

Summary of New Disclosure Requirements for Private Student Loans

August 2009

On July 30, 2009, the Federal Reserve Board issued its [final rules](#) for the new private student loan disclosures required by the Higher Education Opportunity Act of 2008 (HEOA). When the rules go into effect on February 14, 2010, lenders will be required for the first time to give prospective borrowers basic information about loan terms and potential costs *before* they sign on the dotted line. Unfortunately, the Board's final rules do not go far enough to help students and parents make more informed borrowing decisions. The Board rejected most of the [recommendations](#) submitted in May by The Institute for College Access & Success and 10 other national consumer advocacy organizations.

Although the final disclosure rules are a disappointment, even the best disclosures are no substitute for real consumer protections. Lenders are still not required to set maximum interest rates or fees, provide affordable repayment plans, or cancel debts because of death, permanent disability, or school closure; borrowers will still find it nearly impossible to discharge private loans in bankruptcy; schools will not necessarily know when their students are taking out private loans; and policymakers will still lack basic information about who is borrowing and on what terms. For more information on private student loans and needed reforms, see <http://projectonstudentdebt.org/privateloans.vp.html>.

Below is a summary of how the key recommendations we submitted to the Board fared in the final rules.

Annual Percentage Rate (APR): We, along with several industry and school commenters, asked the Board to require that APR be more prominently displayed than the interest rate at the top of the disclosures, as generally required by TILA. The Board rejected that recommendation and required lenders to display the interest rate more prominently than APR.

Information about Federal Loans: We requested several simple and practical improvements to the required disclosures about federal loan availability, so that borrowers could more easily understand and access federal loans. Despite our suggestions, the final language in the new disclosures will *not* 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. The Board also declined to require information on the total cost of federal loans, leaving consumers with only interest rates to compare. Finally, we and several colleges asked that borrowers get information about federal loan availability in the last disclosure they receive, but the final rules contain no such requirement.

Maximum Interest Rate: We strongly suggested that the Board require lenders to set a maximum interest rate for any private loan with a variable rate, which the Board declined to do. Instead, for loans with no maximum interest rate, the required disclosures include a proxy rate as an example of how high interest rates could rise. The Board originally proposed a proxy rate of 21 percent, well below our suggestion of 36 percent. In the final rules, the Board increased the proxy rate to 25 percent.

Co-Signers: We suggested a requirement that co-signers receive the final disclosure, which includes the actual terms of the loan they are responsible for, as well as the same cancellation rights as primary borrowers. Instead, the Board only required lenders to provide final disclosures to *any* consumer with primary liability for the loan, rather than all consumers with liability. The Board also declined to extend cancellation rights to co-signers. Nearly all private loans to students now require co-signers, who are usually parents. The final rules leave co-signers in the dark about the final terms of their obligation, and deny them the right to cancel during the cooling-off period, even if they are able to find a better deal.

Co-Branding: We opposed the Board's proposed "safe harbor" rules because they allowed broad exceptions to the HEOA's prohibition of co-branding. The final rules merely require that when lenders use a school's name or other insignia, they provide a generic statement about the school's non-endorsement. This statement must be physically close to the reference to the school and equally prominent in size. The Board also allows co-branding by lenders that have preferred lender arrangements with schools, because the preferred lender arrangement is assumed to be a form of endorsement. In this case, lenders must display a statement informing consumers that the loan is not being made by or offered by the school. Prospective borrowers will still be exposed to the persuasive visual impact of co-branding in lenders' marketing materials.

Self-Certification: The HEOA created a new requirement that lenders obtain a borrower "self-certification" form before consummating a private loan. This form is supposed to inform consumers about federal loan availability and encourage them to seek advice from their school's financial aid office before taking out a private loan. The form also requires specific information about the borrower's current cost of attendance and financial aid, which determines how much they can borrow. The Board originally proposed allowing creditors to get the signed, completed self-certification form from either the borrower or the school. Unfortunately, the final rules also allow lenders to provide pre-filled forms directly to borrowers. This allows lenders to circumvent contact between consumers and financial aid offices that could help borrowers make smarter choices, and it increases opportunities for fraud. The Board also rejected our recommendation that creditors must obtain self-certification forms from co-signers as well as primary borrowers.

Marketing/Sales by Phone: We requested that consumers who inquire about private loans by phone receive oral disclosures similar to the written disclosures required for consumers seeking loans online or by post. HEOA requires specific disclosures at three junctures: application, approval and consummation. The final rules permit, but *do not require*, lenders to provide oral application disclosures. A lender can avoid making the required disclosures over the phone and simply mail a written disclosure within three days of the initial communication. If the lender approves the consumer for the loan over the phone, the lender is required to mail only the written *approval* disclosure and *not the application disclosure* that explains the potential range of interest rates on the loan, whether interest will accrue during enrollment, the benefits of having a co-signer, and the need to submit a self-certification form. By not requiring both oral and written application disclosures at the beginning of the process, the Board has left consumers vulnerable to aggressive phone sales tactics and inadequate follow-up information.

A few areas of improvement: The Board did make a few very specific changes suggested in our comments. For example, the Board added a reference to graduate students in the disclosure language on PLUS loans, where only parents were mentioned before. The Board also approved more detailed disclosures about the fees (including prepaid fees) that consumers will pay as well as a distinct "total loan amount." However, the Board did not require the disclosure to include post-consummation fees that can substantially increase the cost of a loan, such as fees for forbearances.