



# Recent Changes to the Truth In Lending Act Concerning Private Education Loans

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February 2, 2010

# Truth In Lending Act (TILA)

## Background on TILA:

- TILA at its core is a means of requiring creditors to provide accurate and meaningful disclosure to consumer-borrowers of the costs of credit.\*
- TILA requires creditors to provide written (or qualifying electronic) disclosures to consumers prior to consummating credit transactions.
  - › Such disclosures must include certain key terms of the contemplated loan and be in formats prescribed by TILA.

\*The statutes can be found at 15 U.S.C. §1601 et seq.

## TILA Background (cont.):

- The Federal Reserve Board of Governors is charged with implementing and enforcing TILA's requirements and has done so through its Regulation Z. See 12 CFR part 226.
- Title X of the Higher Education Opportunity Act of 2008 (HEOA) specifically amends TILA as it applies to creditors making private education loans.
- On 08/14/09, the Fed amended Reg. Z to implement changes to TILA required by the HEOA.
  - › The compliance deadline for most of those changes is February 14, 2010. **Happy Valentine's Day!**

# Our primary focus today is on:

- What do the Fed's recent amendments to Regulation Z mean for schools offering private education loans or partnering with outside private educational lenders?

\*Those amendments can be found at Federal Register, Vol. 14, No. 156, Friday, August 4, 2009, Rules and Regulations. Although there are other sections involved, the changes are principally codified at new sections 12 CFR 226.46, 226.47, & 226.48.

# TILA for Private Educational Lenders

- “private educational loans” = loans made expressly for postsecondary educational expenses
- TILA applies to outside private lenders and schools extending their own private loans or billing plans.
- TILA applies to credit sales (e.g. retail installment contracts) as well as straight loans (e.g. promissory notes).

# TILA for Private Educational Lenders

- Although there are certain enumerated exclusions (e.g. open-end credit, loans secured by real estate, and loans under Title IV), the HEOA specifically amends TILA to say that private education loans exceeding \$25,000 are covered.
- The Fed’s new regulations specifically exclude any extension of credit by a covered educational institution if (i) the term is 90 days or less; or (ii) no interest rate will be charged and the term is one year or less, “even if the credit is payable in more than four installments.”
  - › However, credit arrangements that fit under these exemptions might still be covered by TILA generally, unless no interest is charged and the credit is re-payable in four or fewer installments.

# TILA for Private Educational Lenders

- The Fed’s recent changes to Regulation Z implement four main changes. They:
  1. clarify the disclosure and timing requirements for private educational loans;
  2. limit certain practices by creditors, including “co-branding” by outside lenders with educational institutions;
  3. require a “self-certification” form signed by the consumer before consummating the loan; and
  4. require creditors with preferred lending arrangements with educational institutions to provide certain information to those institutions.

# TILA for Private Educational Lenders

## (I) Disclosure Requirements:

- Regulation Z now requires three particular sets of “clear and conspicuous disclosures” to the consumer-borrowers for private educational loans:
  1. on or with the application (or in solicitations that require no applications);
  2. on or with the loan approval; and
  3. after the borrower accepts but at least three business days *prior* to disbursement.

# TILA Disclosure Requirements

- Safe Harbor
  - › A creditor using the Fed's model forms (at Regulation Z, Appendix H) and providing accurate information about its loan terms in those forms is protected from civil liability as to the adequacy of its disclosures.

## H-21 Private Education Loan **Application** and Solicitation Sample

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First ABC Bank  
12345 1st St.  
Anytown, CA 93120  
(800) 555 - 5555

### Loan Interest Rate & Fees

Your starting interest rate will be between

7.375% and 17.375%

After the starting rate is set, your rate will then vary with the market

#### Your Starting Interest Rate (upon approval)

The starting interest rate you pay will be determined after you apply. It will be based upon your credit history and other factors (co-signer credit, school type, etc). If approved, we will notify you of the rate you qualify for within the stated range.

#### Your Interest Rate during the life of the loan

**Your rate is variable.** This means that your rate could move lower or higher than the rates on this form. The variable rate is based upon the LIBOR Rate (as published in the *Wall Street Journal*). For more information on this rate, see the reference notes.

Although the rate will vary after you are approved, it will **never exceed 25%** (the maximum allowable for this loan).

#### Loan Fees

**Application Fee:** \$15. **Origination Fee:** The fees that we charge to make this loan range from 0% to 3% of total loan amount. **Loan Guarantee Fee:** 0% to 3% of total loan amount. **Repayment Fee:** The fees we charge when you begin repayment range from 0% to 3.5% of the total loan amount. **Late Charge:** 5% of the amount of the past due payment, or \$25, whichever is greater. **Returned check charge:** up to \$25.

### Loan Cost Examples

The total amount you will pay for this loan will vary depending upon when you start to repay it. This example provides estimates based upon three (3) different repayment options available to you while enrolled in school.

Repayment Option (while enrolled in school)	Amount Provided (amount provided directly to you or your school)	Interest Rate (highest possible starting rate)	Loan Term (how long you have to pay off the loan)	Total Paid over 20 years (includes associated fees)
<b>1. DEFER PAYMENTS</b> Make no payments while enrolled in school. Interest will be charged and added to your loan	\$10,000	17.375%	20 years starting after the deferment period	\$81,084
<b>2. PAY ONLY THE INTEREST</b> Make interest payments but defer payments on the principal amount while enrolled in school.	\$10,000	17.375%	20 years starting after the deferment period	\$60,707
<b>3. MAKE FULL PAYMENTS</b> Pay both the principal and interest amounts while enrolled in school.	\$10,000	17.375%	20 years starting after your first payment	\$38,180

#### About this example

The repayment example assumes that you remain in school for 4 years and have a 6 month grace period before beginning repayment. It is based on the highest starting rate currently charged and associated fees. For loan amounts up to \$20,000, repayment will last 20 years, starting once the initial principal payment is made. For loan amounts more than \$20,000 repayment will last 30 years, starting once the initial principal payment is made.

## Federal Loan Alternatives

Loan program	Current Interest Rates by Program Type	
<b>PERKINS</b> for Students	5% fixed	
<b>STAFFORD</b> for Students	5.6% fixed	Undergraduate subsidized
	6.8% fixed	Undergraduate unsubsidized & Graduate
<b>PLUS</b> for Parents and Graduate / Professional Students	8.5% fixed Federal Family Education Loan	
	7.9% fixed	Federal Direct Loan

### You may qualify for Federal education loans.

For additional information, contact your school's financial aid office or the Department of Education at:

[www.federalstudentaid.ed.gov](http://www.federalstudentaid.ed.gov)

## Next Steps

### 1. Find Out About Other Loan Options.

Some schools have school-specific student loan benefits and terms not detailed on this form. Contact your school's financial aid office or visit the Department of Education's web site at: [www.federalstudentaid.ed.gov](http://www.federalstudentaid.ed.gov) for more information about other loans.

### 2. To Apply for this Loan, Complete the Application and the Self-Certification Form.

You may get the certification form from your school's financial aid office. If you are approved for this loan, the loan terms will be available for 30 days (terms will not change during this period, except as permitted by law and the variable interest rate may change based on the market).

## REFERENCE NOTES

### Variable Interest Rate

- This loan has a variable interest rate, that is based on a publicly available index, the London Interbank Offered Rate (LIBOR). Your rate will be calculated each month by adding a margin between 3% and 13% to the LIBOR.
- The rate will not increase more than once a month, but there is no limit on the amount that the rate could increase at one time.

### Eligibility Criteria

#### Borrower

- Must be enrolled at an eligible school at least half-time.
- Must be 18 years or older at the time you apply.

### Co-signers

- Rates are typically higher without a co-signer.
- Must be 18 years or older at the time of loan application.

### Bankruptcy Limitations

- If you file for bankruptcy you may still be required to pay back this loan.

More information about loan eligibility and repayment deferral or forbearance options is available in your loan application and loan agreement.

## H-22 Private Education Loan Approval Sample

<b>BORROWER:</b> Christopher Smith Jr. 1492 Columbus Way Plymouth, MA 02360	<b>CREDITOR:</b> First ABC Bank 12345 1st St Anytown, CA 931
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### Loan Rates & Estimated Total Costs

Total Loan Amount	Interest Rate	Finance Charge	Total of Payments
\$10,600.00	7.375%	\$18,541.24	\$ 28,541.24
The total amount you are borrowing.	Your current interest rate.	The estimated dollar amount the credit will cost you.	The estimated amount you will have paid when you have made all payments.

#### ITEMIZATION OF AMOUNT FINANCED

Amount paid to you	\$0.00
Amount paid to others on your Behalf:	+ \$10,000
• ABC State University	
Amount Financed (total amount provided)	= \$10,000
Initial finance charges (total)	+ \$600
• Origination Fee (\$300)	
• Loan Guarantee Fee (\$300)	
Total Loan Amount	= \$10,600

#### ABOUT YOUR INTEREST RATE

• **Your rate is variable.** This means that your actual rate varies with the market and could be lower or higher than the rate on this form. The rate is based upon the LIBOR Rate (as published in the *Wall Street Journal*). For more information on this rate, see reference notes.

• Although your rate will vary, it will never exceed 25% (the maximum rate for this loan).

• **Your Annual Percentage Rate (APR) is 8.23%.** The APR is typically higher than the Interest Rate since it considers fees and reflects the cost of the loan as a yearly rate. For more information about the APR, see reference notes.

#### FEES

- **Late Charge:** 5% of the amount of the past due payment, or \$25, whichever is greater.
- **Returned check charge:** up to \$25.
- **Fee when you begin repaying the loan:** 3.5% of loan balance.

### Estimated Repayment Schedule & Terms

20 YEAR LOAN TERM	MONTHLY PAYMENTS		The estimated Total Payments at the Rate of Interest will be \$154,928.
	at 7.375% the current interest rate of your loan	at 25% the maximum interest rate possible for your loan	
Sept. 1, 2009 - Oct. 31, 2013 deferment period	No payment required (\$3,799.67 in interest will accrue during this time)	No payment required (Interest will accrue during this time)	
Nov. 1, 2013 - Sept. 30, 2033 239 monthly payments	\$118.93	\$645.41	
Oct. 1, 2033 1 monthly payment	\$116.97	\$674.63	

## Federal Loan Alternatives

Loan program	Current Interest Rates by Program Type	
<b>PERKINS</b> for Students	5% fixed	
<b>STAFFORD</b> for Students	5.6% fixed	Undergraduate subsidized
	6.8% fixed	Undergraduate unsubsidized & Graduate
<b>PLUS</b> for Parents and Graduate / Professional Students	8.5% fixed	Federal Family Education Loan
	7.9% fixed	Federal Direct Loan

### You may qualify for Federal education loans.

For additional information, contact your school's financial aid office or the Department of Education at:

[www.federalstudentaid.ed.gov](http://www.federalstudentaid.ed.gov)

## Next Steps & Terms of Acceptance

This offer is good until:

**August 1, 2009**

### 1. Find Out About Other Loan Options.

Contact your school's financial aid office for more information.

### 2. You Have Until August 1, 2009 to Accept this Offer

The terms of this offer will not change except as permitted by law and the variable interest may change based on the market.

### To Accept the Terms of this loan, contact us at

First ABC Bank  
12345 1st St.  
Anytown, CA 93120  
(800) 555 - 5555

## REFERENCE NOTES

### Variable Interest Rate:

- Your loan has a variable Interest Rate that is based on a publicly available index, the London Interbank Offered Rate (LIBOR), which is currently 4.375%. Your rate is calculated each month by adding a margin of 3% to the LIBOR.
- The Interest Rate may be higher or lower than your Annual Percentage Rate (APR) because the APR considers certain fees you pay to obtain this loan, the Interest Rate, and whether you defer (postpone) payments while in school.
- The rate will not increase more than once a month, but there is no limit on the amount that the rate could increase at one time. Your rate will never exceed 25%.
- If the Interest Rate increases your monthly payments will be higher.

### Bankruptcy Limitations

- If you file for bankruptcy you may still be required to pay back this loan.

### Repayment Options:

- Although you elected to postpone payments, you can still make payments while you are in school. You can also choose to change your deferment choice to: Pay Interest Only or Make Full Payments. More information about repayment deferral or forbearance options is available in your loan agreement.

### Prepayments:

- If you pay the loan off early, you will not have to pay a penalty. You will not be entitled to a refund of part of the finance charge.

See your loan agreement for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

**H-23 Private Education Loan Final Sample**

**BORROWER:**

Christopher Smith Jr.  
1492 Columbus Way  
Plymouth, MA 02360

**CREDITOR:**

First ABC Bank  
12345 1st St  
Anytown, CA 93120  
(800) 555 - 5555

**RIGHT TO CANCEL**

You have a right to cancel this transaction, without penalty, by midnight on August 4, 2009. No funds will be disbursed to you or to your school until after this time. You may cancel by calling us at 800-555-5555.

**Loan Rates & Estimated Total Costs**

Total Loan Amount	Interest Rate	Finance Charge	Total of Payments
\$10,600.00	7.375%	\$18,541.24	\$ 28,541.24
The total amount you are borrowing.	Your current interest rate.	The estimated dollar amount the credit will cost you.	The estimated amount you will have paid when you have made all payments.

**ITEMIZATION OF AMOUNT FINANCED**

Amount paid to you	\$0.00
Amount paid to others on your Behalf:	+ \$10,000
• ABC State University	
Amount Financed (total amount provided)	= \$10,000
Initial finance charges (total)	+ \$600
• Origination Fee (\$300)	
• Loan Guarantee Fee (\$300)	
Total Loan Amount	= \$10,600

**ABOUT YOUR INTEREST RATE**

• **Your rate is variable.** This means that your actual rate varies with the market and could be lower or higher than the rate on this form. The variable rate is based upon the LIBOR Rate (as published in the *Wall Street Journal*). For more information on this rate, see reference notes.

• There is no limit on the amount the interest rate can increase.

• **Your Annual Percentage Rate (APR) is 8.23%.** The APR is typically different than the Interest Rate since it considers fees and reflects the cost of your loan as a yearly rate. For more information about the APR, see reference notes.

**FEES**

- **Late Charge:** 5% of the amount of the past due payment, or \$25, whichever is greater.
- **Returned check charge:** up to \$25.
- **Fee when you begin repaying the loan:** 3.5% of loan balance.

**Estimated Repayment Schedule & Terms**

20 YEAR LOAN TERM	MONTHLY PAYMENTS	
	at 7.375% the current interest rate of your loan	No Maximum Rate example at 25%
Sept. 1, 2009 - Oct. 31, 2013 deferment period	No payment required (\$3,799.67 in interest will accrue during this time)	No payment required (Interest will accrue during this time)
Nov. 1, 2013 - Sept. 30, 2033 239 monthly payments	\$118.93	\$645.41 (your payments will be higher if the rate increases above 25%)
Oct. 1, 2033 1 monthly payment	\$116.97	\$674.63 (your payments will be higher if the rate increases above 25%)

Though your loan does not have a maximum interest rate, an example rate of 25% has been used for comparative purposes.

The estimated Total of Payments if your rate rises to 25% would be \$154,928. Your Total of Payments will be higher if rate increases above 25%.

**REFERENCE NOTES****Variable Interest Rate:**

- Your loan has a variable Interest Rate that is based on a publicly available index, the London Interbank Offered Rate (LIBOR), which is currently 4.375%. Your rate is calculated each month by adding a margin of 3% to the LIBOR.
- The Interest Rate may be higher or lower than your Annual Percentage Rate (APR) because the APR considers certain fees you pay to obtain this loan, the Interest Rate, and whether you defer (postpone) payments while in school.
- The rate will not increase more than once a month, but there is no limit on the amount that the rate could increase at one time. Your rate will never exceed 25%.
- If the Interest Rate increases your monthly payments will be higher.

**Bankruptcy Limitations**

- If you file for bankruptcy you may still be required to pay back this loan.

**Repayment Options:**

- Although you elected to postpone payments, you can still make payments while you are in school. You can also choose to change your deferment choice to: Pay Interest Only or Make Full Payments. More information about repayment deferral or forbearance options is available in your loan agreement.

**Prepayments:**

- If you pay the loan off early, you will not have to pay a penalty. You will not be entitled to a refund of part of the finance charge.

See your loan agreement for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

# TILA for Private Educational Lenders

## (II) Prohibition on Co-Branding:

- An outside education lender cannot use the name, emblem, mascot, or logo of a covered educational institution, or other words, pictures, or symbols identified with the institution, in the marketing of its loans in a way that implies the institution endorses the creditor's loans.

# TILA Prohibition on Co-Branding

Two express exceptions:

- i. The lender includes a clear and conspicuous disclaimer, equal in size and proximate to the logo (etc.), that says the institution does not endorse the creditor's loans and that the creditor is not affiliated with the institution.
- ii. The lender and the institution actually have an endorsement agreement.
  - This appears to effectively require a preferred lender arrangement, though the Fed uses a different term. The HEOA contemplates an endorsement being permissible only through the preferred lender list process.
  - Even then, there must be a clear and conspicuous disclosure, equally prominent and close in proximity to the reference to the institution, that says the loans are not offered or made by the institution, but rather by the creditor.

# TILA for Private Educational Lenders

## (III) Self-certification form:

- For loans to be used while the student is attending an institution of higher education, the creditor must obtain from either the consumer or the institution, a self-certification form, in a format to be determined by the Department of Education, signed by the consumer, in writing or electronically, before consummating the loan.
  - › The creditor can pre-fill the form for the consumer and send it to him/her for signature.



**Important:** Pursuant to Section 155 of the Higher Education Act of 1965, as amended, (HEA) and to satisfy the requirements of Section 128(e)(3) of the Truth in Lending Act, a lender must obtain a self-certification signed by the applicant before disbursing a private education loan. The school is required on request to provide this form or the required information only for students admitted or enrolled at the school. Throughout this Applicant Self-Certification, "you" and "your" refer to the applicant who is applying for the loan. The applicant and the student may be the same person.

**Instructions:** Before signing, carefully read the entire form, including the definitions and other information on the following page. Return the signed form to your lender.

**SECTION 1: NOTICES TO APPLICANT**

- Free or lower-cost Title IV federal, state, or school student aid may be available in place of, or in addition to, a private education loan. To apply for Title IV federal grants, loans and work-study, submit a Free Application for Federal Student Aid (FAFSA) available at [www.fafsa.ed.gov](http://www.fafsa.ed.gov), or by calling 1-800-4-FED-AID, or from the school's financial aid office.
- A private education loan may reduce eligibility for free or lower-cost federal, state, or school student financial assistance.
- You are **strongly** encouraged to pursue the availability of free or lower-cost financial assistance with your school's financial aid office.
- The financial information required to complete this form can be obtained from the school's financial aid office. If the lender has provided this information, you should contact your school's financial aid office to verify this information and to discuss your financing options.

**SECTION 2: COST OF ATTENDANCE AND ESTIMATED FINANCIAL ASSISTANCE**

If information is not already entered below, obtain the needed information from the school financial aid office and enter it on the appropriate line. Sign and date where indicated.

- A. Student's cost of attendance for the period of enrollment covered by the loan \$ \_\_\_\_\_
  - B. Estimated financial assistance \$ \_\_\_\_\_
  - C. Difference between amounts A and B : \$ \_\_\_\_\_
- ? **Warning:** If you borrow more than the amount on line C, you risk reducing your eligibility for free or lower-cost federal, state, or school financial aid.

**SECTION 3: APPLICANT INFORMATION**

Enter or correct the information below.

Name and Address of School \_\_\_\_\_

Applicant Name (last, first, MI) \_\_\_\_\_ Date of Birth (mm/dd/yyyy) \_\_\_\_/\_\_\_\_/\_\_\_\_

Street Address \_\_\_\_\_ E-mail Address \_\_\_\_\_

City, State \_\_\_\_\_ Zip Code \_\_\_\_\_

Area Code / Telephone Number Home ( ) \_\_\_\_\_ Period of Enrollment Covered by the Loan (mm/dd/yyyy)  
 Other ( ) \_\_\_\_\_ From \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_

If the student is not the loan applicant, provide the student's name and date of birth.

Student Name (last, first, MI) \_\_\_\_\_ Student Date of Birth (mm/dd/yyyy) \_\_\_\_/\_\_\_\_/\_\_\_\_

**SECTION 4: APPLICANT SIGNATURE**

I certify that I have read and understood the notices in Section 1 and, to the best of my knowledge, the information provided on this form is true and correct.

Signature of Applicant \_\_\_\_\_ Date (mm/dd/yyyy) \_\_\_\_\_

## SECTION 5: DEFINITIONS

**Cost of attendance** is an estimation of tuition and fees, room and board, transportation and other costs for the period of enrollment covered by the aid, as determined by the school. A student's cost of attendance may be obtained from the school financial aid office.

**Estimated financial assistance** is all federal, state, institutional (school), private and other sources of assistance used in determining eligibility for Title IV student aid, including amounts of financial assistance used to replace the expected family contribution. The student's estimated financial assistance is determined by the school, and may be obtained from the school's financial aid office.

A **lender** is a private education lender as defined in Section 140 of the Truth in Lending Act; and any other person engaged in the business of securing, making, or extending education loans on behalf of the lender.

A **period of enrollment** is the academic year, academic term (such as semester, trimester, or quarter) or the number of weeks of instructional time for which the applicant is requesting student financial assistance.

A **private education loan** is a loan provided by a private education lender that is not a Title IV loan and that is issued expressly for postsecondary education expenses to a borrower, regardless of whether the loan is provided through the school that the student attends or directly to the borrower from the private education lender. A private education loan does not include: (1) 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; (2) An extension of credit in which the school is the lender if the term of the extension of credit is 90 days or less and an interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, or if the credit is payable in more than four installments.

**Title IV student aid** includes the Federal Pell Grant Program, the Academic Competitiveness Grant (ACG) Program, the Federal Supplemental Educational Opportunity Grant (FSEOG) Program, the Leveraging Educational Assistance Partnership (LEAP) Program, the Federal Family Education Loan Program (FFELP), the Federal Work Study (FWS) Program, the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Perkins Loan Program, the National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program, and the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program.

## SECTION 6: PAPERWORK REDUCTION NOTICE

**Paperwork Reduction Notice** According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a currently valid OMB control number. The valid OMB control number for this information collection is 1845-XXXX. The time required to complete this information collection is estimated to average 25 hours (15 minutes) per response, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection.

**If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-6511

**If you have any comments or concerns regarding the status of your individual submission of this form, contact your lender.**

# TILA for Private Educational Lenders

## (IV) Preferred Lender Disclosures to Institution:

- A creditor that has a preferred lender arrangement with an institution must provide to the institution annually the basic loan terms for each type of private education loan the lender plans to offer students attending the institution.

# TILA Preferred Lender Disclosures to Institution

- The rules specify what must be disclosed by the preferred lender by reference to the loan terms that must be disclosed to any given consumer-borrower initially with his application, namely the:
  - (i) interest rates,
  - (ii) fees and default or late payment costs,
  - (iii) repayment terms,
  - (iv) cost estimates, and
  - (v) eligibility.



# Contact Information

Jason McCarter  
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(770)901-8864

Aaron Lacey  
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(202)776-2613