

November 25, 2009

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Ms. Angela C. Arrington  
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(also sent via email to: [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov))

Dear Ms. Arrington:

We write to comment on the U.S. Department of Education's proposed self-certification form for private student loans in response to the October 2, 2009 *Federal Register* notice (FR Doc. E9–23809). These comments are submitted by the Institute for College Access & Success and Campus Progress Action, Consumer Action, Greenlining Institute, National Association for College Admissions Counseling, National Consumer Law Center (on behalf of its low-income clients), Public Advocates Inc., Roosevelt Institute Campus Network, U.S. Public Interest Research Groups, and United States Students Association. A description of each organization is available in Appendix A.

The Higher Education Opportunity Act (HEOA) created a new requirement that lenders obtain a borrower "self-certification" form before consummating a private loan. Our goal in commenting on the proposed self-certification form is to ensure it fulfills its statutory purpose of helping students and parents make more informed borrowing decisions and encouraging them to seek advice from their school's financial aid office before taking out a private loan. This is particularly important in light of the fact that the Federal Reserve Board's private student loan disclosures and Final Rule do not do enough to warn consumers about private loans and make them aware of safer, more affordable options.<sup>1</sup> For instance, the disclosure forms approved by the Board do not mention the Free Application for Federal Student Aid (FAFSA), provide the Department of Education's toll-free phone number, or inform borrowers that there is no income limit for federal loans.

Private student loans typically carry high variable interest rates and expensive fees, and they offer limited repayment options and few consumer protections if borrowers have trouble making payments. The Department, financial aid experts, and lenders agree that private loans should only be used after all federal financial aid options have been exhausted, including Parent PLUS loans that are available up to the full cost of attendance.<sup>2</sup> However, in 2007-08, nearly two-

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<sup>1</sup> Project on Student Debt. August 2009. *Summary of New Disclosure Requirements for Private Student Loans*. See [http://projectonstudentdebt.org/files/pub/FRB\\_summary\\_aug09rules.pdf](http://projectonstudentdebt.org/files/pub/FRB_summary_aug09rules.pdf).

<sup>2</sup> On its website, Sallie Mae states: "[Federal student] loans have very attractive terms when compared to private loans. So, get all the federal loans you can before looking into private loans." Accessed November 12, 2009 at [http://www.salliemae.com/before\\_college/parents\\_plan/ways\\_to\\_pay/exploring\\_loan/](http://www.salliemae.com/before_college/parents_plan/ways_to_pay/exploring_loan/).

On its website, the Department states: "[...] students and parents should always exhaust federal student loan options before considering a private loan." Accessed November 12, 2009 at <http://federalstudentaid.ed.gov/federalaidfirst/>.

thirds (64 percent) of undergraduate private loan borrowers did not take out all they could in safer, more affordable federal loans, including one-quarter (26 percent) who took out no Stafford loans at all.<sup>3</sup>

Prospective consumers of private student loans need helpful and accessible information about federal loan alternatives and how to apply for federal aid. Although we believe consumers would be best served by requiring lenders to get all private loans certified by schools, the self-certification form presents an opportunity to encourage students to consult with their school's financial aid office and to provide students and parents with helpful information about more affordable federal loan alternatives.

Unless otherwise noted, our recommendations for changes to the language used on the proposed form are italicized. We have also attached a sample form that incorporates each of our recommendations.

## **Recommendations for the Self-Certification Form**

### **Format**

#### Placement of text

We *strongly* recommend making the “Notices to Applicant” the first section, before the “Applicant Information” section. We believe that these important disclosures are much more likely to be read and have an impact if they are placed at the top of the form, *before* applicants start filling it out.<sup>4</sup>

We also recommend creating a separate section for the applicant's signature. As currently proposed the signature section appears to be grouped with the previous section on the cost of attendance and estimated financial assistance, which may confuse applicants. This change is also consistent with the separate enumeration in the statute.

The statement “For lender use only” at the top of the proposed form is confusing since it suggests that only lenders are expected to fill out the form, not applicants. We recommend eliminating or moving this language to the end of the form.

#### Font

We recommend a larger font size for the “Application Information” and “Cost of Attendance and Estimated Financial Assistance” sections as well as more space for applicants to provide their information.

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On the [finaid.org](http://www.finaid.org) website, Mark Kantrowitz states: “Since federal education loans are less expensive than and offer better terms than private student loans, you should exhaust your eligibility for federal student loans before resorting to private student loans.” Accessed November 12, 2009 at <http://www.finaid.org/loans/privateloan.phtml>.

<sup>3</sup> Project on Student Debt. August 2009. *Private Loans: Facts and Trends*. Available at [http://ticas.org/files/pub/private\\_loan\\_facts\\_trends\\_09.pdf](http://ticas.org/files/pub/private_loan_facts_trends_09.pdf).

<sup>4</sup> Consumers Union. July 2007. *Helping Families Finance College: Improved Student Loan Disclosures and Counseling*. See [www.consumersunion.org/pdf/CU-College.pdf](http://www.consumersunion.org/pdf/CU-College.pdf) at pg. 14.

## Content

### Instructions

In its commentary accompanying the Final Rule on private student loan disclosures, the Federal Reserve Board noted that lenders may obtain the form from schools or directly from applicants.<sup>5</sup> Therefore, the instructions at the top of the form should be changed to:

“Return the signed form to your *school’s financial aid office* or to your lender.”

### Section 1: Applicant Information

Applicants may be confused by the wording used to describe the primary loan applicant and the name of the student in the case of another person applying for the loan on behalf of the student. We recommend clarifying the request for the “Applicant Name” and the accompanying instructions for the “Student Name” as follows:

- “Applicant Name” should appear as “*Name of Loan Applicant*”
- “Complete the item below if the student is a different person from the applicant.” should change to “*If the student is not the loan applicant, provide the student’s name.*”

### Section 2: Notices to Applicants

The HEOA specifies four disclosures to be included on the self-certification form but does not specify their precise wording, thus allowing the Department to determine the most effective way to convey the specified information to applicants.

The first disclosure should inform applicants that they may qualify for federal, state or institutional student financial assistance in place of, or in addition to, a private education loan. Since none of the private loan disclosure forms approved by the Federal Reserve Board mention the FAFSA, provide the Department of Education’s toll-free phone number, or tell borrowers that there is no income limit for federal loans, it is particularly important that the self-certification form do so. This information should logically be part of the disclosure that applicants may be eligible for other aid.

The Department’s toll-free telephone number needs to be included because not all households have easy access to the Internet, whereas nearly all have telephones. In addition, many students and families incorrectly believe their income is too high to qualify for federal loans, so it is critically important to state that there are no income limits for federal student loans.<sup>6</sup>

Consumers Union conducted focus groups with 130 students and parents to develop practical recommendations to improve student loan counseling and enhance student loan information disclosures. It found that broad statements such as “the borrower may qualify for Federal

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<sup>5</sup> Board of Governors of the Federal Reserve System. July 30, 2009. *Final Rule and official staff commentary for 12 CFR Part 226, Regulation Z; Docket No. R-1353 under Truth in Lending*. See <http://edocket.access.gpo.gov/2009/E9-18548.htm> at pg. 41227.

<sup>6</sup> Rockbridge Associates. March 2009. *Consumer Research and Testing for Private Education Loans: Report of Findings*. See <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20090311a8.pdf> at pg. 11.

financial assistance through a program under Title IV of the Higher Education Act of 1965” or “a Federal student loan may provide the consumer with more beneficial terms and conditions, including a lower annual percentage rate and fewer and lower fees, than private educational loans,” do *not* help consumers understand that private loans are more expensive than federal loans.<sup>7</sup> *Consumers Union’s research found that citing the specific fixed interest rate on federal loans is essential, as well as stating that there are no income limits for federal loans. We therefore recommend the first disclosure read:*

**“You may qualify for *free or lower-cost federal, state or institutional student aid in place of, or in addition to, a private education loan.* Federal loans with fixed interest rates of 6.8% or less are available to students and families at all income levels. To apply for federal grants and loans, submit a Free Application for Federal Student Aid (FAFSA) available at [www.fafsa.gov](http://www.fafsa.gov), 1-800-4-FED-AID, or from your school’s financial aid office.”**

The second disclosure should encourage applicants to discuss the availability of free or low-cost federal, state and institutional student aid with the school’s financial aid office. We suggest:

*“You are **strongly** encouraged to discuss the availability of free or lower-cost financial assistance with your school’s financial aid office **before** taking out a private education loan.”*

The third disclosure should warn applicants that a private education loan may affect their eligibility for free or low-cost federal, state or institutional student aid. We suggest:

*“Taking out a private education loan may reduce your eligibility for free or low-cost federal, state or *institutional* student financial aid.”*

The fourth disclosure should let applicants know that the information required by the form is available from their school’s financial aid office. We suggest:

*“The information *required on this form* is available from your school’s financial aid office.”*

### Section 3: Cost of Attendance and Estimated Financial Assistance, Applicant Signature

The applicant’s signature should constitute its own section, as mentioned earlier in our comments about the format and placement of text.

The Federal Reserve Board’s Final Rule allows *lenders* to fill out the self-certification form and to provide a *pre-filled form to applicants* to sign. This unfortunately allows lenders to circumvent the very contact between applicants and financial aid offices that the self-certification disclosures are intended to encourage.

This loophole in the Board’s Final Rule also increases opportunities for fraud or for applicants to unintentionally borrow more than permitted. Sallie Mae, Citibank and Chase all report that

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<sup>7</sup> Consumers Union. July 2007. *Helping Families Finance College: Improved Student Loan Disclosures and Counseling*. See [www.consumersunion.org/pdf/CU-College.pdf](http://www.consumersunion.org/pdf/CU-College.pdf) at pg. 18.

schools commonly certify lower amounts than the borrower requested.<sup>8</sup> For instance, in its comments to the Federal Reserve Board, Sallie Mae stated that “Our extensive experience in the private student loan industry has shown that it is a common occurrence (nearly 30% of all private student loans that we originate) that a school certifies a lower [private] student loan amount during school certification than the amount the borrower requested on his or her application.”<sup>9</sup>

In addition, under the Board’s Final Rule, applicants may obtain the self-certification form from their school, lender or “anyone else.”<sup>10</sup> This further increases the risk that the information on the form may not be correct, and reduces the odds of direct contact between prospective borrowers and college financial aid offices.

We therefore recommend that the instructions read:

*“Obtain the information on lines A, B and C from your school financial aid office. If your lender filled out lines A, B or C, you should verify the amounts with your school’s financial aid office.”*

This approach is consistent with the HEOA requirement that this self-certification form encourage applicants to consult with their school financial aid office and obtain the needed information from that office. In addition to ensuring that students do not borrow more than permitted and encouraging students to consult with their school financial aid office, this will also make it more likely that schools have an opportunity to counsel students about their loan alternatives. Many public and private colleges, such as Barnard College, Colorado State University, Loyola in New Orleans, Mt. Holyoke College and Northern Michigan University, have policies requiring counseling or warning students about the risks and alternatives when they learn that a student has applied for a private loan, especially when the student has not yet borrowed the maximum amount in federal loans.<sup>11</sup> This practice has led to measurable reductions in private loan usage. For example:

- After Barnard implemented a policy of withholding certification until private loan applicants speak with a Barnard financial aid officer, nearly 60 percent of private loan applicants chose not to take out a private loan. This policy also reduced the total amount of private loans by almost 75 percent, or approximately \$1.1 million.<sup>12</sup>
- At Colorado State University, a public institution with 24,000 students, financial aid officers contact any private loan applicants who have not filled out a FAFSA or have not

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<sup>8</sup> Student Lending Analytics Blog. June 2, 2009. *What Lenders Saying About Federal Reserve Proposals on Private Student Loans*. See [http://studentlendinganalytics.typepad.com/student\\_lending\\_analytics/2009/06/what-are-lenders-saying-about-federal-reserve-proposals-on-private-student-loans.html](http://studentlendinganalytics.typepad.com/student_lending_analytics/2009/06/what-are-lenders-saying-about-federal-reserve-proposals-on-private-student-loans.html).

<sup>9</sup> See Sallie Mae’s comments to the Board of Governors of the Federal Reserve System: [http://www.federalreserve.gov/SECRS/2009/May/20090529/R-1353/R-1353\\_052609\\_21079\\_591049709690\\_1.pdf](http://www.federalreserve.gov/SECRS/2009/May/20090529/R-1353/R-1353_052609_21079_591049709690_1.pdf)

<sup>10</sup> See Board, *supra* 4

<sup>11</sup> The opportunity arises only when the lender “certifies” the loan by confirming the student’s enrollment, cost of attendance and aid received before issuing the loan. Students may also get “uncertified” private student loans, which do not involve contact between the lender and the school. In those cases, the school may never learn that the student applied for a private student loan.

<sup>12</sup> From “Bucking the Tide on Private Loans,” *Inside Higher Ed*. Available online at: <http://www.insidehighered.com/news/2007/07/16/barnard>

maximized their federal student loans. Half of the contacted applicants opt to pursue their federal borrowing options first.<sup>13</sup>

In addition, for those applicants who do not consult with their financial aid office, the form could have a check box for applicants to direct their lender to verify the information on lines A, B and C directly with their school. Lenders that have already certified the applicant's information with the school would not need to do so again. The form could say:

*“Check here if the lender should confirm the accuracy of the information below with your school.”*

We also suggest changing lines A, B and C to make them clearer. We suggest:

A. *Full cost of attendance at your school* for the period of enrollment covered by the loan:

B. *The financial assistance you will receive (including grants, loans and work study):*

C. Difference between amounts A and B:

*The amount on line C is the **maximum** private loan amount you may borrow. You do not have to borrow the maximum amount. Borrowing more can reduce your eligibility for free or low-cost federal, state or school financial aid.*

Since the Department, financial aid experts and lenders all recommend that students exhaust their federal loan options before taking out a private loan, we also strongly recommend that the self-certification form give applicants a way of easily determining whether they have exhausted their federal loan eligibility. This could be done in a variety of ways. For instance, the required electronic version of the self-certification form could use “pop-up” screens to ask about the student's dependency status and year in school, then apply the cost of attendance and financial aid assistance information from this form, and either ask about the student's federal loans or obtain this information from the National Student Loan Data System (NSLDS). The paper version of the self-certification form could be accompanied by a worksheet that would similarly help students, families and others to determine their remaining federal loan eligibility.

#### Section 4: Definitions

We suggest removing the definition for “Expected Family Contribution” since the term does not appear on the self-certification form, nor is it required to complete the form.

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<sup>13</sup> From “Colorado State Does Student Loans Right,” *HigherEdWatch.org*. Available online at: [http://www.newamerica.net/blogs/education\\_policy/2007-08/colorado\\_state](http://www.newamerica.net/blogs/education_policy/2007-08/colorado_state)

Thank you for the opportunity to comment on the proposed self-certification form for private student loans. If you have any questions regarding our comments, please do not hesitate to contact Pauline Abernathy or Cedrick Andrews at the Institute for College Access & Success by phone at (510) 559-9509, or via email at [pabernathy@ticas.org](mailto:pabernathy@ticas.org) and [candrews@ticas.org](mailto:candrews@ticas.org).

Sincerely,

The Institute for College Access & Success and its Project on Student Debt  
Campus Progress Action  
Consumer Action  
Greenlining Institute  
National Association for College Admissions Counseling  
National Consumer Law Center (on behalf of its low-income clients)  
Public Advocates Inc.  
Roosevelt Institute Campus Network  
U.S. Public Interest Research Group  
United States Students Association

## **Appendix A. Organizational Descriptions**

The Institute for College Access & Success works to make higher education more available and affordable for people of all backgrounds. Through nonpartisan research, analysis, and advocacy, the Institute aims to improve the processes and public policies that can pave the way to successful educational outcomes for students and for society. The Institute is also home to the Project on Student Debt.

Campus Progress Action, a part of the Center for American Progress Action Fund, works to help young people -- advocates, activists, journalists, artists, and others -- to make their voices heard on issues that matter.

Consumer Action, founded in 1971, is a national non-profit education and advocacy organization engaged in financial literacy and consumer protection.

The Greenlining Institute is a national policy, organizing, and leadership institute working for racial and economic justice.

The National Association for College Admission Counseling (NACAC) is an organization of more than 11,000 professionals from around the world dedicated to serving students as they make choices about pursuing postsecondary education.

The National Consumer Law Center, Inc. (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work with thousands of legal services, government and private attorneys, as well as community groups and organizations that represent low-income and elderly individuals on consumer issues. NCLC's Student Loan Borrower Assistance Project ([www.studentloanborrowerassistance.org](http://www.studentloanborrowerassistance.org)) provides information about student loan rights and responsibilities for borrowers and advocates.

Public Advocates Inc. is a nonprofit law firm and advocacy organization that challenges the systemic causes of poverty and racial discrimination by strengthening community voices in public policy and achieving tangible legal victories advancing education, housing, transit and economic justice.

The Roosevelt Institute Campus Network, a national student initiative, engages young people in a unique form of progressive activism that empowers them as leaders and promotes their ideas for change.

The U.S. Public Interest Research Group serves as the federal advocacy office and federation of the non-profit and non-partisan state Public Interest Research Groups. The PIRGs have a longstanding interest in ensuring a fair financial marketplace for their one million members and other consumers.

The United States Student Association, the country's oldest and largest national student-led organization, is dedicated to training, organizing, and developing a base of student leaders who are utilizing those skills to engage in expanding access to higher education and advancing the broader movement for social justice.