISCLOSURES DURING DELINQUENCY. Each eligible lender shall provide to a borrower who is 60 days delinquent in making payments on a loan made, insured, or guaranteed under this part with a notice, in simple and understandable terms, of the following:

(A) The date on which the loan will default if no payment is made.

(B) The minimum payment the borrower must make to avoid default.

(C) A description of the options available to the borrower to avoid default, and any relevant fees or costs associated with such options, including a description of deferment and forbearance and the requirements to obtain each.

(D) Discharge options to which the borrower may be entitled.

(E) Additional resources, including nonprofit organizations, advocates, and counselors (including the Student Loan Ombudsman of the Department), of which the lender is aware, where the borrower can receive advice and assistance on loan repayment.

(f) COST OF DISCLOSURE AND CONSEQUENCES OF NONDISCLOSURE.
(1) NO COST TO BORROWERS. The information required under this section shall be available without cost to the borrower.
(2) CONSEQUENCES OF NONDISCLOSURE. The failure of an eligible lender to provide information as required by this section shall not
(A) relieve a borrower of the obligation to repay a loan in accordance with the loan's terms; or
(B) provide a basis for a claim for civil damages.
(3) RULE OF CONSTRUCTION. Nothing in this section shall be construed as subjecting the lender to the Truth in Lending Act with regard to loans made under this part.
(4) ACTIONS BY THE SECRETARY. The Secretary may limit, suspend, or terminate the continued participation of an eligible lender in making loans under this part for failure by that lender to comply with this section."
(b) EFFECTIVE DATES.
(1) REGULAR DISCLOSURE REQUIREMENTS AND DISCLOSURE REQUIREMENTS TO BORROWERS HAVING DIFFICULTY MAKING PAYMENTS. Paragraphs (1) and (2) of section 433(e) of the Higher Education Act of 1965, as amended by subsection (a), shall apply with respect to loans for which the first payment is due on or after July 1, 2009.
(2) DISCLOSURE REQUIREMENTS FOR BORROWERS WITH DELINQUENT LOANS. Section 433(e)(3) of the Higher Education Act of 1965, as amended by subsection (a), shall apply with respect to loans that become delinquent on or after July 1, 2009.

Eligible Lender Definition

(Title IV, Section 435(d)(5))

(5) DISQUALIFICATION FOR USE OF CERTAIN INCENTIVES.

The term eligible lender' does not include any lender that the Secretary determines, after notice and opportunity for a hearing, has

(A) offered, directly or indirectly, points, premiums, payments (including payments for referrals and for processing or finder fees), prizes, stock or other securities, travel, entertainment expenses, tuition payment or reimbursement, the provision of information technology equipment at below-market value, additional financial aid funds, or other inducements, to any institution of higher education or any employee of an institution of higher education in order to secure applicants for loans under this part;

(B) conducted unsolicited mailings, by postal or electronic means, of student loan application forms to students enrolled in secondary schools or postsecondary institutions, or to family members of such students, except that applications may be mailed, by postal or electronic means, to students or borrowers who have previously received loans under this part from such lender;

(C) entered into any type of consulting arrangement, or other contract to provide services to a lender, with an employee who is employed in the financial aid office of an institution of higher education, or who otherwise has responsibilities with respect to student loans or other financial aid of the institution;

(D) compensated an employee who is employed in the financial aid office of an institution of higher education, or who otherwise has responsibilities with respect to student loans or other financial aid of the institution, and

who is serving on an advisory board, commission, or group established by a lender or group of lenders for providing such service, except that the eligible lender may reimburse such employee for reasonable expenses incurred in providing such service;

(E) performed for an institution of higher education any function that such institution of higher education is required to perform under this title, except that a lender shall be permitted to perform functions on behalf of such institution in accordance with section 485(b);

(F) paid, on behalf of an institution of higher education, another person to perform any function that such institution of higher education is required to perform under this title, except that a lender shall be permitted to perform functions on behalf of such institution in accordance with section 485(b);

(G) provided payments or other benefits to a student at an institution of higher education to act as the lender's representative to secure applications under this title from individual prospective borrowers, unless such student

(i) is also employed by the lender for other purposes;

and

(ii) made all appropriate disclosures regarding such employment;

(H) offered, directly or indirectly, loans under this part as an inducement to a prospective borrower to purchase a policy of insurance or other product; or

(I) engaged in fraudulent or misleading advertising.

It shall not be a violation of this paragraph for a lender to provide technical assistance to institutions of higher education comparable to the kinds of technical assistance provided to institutions of higher education by the Department.”.

Disclosures Required in Direct Loan Program

(Title IV, Section 455(p))

(p) DISCLOSURES. Each institution of higher education with which the Secretary has an agreement under section 453, and each contractor with which the Secretary has a contract under section 456, shall, with respect to loans under this part and in accordance with such regulations as the Secretary shall prescribe, comply with each of the requirements under section 433 that apply to a lender with respect to a loan under part B.

Service on Lender Advisory Boards

(Title IV, Section 485(m))

(m) Disclosures of Reimbursements for Service on Advisory Boards-

(1) DISCLOSURE- Each institution of higher education participating in any program under this title shall report, on an annual basis, to the Secretary, any reasonable expenses paid or provided under section 140(d) of the Truth in Lending Act to any employee who is employed in the financial aid office of the

institution, or who otherwise has responsibilities with respect to education loans or other financial aid of the institution. Such reports shall include--

- (A) the amount for each specific instance of reasonable expenses paid or provided;
- (B) the name of the financial aid official, other employee, or agent to whom the expenses were paid or provided;
- (C) the dates of the activity for which the expenses were paid or provided; and
- (D) a brief description of the activity for which the expenses were paid or provided.

(2) **REPORT TO CONGRESS-** The Secretary shall summarize the information received from institutions of higher education under paragraph (1) in a report and transmit such report annually to the authorizing committees.

Code of Conduct

(Title IV, Section 487(a)(25) & 487(e))

Section 487(a) . . .

(25) In the case of an institution that participates in a loan program under this title, the institution will--

- (A) develop a code of conduct with respect to such loans with which the institution's officers, employees, and agents shall comply, that--
 - (i) prohibits a conflict of interest with the responsibilities of an officer, employee, or agent of an institution with respect to such loans; and
 - (ii) at a minimum, includes the provisions described in subsection (e);
- (B) publish such code of conduct prominently on the institution's website; and
- (C) administer and enforce such code by, at a minimum, requiring that all of the institution's officers, employees, and agents with responsibilities with respect to such loans be annually informed of the provisions of the code of conduct.

. . .

(e) **Code of Conduct Requirements-** An institution of higher education's code of conduct, as required under subsection (a)(25), shall include the following requirements:

(1) BAN ON REVENUE-SHARING ARRANGEMENTS-

- (A) **PROHIBITION-** The institution shall not enter into any revenue-sharing arrangement with any lender.
- (B) **DEFINITION-** For purposes of this paragraph, the term 'revenue-sharing arrangement' means an arrangement between an institution and a lender under which--
 - (i) a lender provides or issues a loan that is made, insured, or guaranteed under this title to students attending the institution or to the families of such students; and
 - (ii) the institution recommends the lender or the 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, an officer or employee of the institution, or an agent.

(2) GIFT BAN-

- (A) **PROHIBITION-** No officer or employee of the institution who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education loans, or agent who has responsibilities with respect to education loans, shall solicit or accept any gift from a lender, guarantor, or servicer of education loans.

(B) DEFINITION OF GIFT-

(i) **IN GENERAL-** In this paragraph, the term `gift' means any gratuity, favor, discount, entertainment, hospitality, loan, or other item having a monetary value of more than a de minimus amount. The term includes a gift of services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

(ii) **EXCEPTIONS-** The term `gift' shall not include any of the following:

(I) Standard material, activities, or programs on issues related to a loan, default aversion, default prevention, or financial literacy, such as a brochure, a workshop, or training.

(II) Food, refreshments, training, or informational material furnished to an officer or employee of an institution, or to an agent, as an integral part of a training session that is designed to improve the service of a lender, guarantor, or servicer of education loans to the institution, if such training contributes to the professional development of the officer, employee, or agent.

(III) Favorable terms, conditions, and borrower benefits on an education loan provided to a student employed by the institution if such terms, conditions, or benefits are comparable to those provided to all students of the institution.

(IV) Entrance and exit counseling services provided to borrowers to meet the institution's responsibilities for entrance and exit counseling as required by subsections (b) and (l) of section 485, as long as--

(aa) the institution's staff are in control of the counseling, (whether in person or via electronic capabilities); and

(bb) such counseling does not promote the products or services of any specific lender.

(V) Philanthropic contributions to an institution from a lender, servicer, or guarantor of education loans that are unrelated to education loans or any contribution from any lender, guarantor, or servicer that is not made in exchange for any advantage related to education loans.

(VI) State education grants, scholarships, or financial aid funds administered by or on behalf of a State.

(iii) **RULE FOR GIFTS TO FAMILY MEMBERS-** For purposes of this paragraph, a gift to a family member of an officer or employee of an institution, to a family member of an agent, or to any other individual based on that individual's relationship with the officer, employee, or agent, shall be considered a gift to the officer, employee, or agent if--

(I) the gift is given with the knowledge and acquiescence of the officer, employee, or agent; and

(II) the officer, employee, or agent has reason to believe the gift was given because of the official position of the officer, employee, or agent.

(3) CONTRACTING ARRANGEMENTS PROHIBITED-

(A) **PROHIBITION-** An officer or employee who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education loans, or an

agent who has responsibilities with respect to education loans, shall not accept from any lender or affiliate of any lender any fee, payment, or other financial benefit (including the opportunity to purchase stock) as compensation for any type of consulting arrangement or other contract to provide services to a lender or on behalf of a lender relating to education loans.

(B) EXCEPTIONS- Nothing in this subsection shall be construed as prohibiting--

- (i) an officer or employee of an institution who is not employed in the institution's financial aid office and who does not otherwise have responsibilities with respect to education loans, or an agent who does not have responsibilities with respect to education loans, from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of education loans;
- (ii) an officer or employee of the institution who is not employed in the institution's financial aid office but who has responsibility with respect to education loans as a result of a position held at the institution, or an agent who has responsibility with respect to education loans, from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of education loans, if the institution has a written conflict of interest policy that clearly sets forth that officers, employees, or agents must recuse themselves from participating in any decision of the board regarding education loans at the institution; or
- (iii) an officer, employee, or contractor of a lender, guarantor, or servicer of education loans from serving on a board of directors, or serving 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 any decision regarding education loans at the institution.

(4) INTERACTION WITH BORROWERS- The institution shall not--

- (A) for any first-time borrower, assign, through award packaging or other methods, the borrower's loan to a particular lender; or
- (B) refuse to certify, or delay certification of, any loan based on the borrower's selection of a particular lender or guaranty agency.

(5) PROHIBITION ON OFFERS OF FUNDS FOR PRIVATE LOANS-

- (A) **PROHIBITION-** The institution shall not request or accept from any lender any offer of funds to be used for private education loans (as defined in section 140 of the Truth in Lending Act), including funds for an opportunity pool loan, to students in exchange for the institution providing concessions or promises regarding providing the lender with--
 - (i) a specified number of loans made, insured, or guaranteed under this title;
 - (ii) a specified loan volume of such loans; or
 - (iii) a preferred lender arrangement for such loans.

- (B) **DEFINITION OF OPPORTUNITY POOL LOAN-** In this paragraph, the term 'opportunity pool loan' means a private education loan made by a lender to a student attending the institution or the family member of such a student that involves a payment, directly or indirectly, by such institution of points, premiums, additional interest, or financial support to such lender for the purpose of such lender extending credit to the student or the family.

(6) BAN ON STAFFING ASSISTANCE-

- (A) **PROHIBITION-** The institution shall not request or accept from any lender any assistance with

call center staffing or financial aid office staffing.

(B) CERTAIN ASSISTANCE PERMITTED- Nothing in paragraph (1) shall be construed to prohibit the institution from requesting or accepting assistance from a lender related to--

- (i) professional development training for financial aid administrators;
- (ii) providing educational counseling materials, financial literacy materials, or debt management materials to borrowers, provided that such materials disclose to borrowers the identification of any lender that assisted in preparing or providing such materials; or
- (iii) staffing services on a short-term, nonrecurring basis to assist the institution with financial aid-related functions during emergencies, including State-declared or federally declared natural disasters, federally declared national disasters, and other localized disasters and emergencies identified by the Secretary.

(7) ADVISORY BOARD COMPENSATION- Any employee who is employed in the financial aid office of the institution, or who otherwise has responsibilities with respect to education loans or other student financial aid of the institution, and who serves on an advisory board, commission, or group established by a lender, guarantor, or group of lenders or guarantors, shall be prohibited from receiving anything of value from the lender, guarantor, or group of lenders or guarantors, except that the employee may be reimbursed for reasonable expenses incurred in serving on such advisory board, commission, or group.

Preferred Lender Lists

(Section 487(h))

(h) Preferred Lender List Requirements-

(1) IN GENERAL- In compiling, maintaining, and making available a preferred lender list as required under subsection (a)(27), the institution will--

(A) clearly and fully disclose on such preferred lender list--

(i) not less than the information required to be disclosed under section 153(a)(2)(A);

(ii) why the institution has entered into a preferred lender arrangement with each lender on the preferred lender list, particularly with respect to terms and conditions or provisions favorable to the borrower; and

(iii) that the students attending the institution, or the families of such students, do not have to borrow from a lender on the preferred lender list;

(B) ensure, through the use of the list of lender affiliates provided by the Secretary under paragraph (2), that--

(i) there are not less than three lenders of loans made under part B that are not affiliates of each other included on the preferred lender list and, if the institution recommends, promotes, or endorses private education loans, there are not less than two lenders of private education loans that are not affiliates of each other included on the preferred lender list; and

(ii) the preferred lender list under this paragraph--

(I) specifically indicates, for each listed lender, whether the lender is or is not an affiliate of each other lender on the preferred lender list; and

(II) if a lender is an affiliate of another lender on the preferred lender list, describes the details of such affiliation;

(C) prominently disclose the method and criteria used by the institution in selecting lenders with which to enter into preferred lender arrangements to ensure that such lenders are selected on the basis of the best interests of the borrowers, including--

(i) payment of origination or other fees on behalf of the borrower;

(ii) highly competitive interest rates, or other terms and conditions or provisions of loans under this title or private education loans;

(iii) high-quality servicing for such loans; or

(iv) additional benefits beyond the standard terms and conditions or provisions for such loans;

(D) exercise a duty of care and a duty of loyalty to compile the preferred lender list under this paragraph without prejudice and for the sole benefit of the students attending the institution, or the families of such students;

(E) not deny or otherwise impede the borrower's choice of a lender or cause unnecessary delay in loan certification under this title for those borrowers who choose a lender that is not included on the preferred lender list; and

(F) comply with such other requirements as the Secretary may prescribe by regulation.

(2) LENDER AFFILIATES LIST-

(A) IN GENERAL- The Secretary shall maintain and regularly update a list of lender affiliates of all eligible lenders, and shall provide such list to institutions for use in carrying out paragraph (1)(B).

(B) USE OF MOST RECENT LIST- An institution shall use the most recent list of lender affiliates provided by the Secretary under subparagraph (A) in carrying out paragraph (1)(B).

Preferred Lender Arrangements

(Title IV, Section 487(a)(27))

Section 487 (a)

(27) In the case of an institution that has entered into a preferred lender arrangement, the institution will at least annually compile, maintain, and make available for students attending the institution, and the families of such students, a list, in print or other medium, of the specific lenders for loans made, insured, or guaranteed under this title or private education loans that the institution recommends, promotes, or endorses in accordance with such preferred lender arrangement. In making such list, the institution shall comply with the requirements of subsection (h).

Private Education Loans

(Title IV, Section 487(a)(28))

(28)(A) The institution will, upon the request of an applicant for a private education loan, provide to

the applicant the form required under section 128(e)(3) of the Truth in Lending Act (15 U.S.C. 1638(e)(3)), and the information required to complete such form, to the extent the institution possesses such information.

(B) For purposes of this paragraph, the term “private education loan” has the meaning given such term in section 140 of the Truth in Lending Act.

Gift Ban Violations Report

(Title IV, Section 487(g))

(g) Inspector General Report on Gift Ban Violations- The Inspector General of the Department shall--

(1) submit an annual report to the authorizing committees identifying all violations of an institution's code of conduct that the Inspector General has substantiated during the preceding year relating to the gift ban provisions described in subsection (f)(2); and

(2) make the report available to the public through the Department's website.

Preferred Lender Arrangements

(Title IV, Section 487(h))

(h) Preferred Lender List Requirements-

(1) IN GENERAL- In compiling, maintaining, and making available a preferred lender list as required under subsection (a)(27), the institution will--

(A) clearly and fully disclose on such preferred lender list--

(i) not less than the information required to be disclosed under section 153(a)(2)(A);

(ii) why the institution has entered into a preferred lender arrangement with each lender on the preferred lender list, particularly with respect to terms and conditions or provisions favorable to the borrower; and

(iii) that the students attending the institution, or the families of such students, do not have to borrow from a lender on the preferred lender list;

(B) ensure, through the use of the list of lender affiliates provided by the Secretary under paragraph (2), that--

(i) there are not less than three lenders of loans made under part B that are not affiliates of each other included on the preferred lender list and, if the institution recommends, promotes, or endorses private education loans, there are not less than two lenders of private education loans that are not affiliates of each other included on the preferred lender list; and

(ii) the preferred lender list under this paragraph--

(I) specifically indicates, for each listed lender, whether the lender is or is not an affiliate of each other lender on the preferred lender list; and

(II) if a lender is an affiliate of another lender on the preferred lender list, describes the details of such affiliation;

(C) prominently disclose the method and criteria used by the institution in selecting lenders with which to enter into preferred lender arrangements to ensure that such lenders are

selected on the basis of the best interests of the borrowers, including--

- (i) payment of origination or other fees on behalf of the borrower;
 - (ii) highly competitive interest rates, or other terms and conditions or provisions of loans under this title or private education loans;
 - (iii) high-quality servicing for such loans; or
 - (iv) additional benefits beyond the standard terms and conditions or provisions for such loans;
- (D) exercise a duty of care and a duty of loyalty to compile the preferred lender list under this paragraph without prejudice and for the sole benefit of the students attending the institution, or the families of such students;
- (E) not deny or otherwise impede the borrower's choice of a lender or cause unnecessary delay in loan certification under this title for those borrowers who choose a lender that is not included on the preferred lender list; and
- (F) comply with such other requirements as the Secretary may prescribe by regulation.

(2) LENDER AFFILIATES LIST-

- (A) **IN GENERAL-** The Secretary shall maintain and regularly update a list of lender affiliates of all eligible lenders, and shall provide such list to institutions for use in carrying out paragraph (1)(B).
- (B) **USE OF MOST RECENT LIST-** An institution shall use the most recent list of lender affiliates provided by the Secretary under subparagraph (A) in carrying out paragraph (1)(B).

Definitions

(HEA Title IV, Section 487(i))

(i) Definitions- For the purpose of this section:

- (1) **AGENT-** The term “agent” has the meaning given the term in section 151.
- (2) **AFFILIATE-** The term “affiliate” means a person that controls, is controlled by, or is under common control with another person. A person controls, is controlled by, or is under common control with another person if--
- (A) the person directly or indirectly, or acting through one or more others, owns, controls, or has the power to vote five percent or more of any class of voting securities of such other person;
 - (B) the person controls, in any manner, the election of a majority of the directors or trustees of such other person; or
 - (C) the Secretary determines (after notice and opportunity for a hearing) that the person directly or indirectly exercises a controlling interest over

the management or policies of such other person's education loans.

(3) EDUCATION LOAN- The term “education loan” has the meaning given the term in section 151.

(4) ELIGIBLE INSTITUTION- The term “eligible institution” means any such institution described in section 102 of this Act.

(5) OFFICER- The term “officer” has the meaning given the term in section 151.

(6) PREFERRED LENDER ARRANGEMENT- The term “preferred lender arrangement” has the meaning given the term in section 151.

(Title X)

TITLE X--PRIVATE STUDENT LOAN IMPROVEMENT

SEC. 1001. SHORT TITLE.

This title may be cited as the “Private Student Loan Transparency and Improvement Act of 2008”.

SEC. 1002. REGULATIONS.

Not later than 365 days after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall issue regulations in final form to implement paragraphs (1), (2), (3), (4), (6), (7), and (8) of section 128(e) and section 140(c) of the Truth in Lending Act, as added by this title, which regulations shall become effective not later than 6 months after their date of issuance.

SEC. 1003. EFFECTIVE DATES.

(a) In General- Except as provided in subsection (b) and as otherwise provided in this title, this title and the amendments made by this title shall become effective on the date of enactment of this Act.

(b) Effect Notwithstanding Regulations- Paragraphs (1), (2), (3), (4), (6), (7), and (8) of section 128(e) and section 140(c) of the Truth in Lending Act, as added by this title, shall become effective on the earlier of the date on which regulations issued under section 1002 become effective or 18 months after the date of enactment of this Act.

Subtitle A--Preventing Unfair and Deceptive Private Educational Lending Practices and Eliminating Conflicts of Interest

SEC. 1011. AMENDMENT TO THE TRUTH IN LENDING ACT.

(a) Preventing Unfair and Deceptive Private Educational Lending Practices and Conflicts of

Interest- Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by adding at the end the following new section:

`Sec. 140. Preventing unfair and deceptive private educational lending practices and eliminating conflicts of interest

(a) Definitions- As used in this section--

(1) the term `covered educational institution'--

(A) means any educational institution that offers a postsecondary educational degree, certificate, or program of study (including any institution of higher education); and

(B) includes an agent, officer, or employee of the educational institution;

(2) the term `gift'--

(A)(i) means any gratuity, favor, discount, entertainment, hospitality, loan, or other item having more than a de minimis monetary value, including services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred; and

(ii) includes an item described in clause (i) provided to a family member of an officer, employee, or agent of a covered educational institution, or to any other individual based on that individual's relationship with the officer, employee, or agent, if--

(I) the item is provided with the knowledge and acquiescence of the officer, employee, or agent; and

(II) the officer, employee, or agent has reason to believe the item was provided because of the official position of the officer, employee, or agent; and

(B) does not include--

(i) standard informational material related to a loan, default aversion, default prevention, or financial literacy;

(ii) food, refreshments, training, or informational material furnished to an officer, employee, or agent of a covered educational institution, as an integral part of a training session or through participation in an advisory council that is designed to improve the service of the private educational lender to the covered educational institution, if such training or participation contributes to the professional development of

the officer, employee, or agent of the covered educational institution;

(iii) favorable terms, conditions, and borrower benefits on a private education loan provided to a student employed by the covered educational institution, if such terms, conditions, or benefits are not provided because of the student's employment with the covered educational institution;

(iv) the provision of financial literacy counseling or services, including counseling or services provided in coordination with a covered educational institution, to the extent that such counseling or services are not undertaken to secure--

(I) applications for private education loans or private education loan volume;

(II) applications or loan volume for any loan made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.); or

(III) the purchase of a product or service of a specific private educational lender;

(v) philanthropic contributions to a covered educational institution from a private educational lender that are unrelated to private education loans and are not made in exchange for any advantage related to private education loans; or

(vi) State education grants, scholarships, or financial aid funds administered by or on behalf of a State;

(3) the term “institution of higher education” has the same meaning as in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002);

(4) the term “postsecondary educational expenses” means any of the expenses that are included as part of the cost of attendance of a student, as defined under section 472 of the Higher Education Act of 1965 (20 U.S.C. 10871l);

(5) the term “preferred lender arrangement” has the same meaning as in section 151 of the Higher Education Act of 1965;

(6) the term “private educational lender” means--

(A) a financial institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) that solicits, makes, or extends private education loans;

(B) a Federal credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) that solicits, makes, or extends private education loans; and

(C) any other person engaged in the business of soliciting, making, or extending private education loans;

`(7) the term `private education loan'--

`(A) means a loan provided by a private educational lender that--

`(i) is not made, insured, or guaranteed under of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.); and

`(ii) is issued expressly for postsecondary educational expenses to a borrower, regardless of whether the loan is provided through the educational institution that the subject student attends or directly to the borrower from the private educational lender; and

`(B) does not include an extension of credit under an open end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling; and

`(8) the term `revenue sharing' means an arrangement between a covered educational institution and a private educational lender under which--

`(A) a private educational lender provides or issues private education loans with respect to students attending the covered educational institution;

`(B) the covered educational institution recommends to students or others the private educational lender or the private education loans of the private educational lender; and

`(C) the private educational lender pays a fee or provides other material benefits, including profit sharing, to the covered educational institution in connection with the private education loans provided to students attending the covered educational institution or a borrower acting on behalf of a student.

`(b) Prohibition on Certain Gifts and Arrangements- A private educational lender may not, directly or indirectly--

`(1) offer or provide any gift to a covered educational institution in exchange for any advantage or consideration provided to such private educational lender related to its private education loan activities; or

`(2) engage in revenue sharing with a covered educational institution.

`(c) Prohibition on Co-Branding- A private educational lender may not use the name, emblem, mascot, or logo of the covered educational institution, or other words, pictures, or symbols readily identified with the covered educational institution, in the marketing of private education loans in any way that implies that the covered educational institution endorses the private education loans offered by the private educational lender.

`(d) Advisory Board Compensation- Any person who is employed in the financial aid office of a covered educational institution, or who otherwise has responsibilities with respect to private education loans or other financial aid of the institution, and who serves on an advisory board, commission, or group established by a private educational lender or group of such lenders shall be prohibited from receiving anything of value from the private educational lender or group of lenders. Nothing in this subsection prohibits the reimbursement of reasonable expenses incurred by an employee of a covered educational institution as part of their service on an advisory board, commission, or group described in this subsection.

`(e) Prohibition on Prepayment or Repayment Fees or Penalty- It shall be unlawful for any private educational lender to impose a fee or penalty on a borrower for early repayment or prepayment of any private education loan.'

(b) Conforming Amendment to Truth in Lending Act- Section 103(f) of the Truth in Lending Act (15 U.S.C. 1602(f)) is amended by adding at the end the following: 'The term 'creditor' includes a private educational lender (as that term is defined in section 140) for purposes of this title.'

(c) Disclosures of Reimbursements for Service on Advisory Boards-

Section 485 of the Higher Education Act of 1965 (20 U.S.C. 1092), as amended by this Act, is further amended by adding at the end the following:

`(m) Disclosures of Reimbursements for Service on Advisory Boards-

`(1) DISCLOSURE- Each institution of higher education participating in any program under this title shall report, on an annual basis, to the Secretary, any reasonable expenses paid or provided under section 140(d) of the Truth in Lending Act to any employee who is employed in the financial aid office of the institution, or who otherwise has responsibilities with respect to education loans or other financial aid of the institution. Such reports shall include--

`(A) the amount for each specific instance of reasonable expenses paid or provided;

`(B) the name of the financial aid official, other employee, or agent to whom the expenses were paid or provided;

`(C) the dates of the activity for which the expenses were paid or provided;

and

(D) a brief description of the activity for which the expenses were paid or provided.

(2) REPORT TO CONGRESS- The Secretary shall summarize the information received from institutions of higher education under paragraph (1) in a report and transmit such report annually to the authorizing committees.

SEC. 1012. CIVIL LIABILITY.

(a) In General- Section 130 of the Truth in Lending Act (15 U.S.C. 1640) is amended--

(1) in subsection (a)--

(A) in paragraph (3), by inserting 'or 128(e)(7)' after 'section 125'; and

(B) in the fourth sentence of the undesignated matter at the end--

(i) by striking '125 or' and inserting '125,'; and

(ii) by inserting 'of subparagraphs (A), (B), (D), (F), or (J) of section 128(e)(2) (for purposes of paragraph (2) or (4) of section 128(e)), or paragraph (4)(C), (6), (7), or (8) of section 128(e),' before 'or for failing';

(2) in subsection (e), by inserting before the first period the following: 'or, in the case of a violation involving a private education loan (as that term is defined in section 140(a)), 1 year from the date on which the first regular payment of principal is due under the loan'; and

(3) by adding at the end the following:

(j) Private Educational Lender- A private educational lender (as that term is defined in section 140(a)) has no liability under this section for failure to comply with section 128(e)(3).

(b) Effective Date- The amendments made by this section shall have the same effective date as provisions referred to in section 1003(b).

SEC. 1013. CLERICAL AMENDMENT.

The table of sections for chapter 2 of title I of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by adding at the end the following:

140. Preventing unfair and deceptive private educational lending practices and eliminating conflicts of interest.

Subtitle B--Improved Disclosures for Private Education Loans

SEC. 1021. PRIVATE EDUCATION LOAN DISCLOSURES AND LIMITATIONS.

(a) Truth in Lending Act- Section 128 of the Truth in Lending Act (15 U.S.C. 1638) is amended by adding at the end the following:

`(e) Terms and Disclosure With Respect to Private Education Loans-

`(1) DISCLOSURES REQUIRED IN PRIVATE EDUCATION LOAN APPLICATIONS AND SOLICITATIONS- In any application for a private education loan, or a solicitation for a private education loan without requiring an application, the private educational lender shall disclose to the borrower, clearly and conspicuously--

`(A) the potential range of rates of interest applicable to the private education loan;

`(B) whether the rate of interest applicable to the private education loan is fixed or variable;

`(C) limitations on interest rate adjustments, both in terms of frequency and amount, or the lack thereof, if applicable;

`(D) requirements for a co-borrower, including any changes in the applicable interest rates without a co-borrower;

`(E) potential finance charges, late fees, penalties, and adjustments to principal, based on defaults or late payments of the borrower;

`(F) fees or range of fees applicable to the private education loan;

`(G) the term of the private education loan;

`(H) whether interest will accrue while the student to whom the private education loan relates is enrolled at a covered educational institution;

`(I) payment deferral options;

`(J) general eligibility criteria for the private education loan;

`(K) an example of the total cost of the private education loan over the life of the loan--

`(i) which shall be calculated using the principal amount and the maximum rate of interest actually offered by the private educational lender; and

`(ii) calculated both with and without capitalization of interest, if an option exists for postponing interest payments;

`(L) that a covered educational institution may have school-specific education loan benefits and terms not detailed on the disclosure form;

`(M) that the borrower may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), in lieu of, or in addition to, a loan from a non-Federal source;

`(N) the interest rates available with respect to such Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.);

`(O) that, as provided in paragraph (6)--

`(i) the borrower shall have the right to accept the terms of the loan and consummate the transaction at any time within 30 calendar days (or such longer period as the private educational lender may provide) following the date on which the application for the private education loan is approved and the borrower receives the disclosure documents required under this subsection for the loan; and

`(ii) except for changes based on adjustments to the index used for a loan, the rates and terms of the loan may not be changed by the private educational lender during the period described in clause (i);

`(P) that, before a private education loan may be consummated, the borrower must obtain from the relevant institution of higher education the form required under paragraph (3), and complete, sign, and return such form to the private educational lender;

`(Q) that the consumer may obtain additional information concerning such Federal student financial assistance from their institution of higher education, or at the website of the Department of Education; and

`(R) such other information as the Board shall prescribe, by rule, as necessary or appropriate for consumers to make informed borrowing decisions.

`(2) DISCLOSURES AT THE TIME OF PRIVATE EDUCATION LOAN APPROVAL- Contemporaneously with the approval of a private education loan application, and before the loan transaction is consummated, the private educational lender shall disclose to the borrower, clearly and conspicuously--

`(A) the applicable rate of interest in effect on the date of approval;

- `(B) whether the rate of interest applicable to the private education loan is fixed or variable;
- `(C) limitations on interest rate adjustments, both in terms of frequency and amount, or the lack thereof, if applicable;
- `(D) the initial approved principal amount;
- `(E) applicable finance charges, late fees, penalties, and adjustments to principal, based on borrower defaults or late payments, including limitations on the discharge of a private education loan in bankruptcy;
- `(F) fees or range of fees applicable to the private education loan;
- `(G) the maximum term under the private education loan program;
- `(H) an estimate of the total amount for repayment, at both the interest rate in effect on the date of approval and at the maximum possible rate of interest offered by the private educational lender and applicable to the borrower, to the extent that such maximum rate may be determined, or if not, a good faith estimate thereof;
- `(I) any principal and interest payments required while the student for whom the private education loan is intended is enrolled at a covered educational institution and unpaid interest that will accrue during such enrollment;
- `(J) payment deferral options applicable to the borrower;
- `(K) whether monthly payments are graduated;
- `(L) that, as provided in paragraph (6)--
 - `(i) the borrower shall have the right to accept the terms of the loan and consummate the transaction at any time within 30 calendar days (or such longer period as the private educational lender may provide) following the date on which the application for the private education loan is approved and the borrower receives the disclosure documents required under this subsection for the loan; and
 - `(ii) except for changes based on adjustments to the index used for a loan, the rates and terms of the loan may not be changed by the private educational lender during the period described in clause (i);
- `(M) that the borrower --
 - `(i) may qualify for Federal financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et

seq.), in lieu of, or in addition to, a loan from a non-Federal source;
and

`(ii) may obtain additional information concerning such assistance from their institution of higher education or the website of the Department of Education;

`(N) the interest rates available with respect to such Federal financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.);

`(O) the maximum monthly payment, calculated using the maximum rate of interest actually offered by the private educational lender and applicable to the borrower, to the extent that such maximum rate may be determined, or if not, a good faith estimate thereof; and

`(P) such other information as the Board shall prescribe, by rule, as necessary or appropriate for consumers to make informed borrowing decisions.

`(3) SELF-CERTIFICATION OF INFORMATION-

`(A) IN GENERAL- Before a private educational lender may consummate a private education loan with respect to a student attending an institution of higher education, the lender shall obtain from the applicant for the private education loan the form developed by the Secretary of Education under section 155 of the Higher Education Act of 1965, signed by the applicant, in written or electronic form.

`(B) RULE OF CONSTRUCTION- No other provision of this subsection shall be construed to require a private educational lender to perform any additional duty under this paragraph, other than collecting the form required under subparagraph (A).

`(4) DISCLOSURES AT THE TIME OF PRIVATE EDUCATION LOAN CONSUMMATION- Contemporaneously with the consummation of a private education loan, a private educational lender shall make to the borrower each of the disclosures described in--

`(A) paragraph (2)(A) (adjusted, as necessary, for the rate of interest in effect on the date of consummation, based on the index used for the loan);

`(B) subparagraphs (B) through (K) and (M) through (P) of paragraph (2); and

`(C) paragraph (7).

`(5) FORMAT OF DISCLOSURES-

`(A) MODEL FORM- Not later than 2 years after the date of enactment of this subsection, the Board shall, based on consumer testing, and in consultation with the Secretary of Education, develop and issue model forms that may be used, at the option of the private educational lender, for the provision of disclosures required under this subsection.

`(B) FORMAT- Model forms developed under this paragraph shall--

`(i) be comprehensible to borrowers, with a clear format and design;

`(ii) provide for clear and conspicuous disclosures;

`(iii) enable borrowers easily to identify material terms of the loan and to compare such terms among private education loans; and

`(iv) be succinct, and use an easily readable type font.

`(C) SAFE HARBOR- Any private educational lender that elects to provide a model form developed under this subsection that accurately reflects the practices of the private educational lender shall be deemed to be in compliance with the disclosures required under this subsection.

`(6) EFFECTIVE PERIOD OF APPROVED RATE OF INTEREST AND LOAN TERMS-

`(A) IN GENERAL- With respect to a private education loan, the borrower shall have the right to accept the terms of the loan and consummate the transaction at any time within 30 calendar days (or such longer period as the private educational lender may provide) following the date on which the application for the private education loan is approved and the borrower receives the disclosure documents required under this subsection for the loan, and the rates and terms of the loan may not be changed by the private educational lender during that period.

`(B) PROHIBITION ON CHANGES- Except for changes based on adjustments to the index used for a loan, the rates and terms of the loan may not be changed by the private educational lender prior to the earlier of--

`(i) the date of acceptance of the terms of the loan and consummation of the transaction by the borrower, as described in subparagraph (A);
or

`(ii) the expiration of the period described in subparagraph (A).

`(7) RIGHT TO CANCEL- With respect to a private education loan, the borrower may cancel the loan, without penalty to the borrower, at any time within 3 business

days of the date on which the loan is consummated, and the private educational lender shall disclose such right to the borrower in accordance with paragraph (4).

`(8) PROHIBITION ON DISBURSEMENT- No funds may be disbursed with respect to a private education loan until the expiration of the 3-day period described in paragraph (7).

`(9) BOARD REGULATIONS- In issuing regulations under this subsection, the Board shall prevent, to the extent possible, duplicative disclosure requirements for private educational lenders that are otherwise required to make disclosures under this title, except that in any case in which the disclosure requirements of this subsection differ or conflict with the disclosure requirements of any other provision of this title, the requirements of this subsection shall be controlling.

`(10) DEFINITIONS- For purposes of this subsection, the terms `covered educational institution', `private educational lender', and `private education loan' have the same meanings as in section 140.

`(11) DUTIES OF LENDERS PARTICIPATING IN PREFERRED LENDER ARRANGEMENTS- Each private educational lender that has a preferred lender arrangement with a covered educational institution shall annually, by a date determined by the Board, in consultation with the Secretary of Education, provide to the covered educational institution such information as the Board determines to include in the model form developed under paragraph (5) for each type of private education loan that the lender plans to offer to students attending the covered educational institution, or to the families of such students, for the next award year (as that term is defined in section 481 of the Higher Education Act of 1965).'

(b) Self-Certification Form- Part E of title I of the Higher Education Act of 1965, as added by this Act, is further amended by inserting after section 154 the following:

`SEC. 155. SELF-CERTIFICATION FORM FOR PRIVATE EDUCATION LOANS.

`(a) In General- The Secretary, in consultation with the Board of Governors of the Federal Reserve System, shall develop the self-certification form for private education loans that shall be used to satisfy the requirements of section 128(e)(3) of the Truth in Lending Act. Such form shall--

`(1) be developed in a standardized format;

`(2) be made available to the applicant by the relevant institution of higher education, in written or electronic form, upon request of the applicant;

`(3) contain only disclosures that--

`(A) the applicant may qualify for Federal student financial assistance through

a program under title IV of this Act, or State or institutional student financial assistance, in place of, or in addition to, a private education loan;

`(B) the applicant is encouraged to discuss the availability of Federal, State, and institutional student financial assistance with financial aid officials at the applicant's institution of higher education;

`(C) a private education loan may affect the applicant's eligibility for free or low-cost Federal, State or institutional student financial assistance; and

`(D) the information that the applicant is required to provide on the form is available from officials at the financial aid office of the institution of higher education;

`(4) include a place to provide information on--

`(A) the applicant's cost of attendance at the institution of higher education, as determined by the institution under Part F of title IV;

`(B) the applicant's expected family contribution, as determined under Part F of title IV, as applicable, for students who have completed the free application for Federal student aid;

`(C) the applicant's estimated financial assistance, as determined by the institution, in accordance with title IV, as applicable;

`(D) the difference between the amounts under subparagraphs (A) and (C), as applicable; and

`(E) the sum of the amounts under subparagraphs (B) and (D), as applicable; and

`(5) include a place for the applicant's signature, in written or electronic form.

`(b) Limit on Liability- Nothing in this section shall be construed to create a private right of action against an institution of higher education with respect to the form developed under subsection (a).'

SEC. 1022. APPLICATION OF TRUTH IN LENDING ACT TO ALL PRIVATE EDUCATION LOANS.

Section 104(3) of the Truth in Lending Act (15 U.S.C. 1603(3)) is amended by inserting `and other than private education loans (as that term is defined in section 140(a))' after `consumer'.

Subtitle C--College Affordability

SEC. 1031. COMMUNITY REINVESTMENT ACT CREDIT FOR LOW-COST LOANS.

(a) In General- Section 804 of the Community Reinvestment Act of 1977 (12 U.S.C. 2903) is amended by adding at the end the following new subsection:

`(d) Low-Cost Education Loans- In assessing and taking into account, under subsection (a), the record of a financial institution, the appropriate Federal financial supervisory agency shall consider, as a factor, low-cost education loans provided by the financial institution to low-income borrowers.'.

(b) Regulations Required- Not later than 1 year after the date of enactment of this Act, each appropriate Federal financial supervisory agency shall issue rules in final form to implement section 804(d) of the Community Reinvestment Act of 1977, as added by this section.

Subtitle D--Financial Literacy; Studies and Reports

SEC. 1041. DEFINITIONS.

As used in this subtitle--

(1) the terms `covered educational institution', `private educational lender', and `private education loan' have the same meanings as in section 140 of the Truth in Lending Act, as added by this Act;

(2) the term `historically Black colleges and universities' means a `part B institution', within the meaning of section 322 of the Higher Education Act of 1965 (20 U.S.C. 1061)); and

(3) the term `land-grant colleges and universities' has the same meaning as in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103).

SEC. 1042. COORDINATED EDUCATION EFFORTS.

(a) In General- The Secretary of the Treasury (in this section referred to as the `Secretary'), in coordination with the Secretary of Education, the Secretary of Agriculture (with respect to land-grant colleges and universities), and any other appropriate agency that is a member of the Financial Literacy and Education Commission established under the Financial Literacy and Education Improvement Act (20 U.S.C. 9701 et seq.), shall seek to enhance financial literacy among students at covered educational institutions through--

(1) the development of initiatives, programs, and curricula that improve student awareness of the short- and long-term costs associated with education loans and other debt assumed while in college, their repayment obligations, and their rights as borrowers; and

(2) assisting such students in navigating the financial aid process.

(b) Duties- For purposes of this section, the Secretary, working in conjunction with the

Secretary of Education, the Secretary of Agriculture, and the Financial Literacy and Education Commission, shall--

- (1) identify programs that promote or enhance financial literacy for college students, with specific emphasis on programs that impart the knowledge and ability for students to best navigate the financial aid process, including those that involve partnerships between nonprofit organizations, colleges and universities, State and local governments, and student organizations;
 - (2) evaluate the effectiveness of such programs in terms of measured results, including positive behavioral change among college students;
 - (3) promote the programs identified as being the most effective; and
 - (4) encourage covered educational institutions to implement financial education programs for their students, including those that have the highest evaluations.
- (c) Report-

- (1) IN GENERAL- Not later than 2 years after the date of enactment of this Act, the Financial Literacy and Education Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs and the Committee on Health Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives on the state of financial education among students at covered educational institutions.
- (2) CONTENT- The report required by this subsection shall include a description of progress made in enhancing financial education with respect to student understanding of financial aid, including the programs and evaluations required by this section.
- (3) APPEARANCE BEFORE CONGRESS- The Secretary shall, upon request, provide testimony before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives concerning the report required by this subsection.

PRIVATE LOANS

(Title X)

TITLE XPRIVATE STUDENT LOAN IMPROVEMENT

SEC. 1001. SHORT TITLE.

This title may be cited as the Private Student Loan Transparency and Improvement Act of 2008".

SEC. 1002. REGULATIONS.

Not later than 365 days after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall issue regulations in final form to implement paragraphs (1), (2), (3), (4), (6), (7), and (8) of section 128(e) and section 140(c) of the Truth in Lending Act, as added by this title, which regulations shall become effective not later than 6 months after their date

of issuance.

SEC. 1003. EFFECTIVE DATES.

(a) IN GENERAL. Except as provided in subsection (b) and as otherwise provided in this title, this title and the amendments made by this title shall become effective on the date of enactment of this Act.

(b) EFFECT NOTWITHSTANDING REGULATIONS. Paragraphs (1), (2), (3), (4), (6), (7), and (8) of section 128(e) and section 140(c) of the Truth in Lending Act, as added by this title, shall become effective on the earlier of the date on which regulations issued under section 1002 become effective or 18 months after the date of enactment of this Act.

Subtitle A Preventing Unfair and Deceptive Private Educational Lending Practices and Eliminating Conflicts of Interest

SEC. 1011. AMENDMENT TO THE TRUTH IN LENDING ACT.

(a) PREVENTING UNFAIR AND DECEPTIVE PRIVATE EDUCATIONAL LENDING PRACTICES AND CONFLICTS OF INTEREST. Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by adding at the end the following new section:

140. Preventing unfair and deceptive private educational lending practices and eliminating conflicts of interest

(a) DEFINITIONS. As used in this section

(1) the term covered educational institution'

(A) means any educational institution that offers a postsecondary educational degree, certificate, or program of study (including any institution of higher education); and

(B) includes an agent, officer, or employee of the educational institution;

(2) the term gift'

(A)(i) means any gratuity, favor, discount, entertainment, hospitality, loan, or other item having more than a de minimis monetary value, including services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred; and

(ii) includes an item described in clause (1) provided to a family member of an officer, employee, or agent of a covered educational institution, or to any other individual based on that individual's relationship with the officer, employee, or agent, if

(I) the item is provided with the knowledge and acquiescence of the officer, employee, or agent; and

(II) the officer, employee, or agent has reason to believe the item was provided because of the official position of the officer, employee, or agent; and

(B) does not include

(i) standard informational material related to a loan, default aversion, default prevention, or financial literacy;

(ii) food, refreshments, training, or informational material furnished to an officer, employee, or agent of a covered educational institution, as an integral part of a training session or through participation in an advisory council that is designed to improve the service of the private educational lender to the covered educational institution, if such training or participation contributes to the professional development of the officer, employee, or agent of the covered educational institution;

(iii) favorable terms, conditions, and borrower benefits on a private education loan provided to a student employed by the covered educational institution, if such terms, conditions, or benefits are not provided because of the student's employment with the covered educational institution;

(iv) the provision of financial literacy counseling or services, including counseling or services provided in coordination with a covered educational institution, to the extent that such counseling or services are not

undertaken to secure

(I) applications for private education loans or private education loan volume;

(II) applications or loan volume for any loan made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.); or

(III) the purchase of a product or service of a specific private educational lender;

(v) philanthropic contributions to a covered educational institution from a private educational lender that are unrelated to private education loans and are not made in exchange for any advantage related to private education loans; or

(vi) State education grants, scholarships, or financial aid funds administered by or on behalf of a State;

(3) the term institution of higher education' has the same meaning as in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002);

(4) the term postsecondary educational expenses' means any of the expenses that are included as part of the cost of attendance of a student, as defined under section 472 of the Higher Education Act of 1965 (20 U.S.C. 108711);

(5) the term preferred lender arrangement' has the same meaning as in section 151 of the Higher Education Act of 1965;

(6) the term private educational lender' means

(A) a financial institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) that solicits, makes, or extends private education loans;

(B) a Federal credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) that solicits, makes, or extends private education loans; and

(C) any other person engaged in the business of soliciting, making, or extending private education loans;

(7) the term private education loan'

(A) means a loan provided by a private educational lender that

(i) is not made, insured, or guaranteed under of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.); and

(ii) is issued expressly for postsecondary educational expenses to a borrower, regardless of whether the loan is provided through the educational institution that the subject student attends or directly to the borrower from the private educational lender; and H. R. 4137404

(B) does not include an extension of credit under an open end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling; and

(8) the term revenue sharing' means an arrangement between a covered educational institution and a private educational lender under which

(A) a private educational lender provides or issues private education loans with respect to students attending the covered educational institution;

(B) the covered educational institution recommends to students or others the private educational lender or the private education loans of the private educational lender; and

(C) the private educational lender pays a fee or provides other material benefits, including profit sharing, to the covered educational institution in connection with the private education loans provided to students attending the covered educational institution or a borrower acting on behalf of a student.

(b) PROHIBITION ON CERTAIN GIFTS AND ARRANGEMENTS.

A private educational lender may not, directly or indirectly

(1) offer or provide any gift to a covered educational institution in exchange for any advantage or consideration provided to such private educational lender related to its private education loan activities; or

(2) engage in revenue sharing with a covered educational institution.

(c) PROHIBITION ON CO-BRANDING. A private educational lender may not use the name, emblem, mascot, or logo of the covered educational institution, or other words, pictures, or symbols readily identified with the covered educational institution, in the marketing of private education loans in any way that implies that the covered educational institution endorses the private education loans offered by the private educational lender.

(d) ADVISORY BOARD COMPENSATION. Any person who is employed in the financial aid office of a covered educational institution, or who otherwise has responsibilities with respect to private education loans or other financial aid of the institution, and who serves on an advisory board, commission, or group established by a private educational lender or group of such lenders shall be prohibited from receiving anything of value from the private educational lender or group of lenders. Nothing in this subsection prohibits the reimbursement of reasonable expenses incurred by an employee of a covered educational institution as part of their service on an advisory board, commission, or group described in this subsection.

(e) PROHIBITION ON PREPAYMENT OR REPAYMENT FEES OR PENALTY. It shall be unlawful for any private educational lender to impose a fee or penalty on a borrower for early repayment or prepayment of any private education loan."

(b) CONFORMING AMENDMENT TO TRUTH IN LENDING ACT. Section 103(f) of the Truth in Lending Act (15 U.S.C. 1602(f)) is amended by adding at the end the following: "The term creditor" includes a private educational lender (as that term is defined in section 140) for purposes of this title."

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(c) DISCLOSURES OF REIMBURSEMENTS FOR SERVICE ON ADVISORY BOARDS.

Section 485 of the Higher Education Act of 1965 (20 U.S.C. 1092), as amended by this Act, is further amended by adding at the end the following:

(m) DISCLOSURES OF REIMBURSEMENTS FOR SERVICE ON ADVISORY BOARDS.

(1) DISCLOSURE. Each institution of higher education participating in any program under this title shall report, on an annual basis, to the Secretary, any reasonable expenses paid or provided under section 140(d) of the Truth in Lending Act to any employee who is employed in the financial aid office of the institution, or who otherwise has responsibilities with respect to education loans or other financial aid of the institution. Such reports shall include

(A) the amount for each specific instance of reasonable expenses paid or provided;

(B) the name of the financial aid official, other employee, or agent to whom the expenses were paid or provided;

(C) the dates of the activity for which the expenses were paid or provided; and

(D) a brief description of the activity for which the expenses were paid or provided.

(2) REPORT TO CONGRESS. The Secretary shall summarize the information received from institutions of higher education under paragraph (1) in a report and transmit such report annually to the authorizing committees."

SEC. 1012. CIVIL LIABILITY.

(a) IN GENERAL. Section 130 of the Truth in Lending Act (15 U.S.C. 1640) is amended

(1) in subsection (a)

(A) in paragraph (3), by inserting or 128(e)(7)" after section 125"; and

(B) in the fourth sentence of the undesignated matter at the end

(1) by striking 125 or" and inserting 125,"; and

(ii) by inserting of subparagraphs (A), (B), (D),

(F), or (I) of section 128(e)(2) (for purposes of paragraph (2) or (4) of section 128(e)), or paragraph (4)(C), (6),

(7), or (8) of section 128(e)." before or for failing";

(2) in subsection (e), by inserting before the first period the following: or, in the case of a violation involving a private

education loan (as that term is defined in section 140(a)), 1 year from the date on which the first regular payment of principal is due under the loan"; and (3) by adding at the end the following: (j) PRIVATE EDUCATIONAL LENDER. A private educational lender (as that term is defined in section 140(a)) has no liability under this section for failure to comply with section 128(e)(3)". (b) EFFECTIVE DATE. The amendments made by this section shall have the same effective date as provisions referred to in section 1003(b).

SEC. 1013. CLERICAL AMENDMENT.

The table of sections for chapter 2 of title I of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by adding at the end the following:

140. Preventing unfair and deceptive private educational lending practices and eliminating conflicts of interest."

Subtitle B Improved Disclosures for Private Education Loans

SEC. 1021. PRIVATE EDUCATION LOAN DISCLOSURES AND LIMITATIONS.

(a) TRUTH IN LENDING ACT. Section 128 of the Truth in Lending Act (15 U.S.C. 1638) is amended by adding at the end the following:

(e) TERMS AND DISCLOSURE WITH RESPECT TO PRIVATE EDUCATION LOANS.

(1) DISCLOSURES REQUIRED IN PRIVATE EDUCATION LOAN APPLICATIONS AND SOLICITATIONS. In any application for a private education loan, or a solicitation for a private education loan without requiring an application, the private educational lender shall disclose to the borrower, clearly and conspicuously (A) the potential range of rates of interest applicable to the private education loan;

(B) whether the rate of interest applicable to the private education loan is fixed or variable;

(C) limitations on interest rate adjustments, both in terms of frequency and amount, or the lack thereof, if applicable;

(D) requirements for a co-borrower, including any changes in the applicable interest rates without a co-borrower;

(E) potential finance charges, late fees, penalties, and adjustments to principal, based on defaults or late payments of the borrower;

(F) fees or range of fees applicable to the private education loan;

(G) the term of the private education loan;

(H) whether interest will accrue while the student to whom the private education loan relates is enrolled at a covered educational institution;

(I) payment deferral options;

(J) general eligibility criteria for the private education loan;

(K) an example of the total cost of the private education loan over the life of the loan

(i) which shall be calculated using the principal amount and the maximum rate of interest actually offered by the private educational lender; and

(ii) calculated both with and without capitalization of interest, if an option exists for postponing interest payments;

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(L) that a covered educational institution may have school-specific education loan benefits and terms not detailed on the disclosure form;

(M) that the borrower may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), in lieu of, or in addition to, a loan from a non-Federal source;

(N) the interest rates available with respect to such Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.);

(O) that, as provided in paragraph (6)

(i) the borrower shall have the right to accept

the terms of the loan and consummate the transaction at any time within 30 calendar days (or such longer period as the private educational lender may provide) following the date on which the application for the private education loan is approved and the borrower receives the disclosure documents required under this subsection for the loan; and

(ii) except for changes based on adjustments to the index used for a loan, the rates and terms of the loan may not be changed by the private educational lender during the period described in clause (i);
(P) that, before a private education loan may be consummated, the borrower must obtain from the relevant institution of higher education the form required under paragraph (3), and complete, sign, and return such form to the private educational lender;

(Q) that the consumer may obtain additional information concerning such Federal student financial assistance from their institution of higher education, or at the website of the Department of Education; and

(R) such other information as the Board shall prescribe, by rule, as necessary or appropriate for consumers to make informed borrowing decisions.

(2) DISCLOSURES AT THE TIME OF PRIVATE EDUCATION LOAN APPROVAL. Contemporaneously with the approval of a private education loan application, and before the loan transaction is consummated, the private educational lender shall disclose to the borrower, clearly and conspicuously

(A) the applicable rate of interest in effect on the date of approval;

(B) whether the rate of interest applicable to the private education loan is fixed or variable;

(C) limitations on interest rate adjustments, both in terms of frequency and amount, or the lack thereof, if applicable;

(D) the initial approved principal amount;

(E) applicable finance charges, late fees, penalties, and adjustments to principal, based on borrower defaults or late payments, including limitations on the discharge of a private education loan in bankruptcy;

(F) fees or range of fees applicable to the private education loan;

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(G) the maximum term under the private education loan program;

(H) an estimate of the total amount for repayment, at both the interest rate in effect on the date of approval and at the maximum possible rate of interest offered by the private educational lender and applicable to the borrower, to the extent that such maximum rate may be determined, or if not, a good faith estimate thereof;

(I) any principal and interest payments required while the student for whom the private education loan is intended is enrolled at a covered educational institution and unpaid interest that will accrue during such enrollment;

(J) payment deferral options applicable to the borrower;

(K) whether monthly payments are graduated;

(L) that, as provided in paragraph (6)

(i) the borrower shall have the right to accept the terms of the loan and consummate the transaction at any time within 30 calendar days (or such longer period as the private educational lender may provide) following the date on which the application for the private education loan is approved and the borrower receives the disclosure documents required under this subsection for the loan; and

(ii) except for changes based on adjustments to the index used for a loan, the rates and terms of the loan may not be changed by the private educational lender during the period described in clause (i);

(M) that the borrower

(i) may qualify for Federal financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), in lieu

of, or in addition to, a loan from a non-Federal source;
and

(ii) may obtain additional information concerning such assistance from their institution of higher education or the website of the Department of Education;

(N) the interest rates available with respect to such Federal financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.);

(O) the maximum monthly payment, calculated using the maximum rate of interest actually offered by the private educational lender and applicable to the borrower, to the extent that such maximum rate may be determined, or if not, a good faith estimate thereof; and

(P) such other information as the Board shall prescribe, by rule, as necessary or appropriate for consumers to make informed borrowing decisions.

(3) SELF-CERTIFICATION OF INFORMATION.

(A) IN GENERAL. Before a private educational lender may consummate a private education loan with respect to a student attending an institution of higher education, the lender shall obtain from the applicant for the private education loan the form developed by the Secretary of Education under section 155 of the Higher Education Act H. R. 4137⁴⁰⁹ of 1965, signed by the applicant, in written or electronic form.

(B) RULE OF CONSTRUCTION. No other provision of this subsection shall be construed to require a private educational lender to perform any additional duty under this paragraph, other than collecting the form required under subparagraph (A).

(4) DISCLOSURES AT THE TIME OF PRIVATE EDUCATION LOAN CONSUMMATION. Contemporaneously with the consummation of a private education loan, a private educational lender shall make to the borrower each of the disclosures described in (A) paragraph (2)(A) (adjusted, as necessary, for the rate of interest in effect on the date of consummation, based on the index used for the loan);

(B) subparagraphs (B) through (K) and (M) through (P) of paragraph (2); and
(C) paragraph (7).

(5) FORMAT OF DISCLOSURES.

(A) MODEL FORM. Not later than 2 years after the date of enactment of this subsection, the Board shall, based on consumer testing, and in consultation with the Secretary of Education, develop and issue model forms that may be used, at the option of the private educational lender, for the provision of disclosures required under this subsection.

(B) FORMAT. Model forms developed under this paragraph shall

(i) be comprehensible to borrowers, with a clear format and design;

(ii) provide for clear and conspicuous disclosures;

(iii) enable borrowers easily to identify material terms of the loan and to compare such terms among private education loans; and

(iv) be succinct, and use an easily readable type font.

(C) SAFE HARBOR. Any private educational lender that elects to provide a model form developed under this subsection that accurately reflects the practices of the private educational lender shall be deemed to be in compliance with the disclosures required under this subsection.

(6) EFFECTIVE PERIOD OF APPROVED RATE OF INTEREST AND LOAN TERMS.

(A) IN GENERAL. With respect to a private education loan, the borrower shall have the right to accept the terms of the loan and consummate the transaction at any time within 30 calendar days (or such longer period as the private educational lender may provide) following the date on which the application for the private education loan is approved and the borrower receives the disclosure documents required under this subsection for the loan, and

the rates and terms of the loan may not be changed by the private educational lender during that period.

(B) PROHIBITION ON CHANGES. Except for changes based on adjustments to the index used for a loan, the rates and terms of the loan may not be changed by the private educational lender prior to the earlier of

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(i) the date of acceptance of the terms of the loan and consummation of the transaction by the borrower, as described in subparagraph (A); or

(ii) the expiration of the period described in subparagraph (A).

(7) RIGHT TO CANCEL. With respect to a private education loan, the borrower may cancel the loan, without penalty to the borrower, at any time within 3 business days of the date on which the loan is consummated, and the private educational lender shall disclose such right to the borrower in accordance with paragraph (4).

(8) PROHIBITION ON DISBURSEMENT. No funds may be disbursed with respect to a private education loan until the expiration of the 3-day period described in paragraph (7).

(9) BOARD REGULATIONS. In issuing regulations under this subsection, the Board shall prevent, to the extent possible, duplicative disclosure requirements for private educational lenders that are otherwise required to make disclosures under this title, except that in any case in which the disclosure requirements of this subsection differ or conflict with the disclosure requirements of any other provision of this title, the requirements of this subsection shall be controlling.

(10) DEFINITIONS. For purposes of this subsection, the terms 'covered educational institution', 'private educational lender', and 'private education loan' have the same meanings as in section 140.

(11) DUTIES OF LENDERS PARTICIPATING IN PREFERRED LENDER ARRANGEMENTS. Each private educational lender that has a preferred lender arrangement with a covered educational institution shall annually, by a date determined by the Board, in consultation with the Secretary of Education, provide to the covered educational institution such information as the Board determines to include in the model form developed under paragraph (5) for each type of private education loan that the lender plans to offer to students attending the covered educational institution, or to the families of such students, for the next award year (as that term is defined in section 481 of the Higher Education Act of 1965)."

(b) SELF-CERTIFICATION FORM. Part E of title I of the Higher Education Act of 1965, as added by this Act, is further amended by inserting after section 154 the following:

SEC. 155. SELF-CERTIFICATION FORM FOR PRIVATE EDUCATION LOANS.

(a) IN GENERAL. The Secretary, in consultation with the Board of Governors of the Federal Reserve System, shall develop the self-certification form for private education loans that shall be used to satisfy the requirements of section 128(e)(3) of the Truth in Lending Act. Such form shall

(1) be developed in a standardized format;

(2) be made available to the applicant by the relevant institution of higher education, in written or electronic form, upon request of the applicant;

(3) contain only disclosures that

(A) the applicant may qualify for Federal student financial assistance through a program under title IV of H. R. 4137411

this Act, or State or institutional student financial assistance, in place of, or in addition to, a private education loan;

(B) the applicant is encouraged to discuss the availability of Federal, State, and institutional student financial assistance with financial aid officials at the applicant's institution of higher education;

(C) a private education loan may affect the applicant's eligibility for free or low-cost Federal, State or institutional student financial assistance; and

(D) the information that the applicant is required

to provide on the form is available from officials at the financial aid office of the institution of higher education;

(4) include a place to provide information on

(A) the applicant's cost of attendance at the institution of higher education, as determined by the institution under Part F of title IV;

(B) the applicant's expected family contribution, as determined under Part F of title IV, as applicable, for students who have completed the free application for Federal student aid;

(C) the applicant's estimated financial assistance, as determined by the institution, in accordance with title IV, as applicable;

(D) the difference between the amounts under subparagraphs

(A) and (C), as applicable; and

(E) the sum of the amounts under subparagraphs

(B) and (D), as applicable; and

(5) include a place for the applicant's signature, in written or electronic form.

(b) LIMIT ON LIABILITY. Nothing in this section shall be construed to create a private right of action against an institution of higher education with respect to the form developed under subsection (a)."

SEC. 1022. APPLICATION OF TRUTH IN LENDING ACT TO ALL PRIVATE EDUCATION LOANS.

Section 104(3) of the Truth in Lending Act (15 U.S.C. 1603(3)) is amended by inserting and other than private education loans (as that term is defined in section 140(a))" after consumer".