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Duane Morris

# Properly Extending Credit for Private Education Loans

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## Today's Topics

- Private Education Loan Disclosure and requirements subject to regulation by the Department of Education
  - Preferred Lender Arrangements
  - Code of Conduct
  - Private Loan Disclosures and Self-Certification Form

## Today's Topics

- Disclosures and requirements subject to regulation by the Federal Reserve Board
  - Truth in Lending Act background
  - Private education loan disclosures
  - Self-certification form
  - State Licensing, Registration or Notification Filing

# The Higher Education Opportunity Act (HEOA)

- Enacted August 14, 2008
- Public Law 110-315
- Dear Colleague Letter GEN-08-12
- <http://www.ifap.ed.gov/dpcletters/GEN0812FP0810.html>

# THE HEOA – Statutory Framework

- HEOA reauthorized the Higher Education Act (HEA) and established new institution-based loan disclosure requirements
- HEOA amended Truth in Lending Act (TILA) and established private education loan disclosures
- HEOA amended both HEA and TILA to prohibit certain education lending practices

## Federal & Private Loan Disclosures: Background

- HEOA institutional and private loan disclosures and requirements are designed to try and ensure:
  - An informed student loan borrower;
  - Borrower has a choice of lender;
  - Transparency and high ethical standards in the student lending process; and
  - Selection of lender based on best interest of the borrower.

## Regulatory Framework

- Department of Education (ED) regulated required disclosures on Title IV, HEA loans and private education loans – 34 CFR 601
- Federal Reserve Board (FRB) regulated required disclosures on private education loans and defined certain “key” terms
- ED and FRB jointly developed the private loan self-certification form

## Federal Reserve Board Background on Final Rule

- Implemented the Higher Education Opportunity Act of 2008 (HEOA) which amended the Truth in Lending Act (TILA)
- FRB final rules published August 14, 2009
- Compliance mandatory for applications received on or after February 14, 2010
- Replaced prior special rules for student credit extensions in Reg Z



## HEOA Loan Disclosure: Key Terms – 34 CFR 601.2

- Covered institution – an IHE, defined in HEA §102, that receives any federal funding
- Institution-affiliated organization – entity directly or indirectly related to a covered institution that recommends, promotes, or endorses education loans

## HEOA Loan Disclosures: Key Terms

- Lender – an eligible FFEL lender, ED, a private educational lender ( § 140 of the TILA) or any other person engaged in the business of securing, making or extending education loans on behalf of lender
- Private education lender is a financial institution, federal credit union ***or any other person engaged in the business of soliciting, making or extending private education loans.***

## HEOA Loan Disclosures: Key Terms

- Private education loan – ( § 140 of the TILA) is a non-title IV loan provided by a private educational lender expressly for postsecondary educational expenses.
- A private education loan does not include an extension of credit under an open-end consumer credit plan or secured by real property.

## HEOA Loan Disclosures: Key Terms

- A private education loan does not include an extension of credit in which the educational institution is the lender if:
  - *The extension of credit is 90 days or less, or*
  - *Interest will not be applied to credit balance and term is one year or less, even if payable in more than 4 payments*
- Education loan – a FFEL Loan, a Direct Loan or a private education loan

## HEOA Loan Disclosures: Key Terms

- Preferred lender arrangement – an arrangement or agreement, between a lender and covered institution, in which a lender provides education loans to students/families and the covered institution recommends, promotes or endorses the education loan products of the lender.

## HEOA Loan Disclosures: Key Terms

- Preferred lender arrangement (cont.)
  - Does not include private education loans made by a covered institution to students attending a covered institution if the private education loan is:
    - ***Funded by covered institution's own funds, or***
    - ***Funded by donor-directed contributions***

## HEOA Loan Disclosures: Key Terms

- Preferred lender arrangement (cont.)
  - Does not include private education loans made by a covered institution to students attending a covered institution if the private education loan is made under:
    - Title VII or VIII of Public Service Act
    - A State-funded financial aid program, if the terms and conditions of the loan include a loan forgiveness option for public service

## Private Education Loan Disclosures

- Covered institution or affiliate that provides information on private education loans, regardless of participation in a PLA, must:
  - Provide prospective borrower with TILA disclosures under § 128(e)(1)
  - Inform borrowers of possible eligibility for Title IV loans and that Title IV loan terms/conditions may be more favorable than private education loans
- Private loan disclosures must be presented in manner distinct from Title IV loan information



## Self-Certification Form for Private Education Loans

- ED, in consultation with FRB, developed self-certification form for private education loans to satisfy § 128(e)(3) of the TILA which requires that before a private education lender can consummate a private education loan, the lender must obtain the self-certification form from the applicant
- The covered institution at which the applicant is enrolled or admitted must provide the form to the applicant

## Contents of Private Loan Self-Certification Form

- Form must contain only disclosures that:
- Applicant may qualify for federal, state or institutional aid and is encouraged to discuss aid availability with financial aid officials at applicants institution
  - A private education loan may affect applicant's eligibility for Federal, State or institutional aid
  - Information applicant is required to provide on form is available at financial aid office

## Contents of Private Loan Self-Certification Form

- Information provided with self-certification form:
  - Applicant's cost of attendance (COA)
  - Applicant's estimated financial assistance (EFA)
  - Difference between the COA and EFA
- Form must include place for applicant's signature

## Truth-in-Lending Act (TILA)

- Purpose is to provide consumers with “meaningful” disclosures about the cost of “consumer credit”
- Implemented for all lenders by the Federal Reserve Board’s Regulation Z 12 CFR 226
- An official staff commentary gives examples and additional guidance with Model Forms
- Creditors that follow the regulation and commentary in good faith are insulated from liability

## TILA Background

- TILA requires “closed-end” (non-revolving) credit disclosures be made before consummation
- Before HEOA amendments, model disclosure forms were standardized for all types of closed-end credit including, with some minor exceptions, student loans
- So students loan disclosures looked similar to those for auto loans and other installment loans

## Overview of Final Rule

- Disclosures and time rules:
  - Disclosures on or with an application
  - Disclosures after loan approval
  - Consumer's 30-day acceptance period
    - No changes to rate or terms with some exceptions
  - Disclosures at consummation
  - Consumer's 3-day right to cancel
    - ***Creditor must not disburse funds***

## Overview of Final Rule (cont.)

- Self-certification form before consummation
- Model disclosure forms developed through consumer testing and in consultation with the Department of Education
- Prohibition on co-branding in marketing
- Provision of information by creditors to educational institutions with Preferred Lender Arrangements

## Coverage - Lenders

- Applies to “creditors” as defined in Reg Z
- Includes educational institutions that meet the definition of “creditor”
  - However, some types of credit provided by educational institutions are not covered by the private education loan rules



## Definition of Creditor

- A “creditor” means a person who:
  - “regularly extends” consumer credit that:
    - Is subject to a finance charge; or
    - Is payable by written agreement in more than four installments
  - And is the person to whom the obligation is initially payable
  - Regularly extends credit means extending any type of consumer credit more than 25 times in the preceding calendar year

## Coverage - Loans

- Covers loans made in whole or in part for “postsecondary educational expenses”
- at “covered educational institutions”
  - Includes all “institutions of higher education”
  - Includes unaccredited institutions

## Coverage – Loans (cont.)

- Excludes:
  - Federal student loans (Title IV loans)
  - Open-end (revolving) credit
  - Real-estate secured loans
  - Two types of credit extensions made by educational institutions

## Coverage – Loans (cont.)

- Excludes credit extended by educational institutions if:
  - The term of the credit extension is 90 days or less OR
  - An interest rate will not be applied to the credit balance and the term is one year or less, even if the credit is payable in more than 4 installments
- BUT

## Application Disclosures

- On or with an application or a solicitation where no application is required
- Contains general information about the range of rates, fees and other terms that apply
- Also provides information about federal student loan alternatives

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

Page 1 of 2

**First ABC Bank**  
12345 1st St.  
Anytown, CA 90120  
(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	\$81,064
<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.

## Approval Disclosure

- Provided after approval on or with any notice of approval to the consumer
- Transaction-specific rate and term information
  - Including the information currently required by TILA



## H-22 Private Education Loan Approval Sample

Page 1 of 2

**BORROWER:**  
Christopher Smith Jr.  
1492 Columbus Way  
Plymouth, MA 02360

**CREDITOR:**  
First ABC Bank  
12345 1st St  
Anytown, CA 93120

### 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)	
<b>Total Loan Amount</b>	<b>= \$10,600</b>

#### 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.

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

• 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		◀ The estimated Total of Payments at the Maximum Rate of Interest would 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.

## Acceptance Period

- Consumer has 30 days to accept from the time the approval disclosure is received
  - Can accept earlier
- Disclosure must state exact date on which acceptance period expires

## Limitations on Changes

- Creditor cannot change rate or terms with few exceptions
- Permissible changes (no redisclosure required)
  - Rate may change based on index
  - Unequivocally beneficial changes

## Limitations on Changes (cont.)

- Permissible changes (no redisclosure required)
  - Offer may be withdrawn if:
    - Creditor has reason to believe the consumer committed fraud; OR
    - If the extension of credit would be prohibited by law

## Limitations on Changes (cont.)

- Permissible changes (no redisclosure required)
  - Reducing loan amount based on school certification or information from the consumer indicating decrease in financial need
  - Other changes to terms permitted only to the extent that consumer would have received them if the consumer had applied for the reduced loan amount

## Limitations on Changes (cont.)

- Permissible changes (no redisclosure required)
  - Changes may be made to accommodate a request by the consumer
  - New disclosure and 30 day acceptance period required for new terms
  - Creditor must leave original offer open unless/until new offer accepted

## Final Disclosures

- Very similar to approval disclosure
- After acceptance and at least 3 days before disbursement
- ALSO includes TILA disclosures



## Right to Cancel

- Consumer may cancel within 3 business days of receipt of final disclosure form
- ***Funds may not be disbursed until cancellation period expires***

## H-23 Private Education Loan Final Sample

Page 1 of 2

<b>BORROWER:</b> Christopher Smith Jr. 1492 Columbus Way Plymouth, MA 02360	<b>CREDITOR:</b> First ABC Bank 12345 1st St Anytown, CA 93120 (800) 555 - 5555	<b>RIGHT TO CANCEL</b> 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.
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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)	
<b>Total Loan Amount</b>	<b>= \$10,600</b>

#### 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 <small>(your payments will be higher if the rate increases above 25%)</small>
Oct. 1, 2033 1 monthly payment	\$116.97	\$674.63 <small>(your payments will be higher if the rate increases above 25%)</small>

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.

## Self-Certification

- Lender must obtain signed, completed form before consummation
- Lender may receive form from consumer or from school
- Lender may provide the form to the consumer and lender may fill in the data



## Private Education Loan Applicant Self-Certification

OMB No. 1845-0101  
Form Approved  
Exp. Date 10-26-2013

**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. Submit the signed form to your lender.

### SECTION 1: NOTICES TO APPLICANT

- Free or lower-cost Title IV federal, state, or school student financial 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 aid.
- You are **strongly** encouraged to pursue the availability of free or lower-cost financial aid with the 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's 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 for the period of enrollment covered by the loan \$ \_\_\_\_\_
- 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.

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

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

Permanent Street Address \_\_\_\_\_

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

Area Code / Telephone Number Home ( ) \_\_\_\_\_ Other ( ) \_\_\_\_\_

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

Period of Enrollment Covered by the Loan (mm/dd/yyyy) From \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_

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

Student Name (last, first, M) \_\_\_\_\_ 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, that 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 estimate of tuition and fees, room and board, transportation, and other costs for the period of enrollment covered by the loan, as determined by the school. A student's cost of attendance may be obtained from the school's financial aid office.

**Estimated financial assistance** is all federal, state, institutional (school), private, and other sources of assistance used in determining eligibility for most Title IV student financial 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 private 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 the loan.

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, 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; or (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 or an interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

**Title IV student financial 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. To apply for Title IV federal grants, loans, and work-study, submit a Free Application for Federal Student Aid (FAFSA), which is available at [www.fafsa.gov](http://www.fafsa.gov), by calling 1-800-4-FED-AID, or from the school's financial aid office.

## 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 1845-0101. The time required to complete this information collection is estimated to average 0.25 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 20202-4651.

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

## State by State Analysis Necessary

- Each state has its own regulatory scheme for consumer creditors operating in its state
- Entirely different than the federal TILA requirements
- A creditor can be TILA compliant but in violation of a state's requirement to be licensed, registered or file notification filing

## Licensing

- Several states such as Florida require a license in order to utilize Retail Installment Contracts
- Retail Installment Seller – Chapter 520 Part II, Florida Statutes: The license authorizes any retail business to offer installment payments to its customers, for goods or services other than motor vehicle and home improvement businesses. The license authorizes the holder to finance the goods or services sold by an installment contract or a revolving charge account to a retail buyer. The license is required if the goods or services are primarily for personal, family or household use.



## Registration

- Several states such as Texas require a registration in order to utilize Retail Installment Contracts
- Texas law requires creditors who originate, service, or collect on retail installment agreements to register with the Office of Consumer Credit Commissioner (OCCC) within 60 days from the time they begin financing.
- Retailers that provide financing through third-party lenders and retailers that fund the financing themselves are required to register with the OCCC

## Notification Filing

- Several states such as Oklahoma require a notification filing in order to utilize Retail Installment Contracts
- **DESCRIPTION:** Person other than a supervised financial organization or licensed supervised lender engaged in making consumer credit sales, consumer leases or consumer loans in the state of Oklahoma **OR** Persons with an office or place of business in Oklahoma that take assignments of and undertake direct collection of payments from or enforcement of rights against debtors arising from consumer credit sales, consumer leases or non-supervised consumer loans.

## Notification Filing (Cont.)

- **PROCESS:** This filing may be accomplished by contacting the Department of Consumer Credit for an application packet, or by downloading from the links below. Complete the application following the guidelines enclosed. Submit the application, including supporting documentation and proper fee, to the Department of Consumer Credit.  
Oklahoma law requires NOTIFICATION filing by entities which undertake direct collection of payments from or enforcement of rights against debtors arising from consumer sales.  
**TIME FRAME TO ISSUE:** The approval process may require up to 30 days to complete.  
**FEES:** The initial application fee is \$120.00 for each business location.  
**LICENSING PERIOD:** This filing is valid for one year, beginning on February 1<sup>st</sup>.  
**RENEWAL PERIOD:** Send the appropriate fees with renewal form to our office before January 31<sup>st</sup> each year.

## Retail Installment Acts

- ***Every State*** has different requirements:
  - Late Charges
  - NSF Fees
  - Notice to Buyer
  - Signature of Buyer and maybe Seller
  - Acknowledgement by Co-Buyer on a separate page
  - Location of Signature line
  - Size of Font

## Consequences for Violating State Law

- Illinois – (815 ILCS 405/30) (from Ch. 121 1/2, par. 530)

Sec. 30. The Attorney General or the State's Attorney of any county in this State may bring an action in the name of the State against any person to restrain and prevent any violation of this Act. In the enforcement of this Act, the Attorney General or the State's Attorney may accept an assurance of discontinuance of any act or practice deemed in violation of this Act from any person engaging in, or who has engaged in, that act or practice. Failure to perform the terms of any such assurance constitutes prima facie proof of a violation of this Act.

(Source: Laws 1967, p. 2149.)

Sec. 31. (a) Any person who knowingly violates this Act is guilty of a Class A misdemeanor. (b) No person who violates this Act, except as a result of an accident or bona fide error of computation, may recover any finance charge, any delinquency or collection charge or any refinance charge in connection with the related retail installment contract or retail charge agreement.

(Source: P.A. 77-2265.)

## Consequences (Cont.)

Any person who fails to comply with the Unruh Act is barred from recovery of any finance charge or any charge for delinquency, collection, extension, deferral, or refinance. The buyer may recover from the violator an amount equal to any of such charges previously paid. (Ca. Civil Code §1812.7.) However, any non-willful failure to comply with the Unruh Act that is apparent on the face of the Contract may be corrected by the holder by delivering a corrected copy of the contract within 30 days of the execution of the original contract by the buyer. Any amount improperly collected by the seller must be credited against the indebtedness evidenced by the contract. (Ca. Civil Code §1812.8.)

Any person who willfully violates the Unruh Act is guilty of a misdemeanor, which is punishable by a fine not to exceed \$1,000 or imprisonment in the county jail not to exceed six months, or both. (Ca. Civil Code §1812.6; Ca. Penal Code §19.) In addition, if any violation occurs in connection with the imposition, computation, or disclosures of or relating to a finance charge on a consolidated total of two or more contracts, the buyer may recover from the violator an amount equal to three times of the total of the finance charges and any delinquency, collection, extension, deferral, or refinance charges imposed, contracted for, or received on all contracts. In addition, the seller is barred from the recovery of any such charges. (Ca. Civil Code §§1812.6, 1812.9.)

## CONTACT INFORMATION

We appreciate your feedback and comments. We can be reached at:

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