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Transmittal

TR-439

Federal Register, Vol. 74, No. 156, pp. 41197-41257 **Number TR-439**

On August 14, 2009 the Board of Governors of the Federal Reserve System published final rules amending Regulation Z, which implements the Truth in Lending Act (TILA) following the passage of the Higher Education Opportunity Act (HEOA).

Federal Register

Friday,
August 14, 2009

Part II

Federal Reserve System

12 CFR Part 226
Truth in Lending; Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1353]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff commentary.

SUMMARY: The Board is publishing final rules amending Regulation Z, which implements the Truth in Lending Act (TILA) following the passage of the Higher Education Opportunity Act (HEOA). Title X of the HEOA amends TILA by adding disclosure and timing requirements that apply to creditors making private education loans, which are defined as loans made for postsecondary educational expenses. The HEOA also amends TILA by adding limitations on certain practices by creditors, including limitations on ''co-branding'' their products with educational institutions in the marketing of private education loans. The HEOA requires that creditors obtain a self-certification form signed by the consumer before consummating the loan. It also requires creditors with preferred lender arrangements with educational institutions to provide certain information to those institutions.

DATES: *Effective Date:* September 14, 2009.

Compliance Date: Compliance is optional until February 14, 2010.

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SUPPLEMENTARY INFORMATION:

I. Background

A. Current Regulation Z Student Loan Disclosure Requirements

Congress enacted the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, to regulate certain credit practices and promote the informed use of consumer credit by requiring uniform disclosures about its costs and terms. Under TILA section 128, creditors must provide TILA disclosures to consumers in writing before consummation of certain closed-end credit transactions. Extensions of consumer credit over $25,000 are exempt from TILA with the exceptions of credit secured by real property, and, following enactment of the HEOA, private education loans. Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) are also exempt from TILA.

TILA mandates that the Board prescribe regulations to carry out the purposes of the statute. 15 U.S.C. 1604(a). Accordingly, the Board has promulgated Regulation Z, 12 CFR part 226. An Official Staff Commentary, 12 CFR part 226 (Supp. I) interprets the requirements of the regulation and provides guidance to creditors in applying the rules to specific transactions.

To implement TILA section 128, 15 U.S.C. 1638, Regulation Z requires disclosures for certain closed-end loans, including for education loans that are not exempt Federal education loans. Sections 226.17 and 226.18 require a creditor to provide the consumer with clear and conspicuous disclosures before consummation of the transaction. Current § 226.17(i) contains special rules for student credit plans which are education loans where the repayment amount and schedule of payments are not known at the time that the credit is advanced. In such cases, creditors may make all the TILA cost disclosures at the time credit is extended based on the best information available at that time, and state clearly that the disclosures are estimates. Alternatively, creditors may provide partial disclosures at the time the credit is extended and later provide a complete set of disclosures when the repayment schedule for the loan is established.

B. The Higher Education Opportunity Act of 2008

On August 14, 2008, the Higher Education Opportunity Act of 2008 (HEOA) was enacted. Title X of the HEOA, entitled the ''Private Student Loan Transparency and Improvement Act of 2008,'' adds new subsection 128(e) and section 140 to TILA. These TILA amendments add disclosure requirements and prohibit certain practices for creditors making ''private education loans,'' defined as loans made expressly for postsecondary educational expenses, but excluding open-end credit, real estate-secured loans, and Federal loans under title IV of the Higher Education Act of 1965. The HEOA also amends TILA section 104(3) to expressly cover private education loans even if the amount financed exceeds $25,000.

1. Overview of the HEOA's Amendments to TILA

Substantive Restrictions. The HEOA prohibits a creditor from using in its marketing materials a covered educational institution's name, logo, mascot, or other words or symbols readily identified with the educational institution, to imply that the educational institution endorses the loans offered by the creditor.[1] With respect to private education loans, the HEOA also amends TILA in the following ways:

- Creditors must give the consumer 30 days after a private education loan application is approved to decide whether to accept the loan offered. During that time, the creditor may not change the rates or terms of the loan offered, except for rate changes based on changes in the index used for rate adjustments on the loan.
- The consumer has a right to cancel the loan for up to three business days after consummation. Creditors are prohibited from disbursing funds until the three-day cancellation period has run.

Disclosure Requirements. The HEOA adds a number of new disclosures for private education loans, which must be given at different times in the loan origination process. Specifically, the HEOA's amendments to TILA require the following disclosures for private education loans:

- *Disclosures with applications (or solicitations that require no application).* Creditors must provide general information about loan rates, fees, and terms, including an example of the total cost of a loan based on the maximum interest rate the creditor can charge. These disclosures must inform a prospective borrower of, among other things, the potential availability of Federal student loans and the interest rates for those loans, and that additional information about Federal loans may be obtained from the school or the Department of Education Web site.

[1] The HEOA adds a new section 140 to TILA that includes other restrictions regarding private education loans. The Board is only required to issue regulations to implement subsection (c) of TILA section 140, the prohibition on co-branding. The other subsections of section 140 became effective when the HEOA was enacted and the Board is not issuing regulations to implement them at this time. The other subsections of TILA Section 140 prohibit creditors from giving gifts to educational institutions or their employees, and prohibit revenue sharing between creditors and educational institutions. In addition, they restrict creditor payments to financial aid officials who serve on creditors' advisory boards, and require disclosure of any payments made to financial aid officials for advisory board service expenses. Prepayment penalties or fees for early repayment are prohibited for private education loans.

• *Disclosures when the loan is approved.* When the creditor approves the consumer's application for a private education loan, the creditor must give the consumer a set of transaction-specific disclosures, including information about the rate, fees and other terms of the loan. The creditor must disclose, for example, estimates of the total repayment amount based on both the current interest rate and the maximum interest rate that may be charged. The creditor must also disclose the monthly payment at the maximum rate of interest.

• *Disclosures at consummation.* At consummation, the creditor must provide updated cost disclosures substantially similar to those provided at approval. The consumer's three-day right to cancel the transaction must also be disclosed.

Finally, once a consumer applies for a private education loan, the consumer must complete a ''self-certification form'' with information about the cost of attendance at the school that the student will attend or is attending. The form includes information about the availability of Federal student loans, the student's cost of attendance at that school, the amount of any financial aid, and the amount the consumer can borrow to cover any gap. The creditor must obtain the signed and completed form before consummating the private education loan. The Department of Education has primary responsibility for developing the self-certification form in consultation with the Board.

2. Civil Liability

The HEOA amends TILA to provide a private right of action for several, but not all, of the disclosure requirements added by the HEOA. HEOA, Title X, Subtitle A, Section 1012 (amending TILA Section 130). The HEOA also amends TILA's statute of limitations for civil liability regarding private education loans. Currently, TILA section 130(e) requires that an action be brought within one year of the date of the occurrence of the violation. Under the HEOA amendment, an action for a violation involving a private education loan must be brought within one year from the date on which the first regular payment of principal is due for the private education loan.

The HEOA provides a safe harbor for any creditor that elects to use a model form promulgated by the Board that accurately reflects the terms of the creditor's loans. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(5)(C)). Model forms are included in the final rule as amendments to Regulation Z's Appendix H. In addition, a creditor has no liability under TILA for failure to comply with the requirement that it receive the consumer's self-certification form before consummating a private education loan. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 130(j)).

C. Consumer Testing

In October 2008, the Board retained a research and consulting firm (Rockbridge Associates) and a design firm (EightShapes) to help the Board design the model forms required under the HEOA and to conduct consumer testing to determine the most effective presentation of the information required to be disclosed. Specifically, the Board used consumer testing to develop model forms for the following:

• Information required to be disclosed on or with applications or solicitations for private education loans (Application and Solicitation Disclosure);

• Information required to be disclosed when a private education loan is approved (Approval Disclosure); and

• Information required to be disclosed after the consumer accepts a private education loan and at least three business days before loan funds are disbursed (Final Disclosure).

Initial forms design. In November 2008, the Board worked with Rockbridge Associates and EightShapes to develop sample disclosures to be used in the testing, taking into account the specific requirements of the HEOA, information learned through the Board's outreach efforts, and Rockbridge Associate's experience in financial disclosure testing.

Cognitive interviews on model disclosures. In December 2008, Rockbridge Associates worked closely with the Board to conduct two rounds of consumer testing. Each round of testing comprised in-person cognitive interviews with 10 consumers. Both rounds of testing were conducted within the Washington, DC/Baltimore metropolitan area. The consumer participants included both college students and parents of college students, representing a range of ethnicities, ages, educational levels, and education loan experience.

The cognitive interviews consisted of one-on-one discussions with consumers, during which consumers were asked to view the sample Application and Solicitation Disclosure, the Approval Disclosure, and the Final Disclosure developed by the Board. The goals of these interviews were as follows: (1) To learn more about what information consumers are concerned about and actually read when they receive private education loan disclosures; (2) to determine how easily consumers can find various critical pieces of information in the disclosures; (3) to assess consumers' understanding of the information that the HEOA and § 226.18 require to be disclosed for private education loans, and of certain terminology related to private education loans; and (4) to determine the most clear and understandable way to disclose the required information to consumers.

After the first round of cognitive testing, the Board worked with Rockbridge Associates and EightShapes to revise the initial drafts of the sample disclosures in response to findings from the first round of testing. Later in December 2008, the Board and Rockbridge Associates conducted a second round of testing in which 10 consumers were asked to review the revised sample Application and Solicitation Disclosure, Approval Disclosure, and Final Disclosure.

Additional cognitive interviews on model disclosures. In April and May 2009, Rockbridge Associates worked closely with the Board to conduct two additional rounds of consumer testing. Each round of testing consisted of in-person cognitive interviews with 10 consumers. One round of testing was conducted within the Washington, DC metropolitan area and the second round of testing was conducted within the Philadelphia, PA metropolitan area. The consumer participants included college students, proprietary school students and parents of students, representing a range of ethnicities, ages, educational levels, and education loan experience. The format of the cognitive interviews was similar to the initial rounds and the Board worked with Rockbridge Associates and EightShapes to revise the model disclosures in response to findings from the each round of testing.

Following the conclusion of the comment period on the proposed rule, Rockbridge Associates and EightShapes worked with the Board to further revise the disclosures in response to public comment. In June 2009, Rockbridge Associates worked with the Board to conduct a final round of consumer testing comprised of in-person cognitive interviews with 10 consumers conducted in the Washington, DC metropolitan area. The format of the cognitive interviews was similar to the earlier rounds and the Board worked with Rockbridge Associates and EightShapes to revise the model disclosures in response to findings from the final round of testing.

Results of testing. A report summarizing the results of the testing is available on the Board's Web site: *http://www.federalreserve.gov*.

Application and Solicitation Disclosure. Regarding the Application and Solicitation Disclosure, consumers were confused in the initial rounds by seeing the required disclosure of a range of initial rates for which they could be approved. Consumers commonly mistook the highest rate in the range with the maximum possible rate for the life of the loan. Consequently, the model form was revised by providing information under two separate headings for the consumer's ''Starting interest rate upon approval'' and the consumer's ''Interest rate during the life of the loan.'' This revision improved consumers' ability to understand the range of initial interest rates and how the rate would vary over time.

Once consumers understood that the rates disclosed were not necessarily the rates that actually would apply to them, they consistently wanted to know how their own rate would be determined. Thus, the model form places general information about how the consumer's rate will be determined under the heading about the consumer's starting interest rate upon approval. Consumers also wanted to understand how their rate would vary over the life of the loan, but many were confused by detailed information about how the interest rate varies based on the application of a margin to an index. A large number of consumers in the initial rounds were confused by the reference in the model forms to the London Interbank Offered Rate (LIBOR) as the index. However, in the final round of testing, the model form referenced the LIBOR being published in a major newspaper which worked to assure consumers that the LIBOR is a standard index used for determining variable interest rates on loans.

Consumer testing also indicated that consumers want to see specific figures and dollar amounts for fees that may apply to their loan. Thus the model form requires dollar amounts to be disclosed for each fee included on the form wherever possible.

In addition, testing showed that consumers found the sample total cost information to be useful in assessing the potential impact of a private education loan on their financial future. Consumers indicated that the sample total cost was most understandable when the loan amount, interest rate and loan term were included. In addition, consumers found showing the sample total cost of a loan based on each payment deferral option to be useful information.

Finally, consumers found the presentation of Federal loan alternatives, ''Next Steps,'' and reference notes to be clear and understandable, and the information in these sections to be useful.

Approval Disclosure. Regarding the Approval Disclosure, testing indicated that consumers are most concerned about the rate and loan costs, and that the traditional TILA box style of presenting the key elements of a loan is effective even with novice consumers. In initial testing of the proposed model forms, consumers did not understand explanations of the difference between the interest rate and the APR. For this reason, the model forms published with the proposal were revised to disclose the interest rate more prominently than the APR so that consumers would focus on the rate they understood. In subsequent rounds of testing, the prominence of the interest rate disclosure and the additional context provided to explain the APR improved some consumers' understanding of the concepts, although a few consumers continued to have difficulty understanding the difference between the APR and the interest rate. However, in choosing between two loans, consumers in the tests were more likely to compare the payment schedules, total of payments, and finance charge rather than relying on the interest rate alone.

Testing also showed that consumers generally do not understand detailed explanations of how their variable rate changes based on a publicly available index. For consumers, the most important information regarding how the rate changes was simply that the creditor may not change the rate at will, and instead generally can do so only based on market factors out of the creditor's control.

Testing also indicated that consumers strongly prefer to have all fees disclosed with specific dollar amounts. In addition, the placement of the total loan amount in the box at the top of the form, along with the itemization of the amount financed, improved consumers' understanding of the concept presented by the amount financed—that the amount of credit actually available to the consumer would be less than the total loan amount if fees applied.

Consumers considered the monthly payment schedule and amounts to be critical information in understanding the financial implications of obtaining a private education loan. Most consumers felt the disclosure of the maximum monthly payment amounts and total amount for repayment at the maximum rate was useful information. When shown disclosures where a sample maximum rate was used because no maximum rate applies, consumers indicated that they understood the disclosure was only an example.

As with the Application and Solicitation Disclosure, consumers found the presentation of Federal loan alternatives and ''Next Steps'' to be clear and understandable, and the information in these sections to be useful.

Final Disclosure. Regarding the Final Disclosure, the information required to be disclosed under the HEOA is identical to that required on the Approval Disclosure, except for the right to cancel notice. Recognizing the importance of the right to cancel notice for consumers, the model Final Disclosure provides the right to cancel information as clearly and prominently as possible. Consumers tested immediately saw and read the information in the proposed right to cancel notice.

Results from the initial rounds of testing indicated that consumers did not find the information about Federal loan alternatives to be useful at this stage in the private education loan origination process. Consumers stated that this information is redundant; they have already been told about these options two times (on the Application and Solicitation Disclosure and the Approval Disclosure) and have already decided at this point to obtain a private education loan. Consumers in the later rounds of testing were asked whether they felt the Federal loan alternatives should be included in the Final Disclosure and the majority did not feel such information would be useful at that stage. For these reasons, as discussed in the section-by-section analysis under § 226.47(b)(3), the Board is exercising its exception authority under TILA sections 105(a) and 105(f) to omit information about Federal loan alternatives from the Final Disclosure form.

II. The Board's Rulemaking Authority

The Board has authority under the HEOA to issue regulations to implement paragraphs (1), (2), (3), (4), (6), (7), and (8) of new TILA section 128(e), and to implement section 140(c) of new TILA section 140. HEOA, Title X, Section 1002. In addition to implementing the specific disclosure requirements in TILA section 128(e), the Board has authority under TILA sections 128(e)(1)(R), 128(e)(2)(P), and 128(e)(4)(B) to require disclosure of such other information as is necessary or appropriate for consumers to make informed borrowing decisions. 15 U.S.C.

1638(e)(1)(R), 15 U.S.C. 1638(e)(2)(P), 15 U.S.C. 1638(e)(4)(B).

TILA section 128(e)(9) provides that, in issuing regulations to implement the disclosure requirements under TILA section 128(e), the Board is to prevent duplicative disclosure requirements for creditors that are otherwise required to make disclosures under TILA. However, if the disclosure requirements of section 128(e) differ or conflict with the disclosure requirements elsewhere under TILA, the requirements of section 128(e) are controlling. 15 U.S.C. 1638(e)(9).

TILA also mandates that the Board prescribe regulations to carry out the purposes of the act. TILA specifically authorizes the Board, among other things, to issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with the act, or prevent circumvention or evasion. 15 U.S.C. 1604(a).

TILA also specifically authorizes the Board to exempt from all or part of TILA any class of transactions if the Board determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. The Board must consider factors identified in the act and publish its rationale at the time it proposes an exemption for comment. In proposing exemptions, the Board considered (1) The amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection. 15 U.S.C. 1604(f). The rationales for these exemptions were explained in the proposal and are explained below.

III. Overview of Comments Received

On March 24, 2009, the Board published a proposed rule that would amend Regulation Z's rules by adding disclosure and timing requirements that apply to creditors making private education loans. 74 FR 12464. The Board received seventy-one public comment letters. Several financial institutions and financial services trade associations stated that they supported the Board's efforts to improve the disclosure of credit terms to consumers of private education loans and recognized that the Board's proposal was intended to conform Regulation Z to TILA, as amended by the HEOA. These commenters requested that the Board provide flexibility in the timing of the proposed approval disclosure to allow creditors to approve loans conditioned on verification of information provided by the consumer and the educational institution. These commenters also stated that the Board should not cover loans made ''in whole or in part'' to finance postsecondary educational expenses, as proposed. They expressed concern that such coverage would increase the burden in complying with the rule and could cause some lenders to decline to provide consumers with credit if any part of the loan would be used for postsecondary educational expenses. Some of these commenters also did not support the proposal to make the disclosure of the annual percentage rate (APR) less prominent than the disclosure of the interest rate. A few financial institutions stated that the costs of the new disclosure and timing requirements under the HEOA outweigh the benefits and that consumers would object to delays in consummating a private education loan transaction.

By contrast, consumer advocacy organizations generally supported the HEOA's goal of providing additional disclosure of private education loan terms to consumers and in providing for a 30-day period for the consumer to accept the loan and a three-day right to cancel the loan. Consumer advocates encouraged the Board to maintain coverage of loans used ''in whole or in part'' for postsecondary educational expenses. Most of these commenters did not support the proposal to make the disclosure of the APR less prominent than the disclosure of the interest rate.

The Board also received comments from educational institutions and financial aid administrators and trade associations. These commenters also generally supported the HEOA's requirements to provide additional disclosure of private education loan credit terms to consumers. However, a majority of these commenters stated that educational institutions, or specific types of credit provided by education institutions, should be exempt from the proposed rules. Specifically, these creditors sought exemptions for credit in the form of tuition billing plans that permit the student to pay in installments and for short term ''emergency'' loans provided to students while they await disbursement of other funding sources. A number of financial aid officers commented that the proposed self-certification form would be burdensome and requested an exemption to the requirement to obtain a self-certification form in cases where the creditor certifies the student's financial need directly with the educational institution.

Comments are discussed in detail below in part IV of the **SUPPLEMENTARY INFORMATION**.

IV. Section-by-Section Analysis

Overview

The final rule adds the following new disclosure requirements to Regulation Z for private education loans:

(i) Disclosures with applications (or solicitations that require no application) in § 226.47(a);

(ii) Disclosures when notice of loan approval is provided in § 226.47(b); and

(iii) Disclosures before loan disbursement in § 226.47(c). General rules applicable to the new disclosure requirements were detailed in § 226.46 and associated commentary. Model forms for these disclosures are added to Regulation Z's Appendix H.

To implement TILA's new prohibition on co-branding, § 226.48 prohibits a creditor from using in its marketing a covered educational institution's name, logo, mascot, or other words or symbols readily identified with the institution, to imply that the institution endorses the loans offered by the creditor. The final rule adopts an exception to this prohibition under the Board's TILA section 105(a) authority, for creditors who enter into an agreement where the covered educational institution endorses the creditor's private education loans. Section 226.48 also: Provides the consumer with 30 days following receipt of the approval disclosures to accept the loan and prohibits certain changes to a loan's rate or terms during that time; provides the consumer a right to cancel the loan for three business days after receipt of the final disclosures and prohibits disbursement during that time; requires creditors to obtain a completed self-certification form signed by the consumer before consummating the transaction; and requires creditors with preferred lender arrangements to provide certain information to educational institutions.

The final rule largely adopts the provisions in the Board's March 24, 2009 proposed rule. 74 FR 12464. The Board has made certain modifications to the proposal in response to public comment as described throughout this Section-by-Section analysis. In addition, the provisions in new Subpart F have been redesignated from proposed §§ 226.37, 38, and 39 to §§ 226.46, 47, and 48. Sections 226.37 through 226.45 have been reserved in order to accommodate future rulemakings by the Board.

Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement, and Liability

Section 226.1(b) describes the purposes of Regulation Z. The Board proposed to amend § 226.1(b) to refer to the new provisions for private education loans. Section 226.1(d) provides an outline of Regulation Z. Proposed paragraph (d)(6) referenced the addition of a new Subpart F containing rules relating to private education loans.

No comments were received on these provisions and the Board is adopting them as proposed with redesignated cross-references. In addition, transition rules are added as comment 1(d)(6)–1.

Section 226.2—Definitions and Rules of Construction

Currently, § 226.2(a)(6) contains two definitions of ''business day.'' Under the general definition, a ''business day'' is a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for some purposes a more precise definition applies; ''business day'' means all calendar days except Sundays and specified Federal legal public holidays, for purposes of §§ 226.15(e), 226.19(a)(1)(ii), 226.19(a)(2), 226.23(a), and 226.31(c)(1) and (2). The Board proposed using the more precise definition of business day for all purposes in proposed §§ 226.37, 38, and 39, including for measuring the period during which consumers may cancel a private education loan. Industry commenters requested that the Board adopt the general definition of ''business day,'' or exclude Saturdays from the more precise definition of ''business day.'' These commenters noted that they did not operate their systems for disbursing funds or providing disclosures on a Saturday and expressed concern that including Saturday as a business day could make it difficult to provide required disclosures to consumers in a timely fashion.

Consistent with the Board's approach for certain transactions secured by the consumer's dwelling in § 226.19(a)(1)(i), the Board is adopting the more precise definition of business day in providing presumptions of when consumers receive mailed disclosures. The Board is adopting the general definition of ''business day'' for all other purposes in §§ 226.46, 47, and 48, including for measuring the period of time in which the consumer may cancel the loan. The Board believes that allowing creditors to exclude Saturdays or other days on which the creditor's offices are not open to the public for carrying on substantially all of its business functions will result in consumers being provided more time in which to cancel a private education loan. As discussed in the section-by-section analysis to § 226.48(d), the final rule permits creditors to provide consumers with more time to cancel the loan than the minimum three business days. Thus, whichever definition of ''business day'' the Board were to select, creditors would be free to exclude Saturdays or other days by providing the consumer with more time in which to cancel. The final rule also requires the creditor to disclose prominently the precise date upon which the consumer's right to cancel expires and, based on the consumer testing, the Board believes that consumers will be able to understand precisely their deadline to cancel.

Section 226.3—Exempt Transactions

TILA section 104(3) (15 U.S.C. 1603(3)) exempts from coverage credit transactions in which the total amount financed exceeds $25,000, unless the loan is secured by real property or a consumer's principal dwelling. The HEOA amends TILA section 104(3) to provide that private education loans over $25,000 are not exempt from TILA. The Board proposed to revise § 226.3(b) to reflect this change. The Board did not propose changes to § 226.3(f) because the HEOA did not affect TILA's exclusion of loans made, insured, or guaranteed under title IV of the Higher Education Act of 1965. 15 U.S.C. 1603(7). However, the Board proposed to revise comment 3(f)–1 to remove the list of Federal education loans covered by the exemption because it is outdated, and to clarify that private education loans are not exempt.

The Board is adopting the revisions to § 226.3 as proposed with redesignated cross-references. Under the final rules, as proposed, private education loans are covered by TILA and Regulation Z regardless of the loan's total amount financed.

Section 226.17—General Disclosure Requirements

Proposed §§ 226.38(b) and (c) required creditors to provide the current § 226.18 disclosures for private education loans in addition to the new disclosures. Consequently, the Board proposed to revise § 226.17 to clarify that the format and timing rules for private education loans differ slightly from the rules for other types of closed-end credit. In addition, the Board proposed to remove the special rules for student credit plans.

The Board is adopting the proposed changes to § 226.17 for the format and timing rules for private education loans, with redesignated cross-references. The Board is also eliminating the special rules for student credit plans under § 226.17(i) for credit extensions made on or after the mandatory compliance date of Subpart F. However, as discussed more fully below, the Board is revising rather than removing § 226.17(i) to clarify that student credit extensions made under § 226.17(i) prior to the mandatory compliance date of Subpart F must still follow the requirements in § 226.17(i).

Current § 226.17(a)(1) requires that the closed-end credit disclosures under § 226.18 be grouped together, segregated from everything else, and not contain any information not directly related to the disclosures required under § 226.18. It also requires that the itemization of the amount financed under § 226.18(c)(1) must be separate from the other disclosures required under that section. The Board proposed to revise § 226.17(a)(1) and comment 17(a)(1)–4 to clarify that the information required under § 226.38 must be provided together with the information required under § 226.18. In addition, as discussed in the section-by-section analysis under § 226.47, the Board proposed to allow creditors to provide the itemization of the amount financed together with the disclosures required under § 226.18 for private education loan disclosures.

Annual percentage rate disclosure. Current § 226.17(a)(2), implementing TILA section 122(a), requires the terms ''finance charge'' and ''annual percentage rate,'' together with a corresponding amount or percentage rate, to be more conspicuous than any other disclosure, except the creditor's identity under § 226.18(a). For private education loans, TILA sections 128(e)(2)(A) and 128(e)(4)(A) require a disclosure of the interest rate in addition to the APR. The Board proposed to exercise its authority under TILA section 105(a) to except private education loans from the requirement that the APR be more prominent than other disclosures and proposed to give prominence to the interest rate disclosure that is required by the HEOA. The Board also proposed to exercise its authority under TILA section 122(a) to require that the interest rate be disclosed as prominently as the finance charge. *See* proposed § 226.37(c)(2)(iii).

Some industry, consumer group, and other commenters objected to the proposal to give the interest rate more prominence than the APR. Some of the commenters believed the APR was a better tool for consumers to use to compare the cost of a loan than the interest rate. They believed that emphasizing the interest rate could mislead consumers who do not consider other costs of loans. Other commenters believed that for uniformity, the APR should not deviate from the prominent position in the model forms for other types of closed-end loans. Further, consumer group commenters argued that the data produced from consumer testing was not definitive enough to justify making the exception, noting that most consumers tested did not notice the difference between the APR and interest rate and that the testing involved only 20 consumers. The consumer groups also cited several studies to support retaining the prominence of the APR, including a study that found that more than 70% of the population reported using the APR to shop for closed-end credit.[2]

TILA section 128(e)(1)(A) requires a disclosure of the range of potential interest rates in the application and solicitation disclosure. In consumer testing, some consumers expressed confusion as to why the APR on the approval and final forms was inconsistent with the interest rates disclosed on the application form. Consumers tested indicated that the interest rate was most relevant to them for private education loan purposes. In addition, TILA section 128(e)(9), as added by the HEOA, directs the Board to implement the HEOA's requirements even if those requirements differ from or conflict with requirements under other parts of TILA. The HEOA also requires the Board to develop model forms that may be used for the private education loan disclosures based on consumer testing. HEOA, Title X, Subtitle B, Sec. 1021 (adding TILA section 128(e)(5)(A)).

Consumer testing of private education loan disclosures that continued during and after the comment period confirmed that most consumers understand the interest rate and that it is one of the most important terms to them. At the same time, most consumers do not understand the APR and incorrectly believe that the APR is the interest rate.[3] In the initial rounds of testing the APR was presented more prominently than the interest rate. Most consumers had difficulty reconciling the two terms and some consumers believed that either the APR or the interest rate was a mistake and expressed a concern about the accuracy of the disclosures. Consumer confusion was compounded with the private education loan disclosures. Under the HEOA, the application disclosure that the consumer receives first in the series of forms contains a range of interest rates and not APRs. Consumers expected to see similar disclosures on subsequent forms.[4]

By contrast, in consumer testing of the model forms with a less prominent APR, consumers were less likely to equate the APR with the interest rate. Rather, the APR's less prominent location on the model form encouraged consumers to view it in the context of the explanatory text provided. This, in turn, helped consumers to better understand that the APR was a distinct disclosure that reflected both the interest rate and the fees.[5]

In addition, based on consumer testing, the Board does not believe that making the APR less prominent is likely to cause consumers to focus solely on the interest rate to the exclusion of other costs. When consumers were asked in testing to determine which of two sample loans was less expensive, they relied on information other than the interest rate and APR to make their determination, such as the finance charge or the total of payments. By using the other cost information all consumers tested were able to select the loan that had a lower APR, even when it had a higher interest rate.[6]

The findings from the Board's consumer testing that consumers do not understand the APR are supported in other research. For example, the study that cited high awareness of the APR by mortgage borrowers also found that at least 40% of those borrowers did not understand the relationship between the interest rate and the APR which, the study concluded, ''indicates a significant gap between awareness and understanding.'' [7] Lack of understanding of the APR on the part of the consumer could result in an inaccurate comparison of loan terms. For example, a consumer comparing two loans based on both the APR and the fees might erroneously consider fees that were already included in the APR.

Thus, the Board believes that an exception from the requirement that the APR be disclosed more prominently than other terms is necessary and proper to assure a meaningful disclosure of credit terms for consumers, and it is retained in the final rule.

Timing of disclosures. Current § 226.17(b) requires creditors to make closed-end credit disclosures before consummation of the transaction. As discussed more fully below in the section-by-section analysis under §§ 226.46 and 226.47, the Board is adopting as proposed revisions to § 226.17(b) to require creditors to make the current closed-end disclosures two times for private education loans: Once with any notice of approval of a private education loan, and again before disbursement. Under current comment 17(b)–1, the disclosures must be made before consummation, but need not be given by a particular time, except in certain dwelling-secured transactions. The Board is adopting as proposed revisions to comment 17(b)–1 to clarify that more specific timing rules would apply for private education loans.

The proposed rule did not propose any changes to current § 226.17(f), but the final rule revises that section. Current § 226.17(f) requires redisclosure if disclosures are given before consummation of a transaction under certain conditions. The Board is excluding private education loans from the requirements of § 226.17(f) because the Board believes that the disclosure and other requirements for private education loans make redisclosures under § 226.17(f) unnecessary. Creditors must provide approval disclosures for private education loans and then, after the consumer accepts the loan and before funds are disbursed, provide final disclosures. Thus, consumers will always receive at least two disclosures in private education loan transactions. In addition, with few exceptions, creditors cannot change the loan's rate or terms after providing the disclosures,

[2] Jinkook Lee and Jeanne M. Hogarth, ''The Price of Money: Consumers' Understanding of APRs and Contract Interest Rates,'' 18 J. Pub. Pol'y and Marketing 66, 74 (1999).

[3] Rockbridge Associates, ''Consumer Research and Testing for Private Education Loans: Final Report of Findings'' at 8.

[4] Rockbridge Associates, ''Consumer Research and Testing for Private Education Loans: Final Report of Findings'' at 39.

[5] Rockbridge Associates, ''Consumer Research and Testing for Private Education Loans: Final Report of Findings'' at 8, 43.

[6] Rockbridge Associates, ''Consumer Research and Testing for Private Education Loans: Final Report of Findings'' at 55.

[7] Jinkook Lee and Jeanne M. Hogarth, ''The Price of Money: Consumers' Understanding of APRs and Contract Interest Rates,'' 18 J. Pub. Pol'y and Marketing 66, 74 (1999).

and § 226.48(c) requires redisclosure if certain permitted changes are made after the approval disclosure is provided. Creditors are permitted, however, to make changes to the interest rate based on adjustments to the index. As a result of interest rate fluctuations, the loan's APR may vary outside of the tolerance in § 226.17(f)(2). The Board believes that requiring creditors to redisclose the approval or final disclosures merely because of fluctuations in the interest rate would be burdensome to creditors and could be confusing to consumers who might not understand that the redisclosures reflected only changes in the variable rate, rather than substantive changes in the loan terms. Accordingly, § 226.17(f) in the final rule does not apply to private education loans.

In addition, the final rule revises § 226.17(g) which implements TILA section 128(c). Current § 226.17(g) allows for delayed delivery of disclosures if a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or facsimile machine without face-to-face or direct telephone solicitation. The creditor may delay disclosures until the due date of the first payment if certain information is made available to the consumer or the public before the actual purchase order request. The final rule excludes private education loans from § 226.17(g) because the Board believes that the specific disclosure and timing requirements that the HEOA added to TILA for private education loans supersede TILA's general delayed disclosure provisions implemented in § 226.17(g).

Special rules for student credit extensions. Under current § 226.17(i) and accompanying commentary, Regulation Z applies special disclosure rules to closed-end student loans that are ''student credit plans.'' The commentary to Regulation Z describes a ''student credit plan'' as an extension of credit for educational purposes, where the repayment amount and schedule are not known at the time credit is advanced. The plans include loans made under any student credit plan not otherwise exempt from TILA, whether government or private. Comment 17(i)–1. The credit extended before the repayment period begins under these plans is referred to as the interim student credit extension. The Board understands that most or all private education loans made today are ''student credit plans.''

The Board proposed to eliminate the special rules for student credit plans under § 226.17(i) and accompanying commentary because the new TILA section 128(e) disclosure rules effectively eliminate the disclosure exemptions and special rules in § 226.17(i). Implementing new TILA section 128(e)(2)(H), proposed § 226.38(b)(3)(vii) required the creditor to give the consumer an estimate of the total amount for repayment at the time that the loan is approved. As discussed further below, the Board views the total amount for repayment disclosure as duplicative of TILA's existing total of payments disclosure. Proposed § 226.38(b)(3)(vii) required creditors to disclose the total of payments before a definitive repayment schedule is set. Thus, the HEOA revisions to TILA eliminate the § 226.17(i) exemption for disclosure of the total of payments. This also has the effect of eliminating the other exemptions as well, because an estimate of the total of payments requires the creditor to estimate the finance charge and payment schedule. In addition, the Board proposed to apply the new private education loan disclosure regime to consolidation loans, rendering the commentary on consolidation loan disclosures under comment 17(i)–3 unnecessary.

The Board believes that retaining two different disclosure regimes from which creditors may choose is unnecessarily complex and may not be useful to consumers and creditors. Thus, the final rule eliminates the special rules for student credit plans under § 226.17(i) for loans for which an application is received on or after the mandatory compliance date of §§ 226.46, 47, and 48.

However, in response to public comment the Board is not eliminating § 226.17(i) in its entirety, as proposed. Under current comment 17(i)–1, creditors who choose not to make complete disclosures at the time the credit is extended must make a new set of complete disclosures at the time the creditor and consumer agree upon a repayment schedule for the total obligation. The Board is retaining and revising § 226.17(i) to clarify that the requirement to provide a complete disclosures at the time the creditor and consumer agree upon a repayment schedule for the total obligation remains in effect for student credit extensions made before the mandatory compliance date of §§ 226.46, 47, and 48, and for which the creditor chose not to make complete disclosures before consummation.

For loans subject to §§ 226.46, 47, and 48 the Board did not propose to require creditors to give a new set of disclosures once the creditor and consumer agree upon a repayment schedule. Consumer group commenters suggested that the Board require a new set of disclosures upon repayment. However, TILA as amended by the HEOA, does not require such disclosure for private education loans. The final rules require a complete disclosure at the time the credit is extended. In addition, new disclosures are required under § 226.20(a) in the case of a refinancing of a loan.

Section 226.18—Content of Disclosures

As discussed more fully below, the Board is adopting as proposed, with redesignated cross-references, revisions to the commentary to § 226.18. The final rule requires that creditors provide the disclosures required in § 226.18 along with the disclosures required with notice of approval in § 226.47(b) and with the final disclosures required in § 226.47(c). As proposed, the model forms in Appendix H–19 and H–20 show the disclosures required under § 226.18 as well as the disclosures required under §§ 226.47(b) and (c). However, as explained below, the HEOA's disclosure about limitations on interest rate adjustments differs slightly from that of § 226.18(f)(1)(ii), as interpreted in comment 18(f)(1)(ii)–1. Thus the Board is revising comment 18(f)(1)(ii)–1 to clarify that parts of the comment do not apply to private education loans.

Current § 226.18(f)(1)(ii) requires that if the annual percentage rate in a closed-end credit transaction not secured by the consumer's principal dwelling may increase after consummation, the creditor must disclose, among other things, any limitations on the increase. Current comment 18(f)(1)(ii)–1 states that when there are no limitations, the creditor may, but need not, disclose that fact. By contrast, the HEOA and §§ 226.47(b) and 47(c) require creditors to disclose any limitations on interest rate adjustments, or the lack thereof. Thus, for private education loans, disclosure of the absence of any limitations on interest rate adjustments is required, not optional. In addition, under §§ 226.47(b)(1)(iii), and (c)(1), limitations on rate increases include, rather than exclude, legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations. Comment 47(b)(1)–2, proposed as comment 38(b)(1)–2, discussed below, provides guidance on how creditors are to disclose limitations on interest rate adjustments.

The Board is also revising, as proposed, comment 18(f)(1)(iv)–2, which currently clarifies that for interim student credit extensions creditors need not provide a hypothetical example of the payment terms that would result from an increase in the variable rate. The comment is revised, with a redesignated cross-reference, to replace the reference to interim student credit extensions with a reference to private education loans. Sections 226.47(b)(3)(viii) and 226.47(c)(3) require a disclosure of the maximum monthly payment on a private education loan based on the maximum possible rate of interest. As discussed more fully in the section-by-section analysis in § 226.47, the Board believes that the required disclosure of the maximum monthly payment amount at the maximum rate satisfies the requirement under § 226.18(f)(1)(iv) to disclose a hypothetical example of the payment terms resulting from an increase in the rate. Comment 47(b)(1)–1, proposed as comment 38(b)(1)–1, clarifies that while creditors must disclose the maximum payment at the maximum possible rate, they need not also disclose a separate example of the payment terms resulting from a rate increase under § 226.18(f)(1)(iv).

The Board also proposed to revise comment 18(k)(1)–1 which currently clarifies that interim interest on a student loan is not considered a penalty for purposes of the requirement in § 226.18(k)(1) to disclose whether or not a penalty may be imposed if a loan is prepaid in full. The proposal removed the reference to interim interest on a student loan as an example of what is not a penalty. The Board did not intend to indicate that interim interest on a student loan is considered a penalty. Rather, with the proposed removal of § 226.17(i) and associated commentary, the reference to interim interest on a student loan would no longer be clear. Although the Board is retaining and revising § 226.17(i), to avoid confusion between the terms ''student loan'' and ''private education loan,'' the Board is adopting the proposed revision to comment 18(k)(1)–1. The Board believes that the description of what constitutes a penalty in the remainder of revised comment 18(k)(1)–1 provides sufficient clarity that interim interest on a student loan would not be considered a penalty.

Subpart F

The final rule, as proposed, adds a new Subpart F to contain the rules relating to private education loans. In the final rule, proposed §§ 226.37, 38, and 39 have been redesignated to §§ 226.46, 47, and 48. On July 23, 2009, the Board proposed new disclosure requirements for closed-end loans secured by real property or a dwelling. In order to make these proposed provisions contiguous with the current Special Rules for Certain Mortgage Transactions in Subpart E, the Board proposed to add the new disclosure requirements to §§ 226.37 and 226.38. In order to accommodate the potential for future rulemakings the Board is reserving §§ 226.39 through 226.45.

Section 226.46 Special Disclosure Requirements for Private Education Loans

Section 226.46, proposed as § 226.37, contains general rules about the disclosure and other requirements contained in Subpart F. Proposed § 226.37(a) specified that Subpart F would apply only to private education loans. Section 226.46(a) of the final rule applies Subpart F to all extensions of credit that meet the definition of a private education loan in § 226.46(b)(5). The final rule also permits, but does not require, creditors to comply with Subpart F for certain extensions of credit subject to §§ 226.17 and 18 that are related to financing an education. Specifically, some commenters requested clarification as to whether certain loans that do not meet the definition of private education loan, but are extended to students who have completed graduate school for expenses related to relocation, medical internship or residency, or bar study would be covered. Under § 226.46(a) of the final rule, compliance with Subpart F is optional for extensions of credit that are extended to a consumer for expenses incurred after graduation from a law, medical, dental, veterinary or other graduate school and related to relocation, study for a bar or other examination, participation in an internship or residency program, or similar purposes. New comment 46(a)–1 clarifies that if the creditor opts to comply with Subpart F, it must comply with all the applicable requirements of Subpart F. It also clarifies that if the creditor opts not to comply with Subpart F it must comply with the requirements in §§ 226.17 and 18.

Loans made for bar study, residency, or internship expenses may not meet the definition of ''private education loan'' in § 226.46(b)(5) if the extension of credit will not be used, in whole or in part, for ''postsecondary educational expenses'' as specified in § 226.46(b)(3). Consequently, under the HEOA, compliance with Subpart F would not be mandatory for such loans. However, the Board believes that permitting creditors to comply with Subpart F benefits both creditors and consumers. Creditor commenters requested the ability to comply with Subpart F for these loans because the loans are often made along with private education loans and share operational systems with those loans. Optional compliance would allow creditors to avoid the expense of maintaining separate compliance systems. The Board also believes that permitting creditors to comply with Subpart F will benefit consumers who will receive information about credit terms earlier in the lending process and gain the benefits of a 30-day acceptance period and three-day right to cancel.

Comment 46(a)–1, proposed as comment 37(a)–1 clarifies that if any part of a loan used for post-graduate expenses is also used for postsecondary educational expenses, then compliance with Subpart F is mandatory not optional. It also clarifies that, except where specifically provided otherwise, the requirements and limitations of Subpart F are in addition to the requirements of the other subparts of Regulation Z.

46(b) Definitions

The HEOA amends TILA by adding a number of defined terms in new TILA sections 140 and 128(e). Section 226.46(b), proposed as § 226.37(b), adds these definitions to Regulation Z.

The Board did not propose to add a definition to Regulation Z for one new term defined in the HEOA, ''private educational lender.'' Instead, the Board proposed to use Regulation Z's existing definition of ''creditor'' (12 CFR 226.2(a)(17)). The HEOA defines the term ''private educational lender'' as a financial institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), or a Federal credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) that solicits, makes, or extends private education loans.[8] The term also includes any other person engaged in the business of soliciting, making, or extending private education loans. In the proposal, the Board stated its belief that the ''creditor'' definition would encompass persons ''engaged in the business of'' extending private education loans.[9] The term ''creditor'' applies to a person who regularly extends consumer credit, which is defined as credit extended more than 25 times (or more than 5 times for transactions secured by a dwelling) in

[8] The term ''financial institution'' is not defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), but the Board interprets this term to refer to the defined term ''depository institution,'' which is the most comprehensive definition in section 3 of the Federal Deposit Insurance Act.

[9] The HEOA also covers persons engaged in the business of soliciting private education loans. Under § 226.46(d)(1), proposed as § 226.37(d)(1), the term solicitation is defined as an offer to extend credit that does not require the consumer to complete an application. The term ''solicit'' does not include general advertising or invitations to apply for credit.

the preceding calendar year. 12 CFR 226.2(a)(17).

Under the HEOA, a depository institution or Federal credit union would be covered for any private education loan it makes, regardless of whether or not the institution regularly extended consumer credit. By applying the private education loan rules only to ''creditors,'' the Board proposed to create an exception for depository institutions and Federal credit unions that do not regularly extend consumer credit. The Board requested comment on whether there were instances where an institution that does not regularly extend consumer credit nevertheless makes an occasional private education loan and should be covered by the rule. The few commenters who addressed this issue did not provide specific examples of depository institutions or Federal credit unions that make private education loans but do not meet the definition of creditor.

Under TILA section 105(a), the Board may provide exceptions to TILA for any class of transactions to facilitate compliance with TILA. The Board believes that in most cases depository institutions and credit unions that extend private education loans would also be creditors under Regulation Z. The definition of creditor applies to institutions that extended consumer credit of any type more than 25 times in the preceding calendar year (or more than 5 times for transactions secured by a dwelling). That is, an institution need not make more than 25 private education loans to be covered. If an institution makes 3 private education loans and 23 automobile loans, that institution is a creditor. For institutions that do not meet the definition of creditor, the compliance burden of the private education loans rules appears significant for the small number of loans that they may extend. Applying the private education loan rules to such institutions would likely dissuade them from providing private education loans, diminishing competition and consumer choice for those consumers who may have access to such loans. Thus, the Board believes that this exception is necessary and proper to facilitate compliance with TILA, and it is adopted as proposed in the final rule.

The Board also proposed to exercise its authority under TILA section 105(f) in applying the private education loan rules only to ''creditors,'' as defined in Regulation Z, thereby exempting from the requirements of HEOA depository institutions and Federal credit unions that do not regularly extend consumer credit. The Board understands that the private education loan population contains students who may lack financial sophistication, and that the amount of the loan may be large and the loan itself may be important to the borrower. The Board believes, however, that because the number of instances where a consumer would receive a private education loan from an institution that does not regularly extend consumer credit is very limited, the burden and expenses of compliance that would be assumed by the institution are not outweighed by the benefit to the consumer. Furthermore, the Board believes that the goal of consumer protection would not be undermined by this exemption and that, after considering the 105(f) factors, coverage would not provide a meaningful benefit to consumers in the form of useful protection.

The Board also requested comment on whether other persons not covered by the definition of ''creditor'' should be covered by the rule. A few commenters expressed concern that because the current definition of ''creditor'' includes only persons who met the thresholds for regularly extending consumer credit in the preceding calendar year, it would not include new entrants into the private education loan market in their first year. These commenters suggested that the definition be extended to include those persons who intend to regularly extend private education loans for the coming calendar year.

As proposed, the final rule applies to persons meeting the definition of ''creditor'' under § 226.2(a)(17). The current definition provides persons with certainty as to whether or not they are covered by Regulation Z. An alternative definition based on intent to regularly extend credit would be subjective and persons could not determine whether or not they must comply with Regulation Z until after the fact.

46(b)(1) Covered Educational Institution

The HEOA defines the term ''covered educational institution'' to mean any educational institution that offers a postsecondary educational degree, certificate, or program of study (including any institution of higher education) and includes an agent, officer, or employee of the educational institution. Included in the definition of covered educational institution are ''institutions of higher education,'' as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002). The Higher Education Act of 1965 contains two definitions of the term ''institution of higher education;'' a narrower definition in section 101, and a broader definition in section 102. *See* 20 U.S.C. 1001, 1002. The HEOA explicitly uses the broader definition in section 102 of the Higher Education Act of 1965. HEOA Title X, Section 1001 (adding TILA Section 140(a)(3)). The more expansive definition of institution of higher education, as interpreted by the Department of Education's regulations (34 CFR 600), appears broad enough to encompass most educational institutions that offer postsecondary educational degrees, certificates, or programs of study. The definition of institution of higher education under section 102 of the Higher Education Act of 1965, however, would not include certain unaccredited educational institutions that offer postsecondary educational degrees, certificates, or programs of study. The HEOA's definition of ''covered educational institution'' appears to be broader than the definition of ''institution of higher education'' because the former includes, but is not limited to, the latter. For this reason, § 226.46(b)(1), proposed as § 226.37(b)(1), defines ''covered educational institution'' as an educational institution (as well as an agent, officer or employee of the institution) that would meet the definition of an institution of higher education as defined in § 226.46(b)(2), without regard to the institution's accreditation status.

Comment 46(b)(1)–1, proposed as comment 37(b)(1)–1, clarifies that if an educational institution would not be considered an ''institution of higher education'' solely on account of the institution's lack of accreditation, the institution nonetheless would be a ''covered educational institution.'' It also clarifies that a covered educational institution may include, for example, a private university or a public community college. It may also include an institution, whether accredited or unaccredited, that offers instruction to prepare students for gainful employment in a recognized profession such as flying, culinary arts, or dental assistance. Under the definition, a covered educational institution does not include elementary or secondary schools.

Although the definition of ''covered educational institution'' under the Title X of the HEOA includes an agent, officer or employee of a covered educational institution, the term ''agent'' is not explicitly defined in that section of the HEOA. However, section 151 of the HEOA defines an ''agent'' as an officer or employee of a covered institution or an institution-affiliated organization and excluding any creditor regarding any private education loan made by the creditor. Proposed comment 37(b)(1)–2 clarified that an ''agent'' for the purposes of defining a covered educational institution is an officer or employee of an institution affiliated organization. Comment 46(b)(1)–2 in the final rule further clarifies that an ''agent'' of a covered educational institution includes the institution-affiliated organization itself, as well as an officer or employee of an institution-affiliated organization.

46(b)(2) Institution of Higher Education

The HEOA added the term ''institution of higher education'' to TILA Section 140(a)(3) and defined it to have the same meaning as in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002). The definition encompasses, among other institutions, colleges and universities, proprietary educational institutions and vocational educational institutions. Proposed § 226.37(b)(2) defined ''institution of higher education'' with reference to section 102 of the Higher Education Act of 1965 and to the implementing regulations promulgated by the Department of Education. However, on May 22, 2009, after passage of the HEOA and publication of the Board's proposed rule, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (''Credit CARD Act'') amended TILA and added a definition of the term ''institution of higher education'' to TILA section 127 that differs slightly from the definition of ''institution of higher education'' in TILA section 140. The Credit CARD Act amendment to TILA defines ''institution of higher education'' to include both sections 101 and 102 of the Higher Education Act of 1965. Credit CARD Act, Title III, Section 305 (adding TILA section 127(r)(1)(D)).

The definition of institution of higher education in TILA section 127 does not apply to private education loans. However, the Credit CARD Act added substantive provisions that apply to ''institutions of higher education'' to TILA section 127 and section 140, indicating that the difference between the two definitions was inadvertent. Thus, the Board believes that the two definitions of ''institution of higher education'' should be reconciled. In order to ensure that the definition of ''institution of higher education'' is consistent throughout Regulation Z, the final rule adopts a definition of ''institution of higher education'' that includes both sections 101 and 102 of the Higher Education Act of 1965. The Board understands, after consulting with the Department of Education, that intuitions covered under section 101 of the Higher Education Act of 1965 would also be covered under section 102 of the Higher Education Act. As a result, the Board is not expanding the coverage of the final rule, but rather is adopting a definition that is consistent with the most recent statutory amendment to TILA. The Board is adopting comment 46(b)(2)–1, proposed as comment 37(b)(2)–1, providing examples of institutions of higher education.

46(b)(3) Postsecondary Educational Expenses

The HEOA defines ''postsecondary educational expenses'' as any of the expenses that are listed as part of the cost of attendance of a student under section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll). Section 226.46(b)(3) adopts this definition as proposed in § 226.37(b)(3), and provides illustrative examples of postsecondary educational expenses. Examples included tuition and fees, books, supplies, miscellaneous personal expenses, room and board, and an allowance for any loan fee, origination fee, or insurance premium charged to a student or parent for a loan incurred to cover the cost of the student's attendance. Comment 46(b)(3)–1, adopted as proposed in comment 37(b)(3)–1, clarifies that the examples in the rule are not exhaustive.

46(b)(4) Preferred Lender Arrangement

The HEOA defines ''preferred lender arrangement'' as having the same meaning as in section 151 of the Higher Education Act of 1965 (20 U.S.C 1019). Section 226.46(b)(4), proposed as § 226.37(b)(4), adopts this definition. Comment 46(b)(4)–1, proposed as comment 37(b)(4)–1, clarifies that the term refers to an arrangement or agreement between a creditor and a covered educational institution under which a creditor provides education loans to consumers for students attending the school and the school recommends, promotes, or endorses the creditor's private education loans. It does not include arrangements or agreements with respect to Federal Direct Stafford/Ford loans, or Federal PLUS loans made under the Federal PLUS auction pilot program.

46(b)(5) Private Education Loan

Proposed § 226.37(b)(5) implemented the HEOA's definition of a ''private education loan.'' Under the proposal, a private education loan was defined as a loan that is not made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) and is extended expressly, in whole or in part, for postsecondary educational expenses to a consumer, regardless of whether the loan is provided through the educational institution that the student attends. A private education loan excluded any credit otherwise made under an open-end credit plan. It also excluded any closed-end loan secured by real property or a dwelling.

Proposed comment 37(b)(5)–1 clarified that a loan made ''expressly for'' postsecondary educational expenses included loans issued explicitly for expenses incurred while a student is enrolled in a covered educational institution. It also covered loans issued to consolidate a consumer's pre-existing private education loans.

Under § 226.46(b)(5) and related commentary, the Board is adopting the definition of ''private education loan'' substantially as proposed, but with exceptions for certain credit extensions provided by covered educational institutions. Extensions of credit with a term of 90 days or less, and tuition billing plans where an interest rate will not be applied to a balance and the term of the transaction is not greater than one year, even if the credit is payable in more than four installments, are exempt.

Loans used for multiple purposes. Proposed comment 37(b)(5)–2 addressed loans, other than open-end credit or any loan secured by real property or a dwelling, that a consumer may use for multiple purposes, including postsecondary education expenses. Under the proposal, creditors extending such loans, could, at their option, provide the disclosures under § 226.38(a) on or with an application or solicitation. However, under § 226.37(d)(1)(iii), the Board proposed to exercise its authority under TILA section 105(a) and except multi-purpose loans from the application disclosure requirements of proposed § 226.38(a). As explained below, the Board stated its belief that this exception is necessary and proper to effectuate the purposes of, and facilitate compliance with, TILA.

The Board also proposed to exercise its authority under TILA section 105(f) to exempt such loans from the proposed § 226.38(a) disclosure requirements implementing TILA section 128(e)(1). The Board stated its view that these application and solicitation disclosure requirements do not provide a meaningful benefit to consumers in the form of useful information or protection for loans that may be used for multiple purposes. The Board considered that the private education loan population includes many students who may lack financial sophistication and the size of the loan could be relatively significant and important to the borrower. However, with respect to loans that may be used for multiple purposes, the creditor may not know at application if the consumer intends to use such loans for educational purposes. A requirement to provide a consumer with the proposed § 226.38(a) disclosures would likely have been complicated and burdensome to creditors and potentially infeasible to implement. Furthermore, the Board believed that the borrower would receive meaningful information about the loan through the subsequent approval and final disclosures required under proposed §§ 226.38(b) and 38(c), respectively. The HEOA also provides borrowers with significant rights, such as the right to cancel the loan. The Board recognized that such multi-purpose loans would not be secured by the principal residence of the consumer, which is a factor for consideration under section 105(f). The Board stated its belief that consumer protection would not be undermined by this exemption.

Proposed comment 37(b)(5)–2 clarified that if the consumer expressly indicates on an application that the proceeds of the loan will be used to pay for postsecondary educational expenses, the creditor must comply with the disclosure requirements of proposed §§ 226.38(b) (approval disclosures) and 38(c) (final disclosures) and proposed § 226.39 (including the 30 day acceptance period and three-business-day right to cancel). To determine the purpose of the loan, proposed comment 37(b)(5)–2 stated that the creditor may rely on a check-box or purpose line on a loan application.

Proposed comment 37(b)(5)–2 also clarified that the creditor must base the disclosures on the entire amount of the loan, even if only a part of the proceeds is intended for postsecondary educational expenses. The Board's view was that this approach would be the least administratively burdensome for creditors and would also be clearer to consumers. Providing disclosures based on a partial loan amount might cause a consumer to misinterpret the correct amount of his or her loan obligation. Therefore, the Board proposed to exercise its authority under TILA section 105(a) to require that the approval and final disclosure requirements of HEOA be applied to the portion of the loan that is not a private education loan. As explained above, the Board stated its belief that this provision is necessary and appropriate to assure a meaningful disclosure of credit terms for consumers.

The Board requested comment on whether the private education loan application disclosures should be required for loans that may be used for multiple purposes, or, alternatively, whether such loans should be exempt from any of the other disclosure requirements. The Board also requested comment on whether creditors who make loans that may be used for multiple purposes should be required to comply with the requirement to obtain a self-certification form under proposed § 226.39(e) and, if so, whether creditors should be required to obtain the self-certification form only from consumers who are students, or from all consumers, such as parents of a student.

The Board received numerous comments on the proposed application of the private education loan rules to loans that may be used for multiple purposes. Industry commenters, including both large and small institutions and their representatives, stated that applying the proposed rule to such loans would be burdensome. Small institutions stated that the additional disclosures and timing requirements would not be beneficial to their customers who expect to be able to apply for and receive installment loans quickly based on an existing relationship with the institution. Larger institutions noted that they often have dedicated student lending operations and that applying the rules to general installment loans would require them to update systems not only for their student lending divisions, but also for other lending divisions. Some commenters expressed concern that, rather than build systems to comply with the private education loan rules, some institutions would decline to make a loan if the consumer indicated that the funds would be used for postsecondary educational expenses. Commenters also expressed concern that basing the disclosures on the entire loan amount, rather than the amount used for educational expenses would cause confusion.

By contrast, consumer group commenters supported the proposed inclusion of loans that may be used for multiple purposes, noting the concern that exempting such loans could create an opportunity for evasion of the proposed rules. They also supported basing the disclosures on the entire loan amount, rather than the amount used for educational expenses. These commenters suggested that creditors be required to inquire whether a loan would be used for postsecondary educational expenses.

The final rule would cover multipurpose loans largely as proposed. The Board believes that coverage of loans that may be used for multiple purposes is warranted by the statutory inclusion of loans made ''expressly,'' that is, explicitly, for postsecondary educational expenses. The Board also believes that there is potential for evasion of the rules if creditors could avoid compliance by lending the consumer more than the amount needed for educational purposes. One of the goals of the HEOA is to prevent students from borrowing more than their financial need to finance their education. Comment 46(b)(5)–2 provides that the creditor may rely on a check-box or purpose line in an application to determine the loan's purpose. In addition, the creditor must base the disclosures on the entire amount of the loan, even if only part of the loan is to be used for postsecondary educational expenses. The Board believes that providing disclosures based on a partial loan amount might cause a consumer to misinterpret the correct amount of his or her loan obligation. The Board is also adopting the exception to the requirement that the application disclosures under § 226.47(a) be provided for multiple-purpose loans. The creditor may not know at application if the consumer intends to use such loans for educational purposes. A requirement to provide a consumer with the § 226.47(a) disclosures would likely be complicated and burdensome to creditors and potentially infeasible to implement.

Credit provided by educational institutions. In addition to comments about loans that may be used for multiple purposes, the Board received a number of comments from educational institutions requesting clarification as to whether tuition billing plans were covered by the proposed rules. These commenters noted that such billing plans do not involve a disbursement of funds to the consumer and do not involve the application of an interest rate to a balance. Consequently, a major part of the new disclosures required by the HEOA, such as disclosures about interest rates and payment amounts at the maximum interest rate, would not apply to such billing option plans. In addition, these commenters suggested that neither the 30 day acceptance period nor the three-day right to cancel would be meaningful to consumers in a context where no funds are disbursed to the consumer. Most commenters who addressed this issue noted that these billing plans usually have terms of one year or less.

Under § 226.46(b)(5)(iv)(B), the Board is revising the definition of ''private education loan'' to exclude certain billing plans provided by educational institutions. If payable in more than four installments, these plans may be considered credit under Regulation Z and would be subject to the requirements of §§ 226.17 and 18.

However, the Board agrees with commenters that the additional disclosure and timing rules for private education loans would not provide meaningful disclosures to consumers and could potentially make it more difficult for consumers to benefit from flexible payment options. The Board believes that the disclosure requirements under §§ 226.17 and 18 provide consumers with adequate information for these types of plans. In response to public comment, the Board is exercising its authority under TILA section 105(a) to adopt a narrow exception for billing plans that do not apply an interest rate to the credit balance and have a term of one year or less, even if payable in more than four installments. Based on public comment, the Board believes that the limited exception for billing plans of one year or less that do not charge interest will provide sufficient flexibility to schools to accommodate students' payment needs while ensuring that extensions of credit that are more likely to be a substitute for a private education loan are covered. Comment 46(b)(5)–3 clarifies that such plans may nevertheless be extensions of credit subject to §§ 226.17 and 18. As explained above, the Board believes that this exception is necessary and proper to effectuate the purposes of, and facilitate compliance with, TILA.

Educational institution commenters also requested an exemption for ''emergency'' loans provided to a student for a short term while the student waits for other funds to be disbursed. Most commenters that requested an exemption for these ''emergency'' loans stated that they have a term of 90 days or less. Because these loans may charge interest, they would not fall under the exemption for billing payment plans. However, as with billing payment plans, the Board believes that the additional disclosures required by the HEOA, such as the maximum rate disclosures, would not provide a meaningful benefit to consumers taking out short-term loans. Creditors would still be obligated to provide the general disclosures required under Regulation Z. Moreover, these commenters focused particularly on the burden that could be imposed on students by the prohibition on disbursing funds during the three-day cancellation period. For example, if delayed disbursement caused the student to fail to meet a tuition payment deadline the student may not be allowed to enroll in school, increasing the time needed to graduate. The Board believes that short-term loans provided by the school benefit consumers and that the HEOA's requirements, especially the three-day cancellation period, could impair their effectiveness by delaying disbursement of loan proceeds without providing a meaningful benefit to students. Accordingly, the final rule exempts loans provided by the school with a term of 90 days or less.

Comment 46(b)(5)–3 clarifies that such loans are not considered private education loans, even if interest is charged on the credit balance. Because these loans charge interest, they are not covered by the exception under § 226.46(b)(5)(iv)(B). However, these loans are extensions of credit subject to the requirements of §§ 226.17 and 18. The comment clarifies that if legal agreement provides that repayment is required when the consumer or the educational institution receives certain funds (such as by deposit into the consumer's or educational institution's account), the disclosures should be based on the creditor's estimate of the time the funds will be delivered.

The exceptions that apply when the covered educational institution is the creditor apply only when the school itself is the creditors and not when an institution-affiliated organization is the creditor. The definition of covered educational institution in § 226.46(b)(1) includes an agent of the institution, meaning and institution-affiliated organization. Comment 46(b)(1)–2 clarifies that institution-affiliated organization does not include the creditor with respect to any private education loan made by that creditor. Thus, if an institution-affiliated organization is the creditor, it is not a ''covered educational institution'' and the institution-affiliated organization's loans are not exempt.

Educational institution commenters also requested clarification as to whether state ''service requirement'' programs would be considered private education loans. Under these programs, money is disbursed to students who agree as part of the legal obligation to complete a service obligation, such as teaching or practicing medicine in an underserved area. If the consumer completes the obligation, no repayment of principal or interest is required. However, if the consumer does not complete the service obligation, under the terms of the legal obligation, the consumer is required to repay the funds with interest.

The Board notes that the definition of ''credit'' under § 226.2(a)(14) means the right to defer payment of debt or to incur debt and defer its payment. Certain ''service requirement'' programs may not be credit under Regulation Z if the terms of the legal obligation contemplate that the consumer will not be required to repay principal or interest on disbursed funds. If the consumer is required to repay disbursed funds only in connection with an unanticipated breach of the consumer's legal obligation to perform a service, the consumer may not have a credit extension under Regulation Z.

46(c) Form of Disclosures

Similar to the requirements imposed by § 226.17 for the disclosures required by § 226.18, the Board is adopting § 226.46(c)(1), proposed as § 226.37(c)(1), to require the disclosures for private education loans be made clearly and conspicuously. The Board is also adopting § 226.46(c)(2), proposed as § 226.37(c)(2), to require that the approval and final disclosures under §§ 226.47(b) and 47(c) to be in writing in a form that the consumer may keep. The disclosures must be grouped together, be segregated from everything else, and not contain any information not directly related to the disclosures required under §§ 226.47(b) and 47(c), which include the disclosures required under § 226.18. However, the disclosures may include an acknowledgement of receipt, the date of the transaction, and the consumer's name, address, and account number. In addition, as proposed, the following disclosures may be made together with or separately from other required disclosures as permitted under current § 226.17: the creditor's identity under § 226.18(a), insurance or debt cancellation under § 226.18(n), and certain security interest charges under § 226.18(o).

As proposed, the term ''finance charge'' and corresponding amount, when required to be disclosed under § 226.18(d), and the interest rate required to be disclosed under §§ 226.47(b)(1)(i) and 47(c)(1), must be more conspicuous than any other disclosure, except the creditor's identity under § 228.18(a). As discussed in the section-by-section analysis under § 226.17, the annual percentage rate is not required to be more prominent than other terms.

Comment 46(c)–1, proposed as comment 37(c)–1, clarifies that creditors may follow the rules in § 226.17 in complying with the requirement to provide the information required under § 226.18, as well as the requirement that the disclosures be grouped together and segregated from everything else. However, in contrast to § 226.17, the itemization of the amount financed under § 226.18(c)(1) need not be separate from the other disclosures.

TILA Section 128(b)(1) requires any computations or itemization to be segregated from the disclosures required in TILA Section 128(a). However, the HEOA requires creditors to disclose a number of terms that are part of the itemization of the amount financed under § 226.18(b), such as the principal amount of the loan and an itemization of fees. *See* §§ 226.47(b)(2), 47(b)(3)(i), 47(c)(2) and 47(c)(3)(i). Based on consumer testing, the Board believes that consumers may be confused about the difference between the required disclosure of the amount financed (§ 226.18(b)) and the loan's total principal amount in cases where those two disclosures are different. Providing an itemization can help clarify distinction between the ''amount financed'' and the ''total loan amount'' by showing the consumer how the amount financed is derived. It can also provide a clear and understandable disclosure of certain fees. For these reasons, the Board is exercising its authority under TILA section 105(a) to except private education loans from the requirement that the itemization of the amount financed be segregated from the other disclosures. The Board believes that this exception is necessary and proper to effectuate the purposes of, and facilitate compliance with, TILA.

The Board proposed to allow creditors to provide the disclosure of the loan's total principal amount as part of the itemization of the amount financed, if the creditor opts to provide an itemization. However, because the final model disclosures provide the loan's total principal amount, not the amount financed, prominently, the final rule allows the creditor to disclose the amount financed as part of the itemization if the creditor opts to provide an itemization.

Section 226.46(c)(2), proposed as § 226.37(c)(2), permits creditors to make disclosures to consumers in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by § 226.47(a) may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act on or with an application or solicitation provided in electronic form. The self-certification form required under § 226.48(e) may be obtained in electronic form subject to the requirements in that section. In addition, as discussed below in the section-by-section analysis under §§ 226.48(c) and (d), if creditors have provided the approval or final disclosures electronically in accordance with the E-Sign Act, creditors may accept electronic communication of loan acceptance or cancellation, respectively.

Comment 46(c)(2)–1, proposed as comment 37(c)(2)–1, contains guidance on the manner in which disclosures may be provided in electronic form. Electronic disclosures are deemed to be on or with an application or solicitation if they—(1) Automatically appear on the screen when the application or solicitation reply form appears; (2) are located on the same Web ''page'' as the application or solicitation reply form and the application or reply form contains a clear and conspicuous reference to the location and content of the disclosures; or (3) are posted on a Web site and the application or solicitation reply form is linked to the disclosures in a manner that prevents the consumer from by-passing the disclosures before submitting the application or reply form. This approach is consistent with the rules for electronic disclosures for credit and charge card applications under comment 5a(a)(2)–1.ii.

46(d) Timing of Disclosures

Section 226.46(d), proposed as § 226.37(d), contains the rules governing the timing of the proposed disclosures. Proposed comment 37(d)–1 contained guidance specifying that if the creditor places the disclosures in the mail, the consumer is considered to have received them three business days after they are mailed. For purposes of proposed §§ 226.37, 226.38, and 226.39, the term ''business day'' was given the more precise definition used for rescission and other purposes, meaning all calendar days except Sundays and the Federal holidays referred to in § 226.2(a)(6).

As discussed in the section-by-section analysis under § 226.2(a)(6), in the final rule the more precise definition of ''business day'' applies only to measuring the time period in which consumers are deemed to have received mailed disclosures. The final rule includes a new § 226.46(d)(4) providing that the consumer is deemed to have received mailed disclosures within three business days after they are mailed. Comment 46(d)–1 clarifies that the definition of ''business day'' used in § 226.46(d)(4) means all calendar days except Sundays and the Federal holidays referred to in § 226.2(a)(6). For example, if the creditor places the disclosure in the mail on Thursday, June 4, the disclosures are considered received on Monday, June 8.

Proposed comment 37(d)–1 stated that the disclosures are considered provided when received by the consumer. However, in order to clarify the timing of different aspects of the final rule, this is not adopted in comment 46(d)–1. Instead, as discussed in this section-by-section analysis under § 226.46, the final rule specifies when disclosures must be provided and, as discussed in the section-by-section analysis under § 226.48, the final rule provides guidance on when disclosures are deemed to be received by the consumer for purposes of measuring the 30-day acceptance period and three-day cancellation period.

Application disclosures. The HEOA requires creditors to provide disclosures in an application or in a solicitation that does not require the consumer to complete an application. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA section 128(e)(1)). Under § 226.46(d)(1)(i), proposed as § 226.37(d)(1), creditors are allowed to provide the disclosures on or with the application or solicitation because the disclosures are likely to be longer than a single page. The final regulation, as proposed, defines the term ''solicitation'' to mean an offer of credit that does not require the consumer to complete an application. A ''solicitation'' would also include a ''firm offer of credit'' as defined in the Fair Credit Reporting Act (FCRA). 15 U.S.C. 1681 *et seq.* Because consumers who receive ''firm offers of credit'' have been preapproved to receive credit and may be turned down only under limited circumstances, the Board believes that these preapproved offers are of the type intended to be captured as a ''solicitation,'' even though consumers are typically asked to provide some additional information in connection with accepting the offer. The definition of ''solicitation'' is similar to that contained in § 226.5a(a)(1) for credit and charge card application disclosures. Comment 46(d)(1)–1, proposed as comment 37(d)(1)–1, provides additional guidance that invitations to apply for a private education loan would not be considered solicitations.

Proposed § 226.37(d)(1)(ii) dealt with provision of disclosures in a telephone application or solicitation initiated by the creditor. The creditor was allowed, but not required, to orally disclose the information in proposed § 226.38(a). Alternatively, if the creditor did not disclose orally the information in § 226.38(a), the creditor was required to provide or place in the mail the disclosures no later than three business days after the consumer applied for the credit. The Board stated its belief that orally disclosing to consumers all of the information in proposed § 226.38(a), including rate and loan cost information, information about Federal loan alternatives, and loan eligibility requirements, may make it difficult for consumers to comprehend and retain the information.

The Board requested comment on alternatives to providing application disclosures in telephone applications or solicitations initiated by the creditor. In response to comment, the final rule revises the proposal in two ways. First, under § 226.47(d)(1)(ii), the oral disclosure provisions for telephone applications or solicitations apply regardless of whether the creditor or the consumer initiates the communication. Both industry and consumer group commenters stated that consumers of private education loans often initiate telephone applications and suggested that both consumers and creditors would benefit if the same rules applied regardless of which party initiates the communication.

Second, the Board recognized in the proposal that creditors may sometimes be able to communicate approval of the consumer's application at the same time that the creditor would provide the application disclosures. Consumers may be confused by receiving both the application disclosures and the approval disclosures at the same time. Therefore, the Board proposed to exercise its authority under TILA section 105(a) to create an exception from the requirement to provide the application disclosures under proposed § 226.38(a) if the creditor did not provide oral application disclosures but did provide or place in the mail the approval disclosures in proposed § 226.38(b) no later than three business days after the consumer requested the credit. As explained above, the Board stated its belief that this exception is necessary and proper to assure a meaningful disclosure of credit terms for consumers.

The Board also proposed to exercise its authority under TILA section 105(f) in proposing the exemption, described above, from the requirement to provide the application disclosures under proposed § 226.38(a), as required by TILA section 128(e)(1). The Board believed that, as described above, the application disclosure requirements would not provide a meaningful benefit to consumers in the form of useful information or protection because they would also contemporaneously receive the approval disclosures which would provide the consumer with adequate information. Moreover, the Board stated its view that receiving both the application and approval disclosures at the same time may complicate and hinder the credit process by causing consumer confusion. The Board recognized that the private education loan population contains students who may lack financial sophistication, and that the amount of the loan may be large and the loan itself may be important to the consumer. The Board also noted that private education loans are not secured by the consumer's residence and that HEOA provides the consumer with the right to cancel the loan. Finally, in considering the last factor under section 105(f), the Board did not believe that the goal of consumer protection would be undermined by such an exemption.

Commenters supported this aspect of the proposal, but industry commenters also suggested that if creditor denies the consumer's application within three business days of the telephone communication, the creditor should not be required to provide the application disclosures. The Board agrees that it would be confusing for the consumer to receive an adverse action notice simultaneously with or shortly after receiving the application disclosures. Under § 226.47(d)(1)(ii) of the final rule, if the creditor does not provide the application disclosures orally and the creditor denies the consumer's application within three business days, the creditor need not send the application disclosures.

As discussed above in the section-by-section analysis under § 226.46(b)(5), § 226.46(d)(1)(iii) would create an exception to the application disclosure requirement for a loan, other than open-end credit or any loan secured by real property or a dwelling, that the consumer may use for multiple purposes including, but not limited to, postsecondary educational expenses.

Approval disclosures. Section 226.46(d)(2), proposed as § 226.37(d)(2), requires that the disclosures specified in § 226.47(b) be provided before consummation on or with any notice to the consumer that the creditor has approved the consumer's application for a loan. If the creditor provides approval to the consumer by mail, the disclosures have to be mailed at the same time as the approval. If the creditor provides approval by telephone, the creditor must place the disclosures in the mail within three business days of the approval. The creditor may provide the disclosures solely in electronic form if the creditor has complied with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. § 7001 *et seq.*); otherwise, the creditor must place the disclosures in the mail within three business days.

The HEOA requires that the disclosures be provided contemporaneously with loan approval. However, loan approval is an internal process of the creditor's and it often may not be feasible to provide the disclosures at the precise moment that the creditor approves the loan. The Board believes that by requiring the disclosures be provided at the time the creditor communicates approval to the consumer, the consumer will receive the information at the earliest opportunity contemporaneous with loan approval. In addition, the rule provides creditors with certainty as to when the disclosure must be provided. The Board believes that creditors are likely to notify the consumer that the loan has been approved shortly after approval is granted because the creditor cannot consummate and disburse the loan until the consumer has received the required approval disclosures and accepted the loan.

The Board requested comment on alternative approaches to the timing of the approval disclosure. As discussed more fully in the section-by-section analysis under § 226.48(c), industry commenters requested clarification as to when "approval" occurs. They noted that they currently provide conditional notices of approval to consumers but that final approval does not occur until information provided by the consumer and the educational institution are verified. These commenters noted that under the prohibition on changing terms during the consumer's 30-day acceptance period in proposed § 226.39(b), they could no longer provide conditional approvals and expressed concern that final approvals would come too late in the process for the 30-day acceptance period to be meaningful to consumers.

The final rule requires creditors to provide the approval disclosures on or with any notice of approval, as proposed. However, to ensure that the approval disclosure comes as early as reasonably possible consistent with the HEOA's prohibition on the creditor changing the terms of the loan, § 226.48(c) allows creditors to make certain, limited changes to loan terms after loan approval without providing another 30-day acceptance period. In addition, comment 46(d)(2)–1 explicitly permits the creditor to communicate that additional information is required from the consumer before approval may be granted, without triggering the disclosure requirements of § 226.47(b).

Final disclosures. Proposed § 226.37(d)(3) required final disclosures to be provided to the consumer after the consumer accepts the loan and at least three business days prior to disbursing the private education loan funds.

In the final rule § 226.46(d)(3), requires the final disclosures to be provided to the consumer after the consumer accepts the loan, but does not base the timing on when the private education loan funds are disbursed. Section 226.48(d) prohibits the creditor from disbursing funds until at least three business days after the consumer receives the final disclosures. The reference in proposed § 226.37(d)(3) to the disbursement of funds was potentially confusing and did not add a meaningful restriction on the timing of providing the disclosures.

In both the proposed and final rule, the timing of the final disclosure differs slightly from the language used in the HEOA. For the reasons discussed below, the Board believes that creditors may not always be able to comply with the literal text of the HEOA, and that the Board's timing rule implements the purpose of the HEOA's final disclosure.

The HEOA requires a final disclosure contemporaneously with the consummation of a private education loan. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(4)). Regulation Z defines ''consummation'' as the time that a consumer becomes contractually obligated on a credit transaction. 12 CFR 226.2(a)(13). The corresponding staff commentary provides that applicable state law governs in determining when a consumer becomes contractually obligated.[10] The Board recognizes that states define when a consumer becomes contractually obligated in a variety of ways. The multiple state definitions could result in considerable confusion among creditors as to the required timing of the final disclosures. Under many current private education loan agreements, the consumer is not contractually obligated until funds are disbursed to the consumer. This would create a compliance problem for creditors making loans in these cases because, in addition to requiring delivery of the final disclosures contemporaneously with consummation, the HEOA forbids creditors from disbursing funds until three business days after the consumer receives the final disclosures. Thus, where the consumer is not contractually obligated until the funds are disbursed, creditors cannot comply with the literal language of the HEOA; a creditor cannot simultaneously provide a disclosure at the time of disbursement and not disburse funds until three business days after the disclosure is provided. The HEOA adds further complexity to determining when the consumer becomes contractually obligated because it requires creditors to provide an approval disclosure to the consumer and hold the terms open for 30 days for the consumer to accept. It is not clear how this process would affect various states' interpretations of when the consumer becomes contractually obligated. Thus, creditors may face considerable uncertainty as to when the required disclosures must be provided.

The Board interprets the phrase ''contemporaneously with consummation'' to mean a time after the consumer accepts the loan that is at least three days before disbursement. Accordingly, the Board is adopting § 226.46(d)(3) to require that the final disclosures be provided after the consumer accepts the loan and, as discussed in the section-by-section analysis below, § 226.48(d) to prohibit disbursement until three days after the consumer receives the final disclosures. The Board solicited comment on alternative approaches to the timing of the final disclosure that achieve the statutory purpose while ensuring that compliance is possible in all cases and commenters generally supported the Board's approach. The Board believes that the purpose of the final disclosure, and the consumer's three-business day right to cancel following receipt of that disclosure, is to ensure that consumers are given a final opportunity to evaluate their need for a private education loan after acceptance and before the funds are actually disbursed. The Board believes that rule will accomplish the statute's objectives while ensuring that creditors have reasonable certainty in complying with the rule's timing requirement.

46(e) Basis of Disclosures and Use of Estimates

Section 226.46(e), adopted as proposed in § 226.37(e), requires that the disclosures be based on the terms of the legal obligation between the parties and is similar to current § 226.17(e). If any information necessary for an accurate disclosure is unknown to the creditor, the creditor must make the disclosure based on the best information reasonably available at the time the disclosure is provided and state clearly that the disclosure is an estimate. For example, the creditor may not know the exact date that repayment will begin at the time that credit is advanced to the consumer. The creditor is permitted to estimate a repayment start date based on, for instance, an estimate of the consumer's graduation date.

46(f) Multiple Creditors; Multiple Consumers

Proposed § 226.37(f), provided rules for disclosures where there are multiple creditors or consumers. If there are multiple creditors only one set of disclosures could be given and the creditors were required to agree which creditor must comply. If there are multiple consumers, the creditor was permitted to provide the disclosure to any consumer who is primarily liable on the obligation.

Consumer group commenters urged the Board to require that the disclosures be provided to all consumers primarily liable on the obligation. However, proposed § 226.37(f) was consistent with the treatment of other disclosures under Regulation Z and the Board is adopting it as proposed in § 226.46(f).

46(g) Effect of Subsequent Events

Under proposed § 226.37(g) and comment 37(g)–1, if an event that occurred after consummation rendered the final disclosures under proposed § 226.38(c) inaccurate, the inaccuracy would not be a violation of Regulation Z. For example, if the consumer initially chose to defer payment of principal and interest while enrolled in an educational institution, but later chose to make payments while enrolled, such a change would not make the original disclosures inaccurate.

Proposed § 226.37(g) was modeled after current § 226.17(e). However, because only one set of disclosures are required under § 226.17, while two sets are required for private education loans, commenters requested clarification of the effect of subsequent events on the approval disclosures required under proposed § 226.38(b). Specifically, commenters noted that because the proposed rule had excepted private education loans from § 226.17(e), but provided an analogous rule in proposed § 226.37(g) only for final disclosures, the proposal did not address the effect of subsequent events on approval disclosures.

In the final rule, § 226.46(g) is broken out into separate rules for the approval disclosures under § 226.47(b) and the final disclosures under § 226.47(c). For approval disclosures, the rule clarifies that if a disclosure under § 226.47(b) becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of Regulation Z (12 CFR part 226), although new disclosures may

[10] The comment states that when a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; Regulation Z does not make this determination. Comment 2(a)(13)–1.

be required under § 226.48(c). Comment 46(g)–1 clarifies that although inaccuracies in the disclosures required under § 226.47(b) are not violations if attributable to events occurring after disclosures are made, creditors are restricted under § 226.48(c)(2) from making certain changes to the loan's rate or terms after the creditor provides an approval disclosure to a consumer. Creditors are also required to make subsequent disclosures in the form of the final disclosures required under § 226.47(c) and therefore, except as specified under § 226.48(c)(4), need not make new approval disclosures in response to an event that occurs after the creditor delivers the required approval disclosures. For example, at the time the approval disclosures are provided, the creditor may not know the precise disbursement date of the loan funds and must provide estimated disclosures based on the best information reasonably available. If, after the approval disclosures are provided, the creditor learns from the educational institution the precise disbursement date, new approval disclosures would not be required, unless specifically required under § 226.48(c)(4) if other changes are made at the same time. Similarly, the creditor may not know the precise amounts of each loan to be consolidated in a consolidation loan transaction and information about the precise amounts would not require new approval disclosures, unless specifically required under § 226.48(c)(4) if other changes are made.

For final disclosures required under § 226.47(c), § 226.46(g)(2) rule clarifies that if a disclosure under § 226.47(c) becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of Regulation Z (12 CFR part 226. For example, if the consumer initially chooses to defer payment of principal and interest while enrolled in a covered educational institution, but later chooses to make payments while enrolled, such a change does not make the original disclosures inaccurate.

Section 226.47 Content of Disclosures

Section 226.47, proposed as § 226.38, establishes the content that a creditor is required to include in its disclosures to a consumer at three different stages in the private education loan origination process: (1) On or with an application or a solicitation that does not require the consumer to complete an application, (2) with any notice of approval of the private education loan, and (3) after the consumer accepts the loan.

Preventing Duplication of Existing TILA Disclosure Requirements

While adding a number of disclosure requirements for private education loans, the HEOA did not eliminate a creditor's obligation to provide consumers with the information required to be disclosed before consummation of any closed-end loan, in accordance with TILA sections 128(a) through (d). The HEOA requires the Board to prevent, to the extent possible, duplicative disclosure requirements for creditors making private education loans under TILA. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(9)). Where the disclosure requirements of section 128(e) differ or conflict with other disclosure requirements under TILA that apply to creditors, the requirements of section 128(e) are controlling. *Id.*

The new application and solicitation disclosures proposed under § 226.38(a) did not duplicate disclosures previously required under TILA because TILA does not require disclosures at the time of application or solicitation for closed-end credit. Under TILA sections 128(a) through (d), as implemented by §§ 226.17 and 226.18, the closed-end loan disclosures applicable to private education loans are required to be provided only once, before consummation. However, the Board proposed to require the § 226.18 closed-end loan disclosures be provided twice for private education loans—once when the loan is approved, and again with the final disclosures, in a manner shown in the proposed model forms in Appendix H. Specifically, the Board proposed to require creditors to provide consumers the existing § 226.18 disclosures along with the proposed § 226.38(b) approval disclosures. The Board also proposed to require that the § 226.18 disclosures be provided along with the final disclosures required under new TILA section 128(e)(4) (implemented by proposed § 226.38(c), discussed below).

Under TILA sections 128(e)(2)(P) and 128(e)(4)(B), the Board has authority to add such other information as necessary or appropriate for consumers to make informed borrowing decisions. With respect to the approval disclosures, the Board stated in its proposal its belief that combining the existing closed-end credit TILA disclosures with the new private education loan disclosures provided to consumers the most relevant transaction-specific information at a point where the consumer was most likely to make the decision as to whether a particular private education loan met the consumer's needs. Once the creditor communicates approval to the consumer, the consumer has the right to accept the loan terms at any time within 30 calendar days of the date the consumer receives the approval disclosures. During this time, with a few exceptions, the creditor may not change the rate and terms of the loan. As a result, if the consumer accepts the loan within that 30-day period, the rate and terms of the approved loan will generally be the rate and terms of the loan ultimately made to the consumer. To make an informed decision during this deliberation period, the Board stated that consumer would be best served by having the information required under §§ 226.17 and 226.18, as well as under proposed § 226.38(b).

In addition, consistent with the requirement in § 226.17 that creditors must provide closed-end disclosures before consummation of the credit transaction, proposed § 226.37(d)(2) required that the approval disclosure be provided before consummation. Based on TILA's definition of ''consummation'' in § 226.2(a)(13), this meant that the closed-end credit disclosures must be provided before the consumer was contractually obligated on the loan. State laws may vary as to when consummation occurs (*see* comment 2(a)(13)–1), but the Board believes that the time of approval is likely to precede the time at which the consumer becomes contractually obligated on a loan.

The Board believed that providing the § 226.18 disclosures a second time along with the final disclosures under proposed § 226.38(c) would enhance consumer understanding by making it easier for consumers to compare the approval and final disclosures. By having two sets of disclosures that largely mirror each other, both in content and in form, consumers would be able to easily compare terms between the two sets of disclosures and likely would be better able to decide whether or not to exercise their right to cancel the loan. Moreover, relatively few disclosures could be removed from the final disclosure if the current TILA disclosures were not required, given the substantial overlap with the HEOA requirements. Thus, the Board stated that requiring uniformity would likely enhance consumer understanding without unduly burdening creditors.

Commenters generally supported the inclusion of the information required in § 226.18 along with the approval and final disclosures in proposed §§ 226.38(b) and 38(c) and the final rule adopts these requirements in §§ 226.47(b) and 47(c). In combining the § 226.18 disclosures with the disclosures under §§ 226.47(b) and 47(c) in a model form, the Board, as proposed, retains many of the basic elements of the closed-end loan model form in existing Regulation Z Appendix H (*see* Appendix H–2). The model forms are discussed further in the section-by-section analysis under Appendix H.

Graduated payment disclosure. TILA section 128(e)(2)(K) requires the creditor to disclose whether monthly payments are graduated. As proposed, the Board is implementing this requirement as part of the requirement that creditors provide the information under § 226.18. Specifically, the payment schedule disclosure under § 226.18(g) requires creditors to show whether the payments are graduated.

Other instances in which the Board is merging specific § 226.18 disclosures with the disclosures in §§ 226.47(b) and (c) to avoid duplicative disclosures are discussed throughout this section-by-section analysis below.

General Disclosure Requirements

Proposed comment 38–1 clarified that the disclosures required under proposed § 226.38 need be provided only as applicable, except where specifically provided otherwise. For example, under proposed §§ 226.38(b)(1) and (c)(1) creditors would specifically be required to disclose the lack of any limitations on adjustments to the loan's interest rate, rather than omit the disclosure as inapplicable. However, for some loans, especially loans made to consolidate a consumer's existing private education loans, a number of the required disclosures may not apply. For example, the required disclosures about the availability of Federal student loans would generally not apply to a consolidation loan because Federal loan programs do not allow a consumer to consolidate private education loans. For this reason, the Board proposed to allow disclosures for consolidation loans to omit the disclosures required in proposed §§ 226.38(a)(6), and (b)(4).

Industry commenters sought further clarification that disclosure of Federal loan alternatives would not apply to other types of loans for which Federal funding is not available. In response to these comments, comment 47–1 of the final rule also lists the transactions for which compliance under Subpart F is optional, such as medical residency or bar study loans, as loans for which §§ 226.47(a)(6) and (b)(4) are not applicable.

47(a) Application or Solicitation Disclosures

Section 226.47(a), proposed as § 226.38(a), specifies the information that a creditor must disclose to a consumer on or with any application for a private education loan or any solicitation for a private education loan that does not require an application. The disclosures may be included either on the same document as the application or solicitation or on a separate document, as long as the creditor provides the required disclosures to the consumer at the required time. Other guidance on delivery of the disclosures required under § 226.47(a) is provided in § 226.46, corresponding commentary, and in this section-by-section analysis under § 226.46. Revisions to the final rule regarding the provision of application and solicitation disclosures in telephone applications are discussed in the section-by-section analysis under § 226.46(d)(1).

47(a)(1) Interest Rates

Section 226.47(a)(1), proposed as § 226.38(a)(1), requires creditors to disclose information regarding the interest rates that apply to the private education loan being offered.

Proposed § 226.38(a)(1)(i) required creditors to disclose the initial interest rate or range of rates that are being offered for the loan. TILA section 128(e)(1)(A) requires disclosure of the potential range of rates of interest applicable to the loan, but does not clarify how this requirement should be applied to loans with variable interest rates that might change between the time of application and approval of the loan. The Board proposed to require that the creditor disclose the minimum and maximum starting rates of interest available at the time that the creditor provides the application or solicitation to the consumer.

The Board recognized that these rates might vary based on the creditor's underwriting criteria for a particular loan product, including a consumer's credit history. Based on consumer testing, the Board believes that providing a general explanation of how an interest rate would be determined provides the context necessary for a consumer to understand why more than one rate is being disclosed and how a creditor would determine a consumer's interest rate if the consumer were to apply for the loan. For this reason, the Board proposed to add a disclosure requirement under its TILA section 128(e)(1)(R) authority. If the rate will depend, in part, on a later determination of the consumer's creditworthiness or other factors, the creditor would be required to state that the rate for which the consumer may qualify will depend on the consumer's creditworthiness and other factors. Proposed comment 38(a)(1)(i)–2 clarified that the disclosure does not require the creditor to list the factors that the creditor will use to determine the interest rate.

Section 226.47(a)(1) adopts proposed § 226.38(a)(1)(i) largely as proposed. Comment 47(a)(1)(i)–2 clarifies that the creditor may, at its option, specify any factors other than the consumer's credit history that it will use to determine the interest rate. For example, if the creditor will determine the interest rate based on information in the consumer's or co-signer's credit report and the type of school the consumer attends, the creditor may state, ''Your interest rate will be based on your credit history and other factors (co-signer credit and school type).''

Proposed comment 38(a)(1)(i)–1 clarified that the rates disclosed must be rates that are actually offered by the creditor. For variable rate loans, the comment provided guidance on when a rate disclosure would be considered timely so that the disclosed rate would be deemed to be actually offered. For disclosures that are mailed, rates would be considered actually offered if the rates were in effect within 60 days before mailing. For disclosures in printed applications or solicitations made available to the general public, or for disclosures in electronic form, rates would be considered actually offered if the rates were in effect within 30 days before printing or within 30 days before the disclosures are sent to consumers electronically or, for disclosures made on an Internet Web site, within 30 days before being viewed by the public. For disclosures in telephone applications or solicitations, rates provided orally would be considered actually offered if the rates are currently applicable at the time the disclosures are provided. Proposed comment 38(a)(1)(i)–1 was consistent with the rules for variable-rate accuracy in credit and charge card application disclosures under §§ 226.5a(c), (d), and (e).

Industry commenters expressed concern that proposed comment 38(a)(1)(i)–1 required interest rate information on an Internet Web site to be in effect as of the time the consumer viewed the information. However, the Board's intent was to provide that such information is deemed actually offered if in effect within 30 days before being viewed by the public. Final comment 47(a)(1)(i)–1 has been revised to clarify this.

Industry, consumer group, and educational institution commenters all expressed concern that for variable-rate loans the interest rates disclosed under § 226.47(a)(1) not be allowed to reflect an interest rate other than the rate based on the index and margin used to make rate adjustments. For example, commenters pointed to certain ''borrower benefits,'' such as a reduction in the interest rate for a series of on-time payments that creditors may offer. According to commenters, few consumers achieve these benefits and often the benefits are not contained in the legal obligation between the parties.

Under § 226.46(e)(1), the disclosures must reflect the terms of the legal obligation between the parties. Section 226.47(a)(1) requires a disclosure of the rate or rates applicable to the loan. Comment 47(a)(1)(i)–3 clarifies that the disclosure of the interest rate or range of rates must reflect the rate or rates calculated based on the index and margin that will be used to make interest rate adjustments under the loan. The comment also permits the creditor to disclose a brief description of the index and margin, or range of margins, used to make rate adjustments. Consumer testing conducted for the Board indicated that consumers' understanding of how a variable-rate loan works is enhanced by such information.

Fixed or variable rate loans, rate limitations. The Board is adopting proposed §§ 226.38(a)(1)(ii) and 38(a)(1)(iii) as §§ 226.47(a)(1)(ii) and 47(a)(1)(iii). Section 226.47(a)(1)(ii) requires the creditor to disclose whether the interest rate applicable to the loan is fixed or may increase after consummation of the transaction. TILA section 128(e)(1)(A) requires disclosure of whether the interest rate applicable to the loan is fixed or variable. Comment 47(a)(1)(iii)–1, proposed as comment 38(a)(1)(iii)–1 clarifies that the variable rate disclosures do not apply to interest rate increases based on delinquency (including late payment), default, assumption, or acceleration. If the loan's interest rate would fluctuate solely because of one or more of these actions, but in no other circumstances, the interest rate is considered fixed.

As proposed, if the interest rate may increase after consummation, § 226.47(a)(1)(iii) requires the creditor to disclose any limitations on interest rate adjustments, or, if there are no limitations on interest rate adjustments, that fact. Under comment 47(a)(1)(iii)–2, when disclosing any limitations on interest rate adjustments, the creditor must disclose both: (1) The maximum allowable increase during a single time period, or the lack of such a limit, and (2) the maximum allowable interest rate over the life of the loan, or the lack of a maximum rate. For example, a creditor could disclose that the maximum interest rate adjustment is two percent in a single month and that the maximum interest rate on the loan can never exceed twenty-five percent over the life of the loan. Consistent with the disclosures based on the maximum rate in §§ 226.47(b) and 47(c) discussed below, limitations include legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations. However, if the applicable rate limitation is in form of a legal limit, such as a state's usury cap (rather than a maximum rate specified in the legal obligation between the parties), the creditor must disclose that the maximum rate is determined by applicable law. The creditor is also required to disclose that the consumer's actual interest rate may be higher or lower than the range of rates disclosed under § 226.47(a)(1)(i), if applicable.

Co-signer or Guarantor Disclosure. Proposed § 226.38(a)(1)(iv) implemented TILA section 128(e)(1)(D), which requires disclosure of requirements for a ''co-borrower,'' including any changes in the applicable interest rates that may apply to the loan if the loan does not have a ''co-borrower.'' HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(1)(D)). The Board interprets the phrase ''co-borrower,'' to mean a co-signer.

Proposed § 226.38(a)(1)(iv) required the creditor to state whether a co-signer is required and whether the applicable interest rates typically will be higher if the loan is not co-signed or guaranteed by a third party. If the presence of a co-signer or guarantor would not affect the loan's interest rate, the creditor was required to disclose that fact. The rule required only a statement and the creditor was not required to estimate any potential changes in the applicable interest rates numerically.

One industry commenter noted that the Board's Regulation B, which implements the Equal Credit Opportunity Act, prohibits creditors from requiring co-signers unless certain conditions are met. 12 CFR 202.7. This commenter expressed concern that the requirement to disclose whether a co-signer is required could cause confusion with the requirements of Regulation B. The HEOA does not alter the prohibitions in Regulation B. Accordingly, § 226.47(a)(1)(iv) of the final rule does not adopt the requirement to state whether a co-signer is required. Rather, the final rule, as proposed, requires disclosure of whether interest rates typically will be higher without a co-signer. In addition, § 226.47(a)(5) requires disclosure of certain eligibility criteria for co-signers. These provisions implement the HEOA's requirement to disclose the requirements for a co-borrower.

47(a)(2) Fees and Default or Late Payment Costs

Proposed § 226.38(a)(2) required disclosure of the fees or range of fees applicable to the private education loan and other default or late payment costs, implementing the fee and penalty disclosures required in TILA sections 128(e)(1)(E) and (F). Under the proposal, the creditor was required to itemize all fees required to obtain the private education loan (proposed § 226.38(a)(2)(i)) and any applicable charges or fees, changes to the interest rate, and adjustments to principal based on the consumer's default or late payment (proposed § 226.38(a)(2)(ii)).

Proposed comment 38(a)(2)–1 explained that the creditor must disclose the dollar amount of each fee required to obtain the loan, unless the fee is based on a percentage, in which case a percentage may be disclosed. If the exact amount of a fee is not known at the time of disclosure, the creditor could disclose the dollar amount or percentage for each fee as an estimated range and must clearly label the fee amount as an estimated range.

Neither the HEOA nor its legislative history clarifies whether Congress intended the fees or range of fees disclosure to require an itemization of all fees, or rather to allow for disclosure of a single dollar or percentage amount for all fees combined. The Board proposed to require an itemization of fees, but to permit the creditor to provide an estimated range of the dollar or percentage amount of each fee if a single dollar or percentage amount is not known. Hearings preceding enactment of the HEOA expressly alerted Congress to concerns about excessively high origination fees and the charging of separate additional fees.[11] In addition, the legislative history indicates that the HEOA is intended to require creditors of private education loans to provide full information to borrowers regarding their loans and to protect the interests of private education loan consumers by requiring creditors prominently to disclose all loan terms, conditions and incentives.[12]

[11] *See* National Consumer Law Center, ''Testimony before the U.S. Senate Committee on Health, Education, Labor, and Pensions regarding 'Ensuring Access to College in a Turbulent Economy' '' (Mar. 17, 2008), p. 8.

[12] *See* U.S. House of Representatives, Committee on Education and Labor, ''Higher Education Opportunity Act of 2008: Protecting Borrowers of Federal and Private Student Loans,'' *<http://edlabor.house.gov/micro/coaa_protect.shtml>* (visited Oct. 31, 2008).

Proposed comment 38(a)(2)–2 clarified that the fees to be disclosed include finance charges under § 226.4, such as loan origination fees and credit report fees, as well as fees not considered finance charges but required to obtain credit, such as an application fee charged whether or not credit is extended.

Implementing TILA section 128(e)(1)(E), the proposal also required the creditor to disclose fees and costs based on defaults or late payments of the consumer, including adjustments to the interest rate, charges, late fees, and adjustments to principal. The HEOA requires a similar disclosure at approval and again in the final disclosure required after the consumer accepts the loan. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Sections 128(e)(2)(E) and (e)(4)(B)).

One difference between the proposal and TILA section 128(e)(1)(E) is that the latter requires disclosure of ''finance charges'' based on defaults or late payments, whereas the Board's proposed regulation eliminated the word ''finance'' and required disclosures of ''charges'' based on defaults or late payments. TILA section 106(a) defines the ''finance charge'' as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. 15 U.S.C. 1605. The Board has interpreted the definition of ''finance charge'' in Regulation Z to expressly exclude charges for late payment, delinquency, default, or a similar occurrence. 12 CFR 226.4(c)(2). By contrast, the HEOA does not define the term ''finance charges,'' but simply states that ''finance charges'' based on the consumer's default or late payment must be disclosed. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(1)(E)). However, under current Regulation Z, there are no ''finance charges'' based on the consumer's default or late payment. To give effect to the requirements of HEOA, the Board proposed to use its authority under HEOA and impose additional disclosure requirements including charges based on defaults or late payments that are not covered by the definition of finance charge under Regulation Z. Therefore the word ''charges,'' without the word ''finance,'' was used in proposed § 226.38(a)(2)(ii) and in the corresponding provisions for other private education loan disclosures (proposed §§ 226.38(b)(2)(ii) and 38(c)(2)).

The Board did not propose to require creditors to disclose fees that would apply if the consumer exercised an option after consummation under the agreement or promissory note for the private education loan, such as fees for exercising deferment, forbearance, or loan modification options. Creditors were not required to disclose third-party fees and costs for collection- or default-related expenses that might be passed on to the consumer, as these are not easily predicted and may never apply.

The Board requested comment on whether creditors should be required to disclose these or other fees. Some consumer group commenters suggested that fees for exercising deferment, forbearance or loan modification options may be important to some consumers. However, the final rule does not require the disclosure of such fees. Based on consumer testing, the Board believes that consumers are unlikely to shop and compare loans based on such fees. Given the amount of information required to be disclosed, the Board believes that disclosure of these fees could produce information overload and distract consumers from more relevant information.

A few commenters also requested clarification as to whether fees charged when the consumer enters repayment of a loan for which payments were deferred during an interim period were fees to ''obtain'' the loan.

The Board is adopting proposed § 226.38(a)(2) as § 226.47(a)(2). In addition, the Board is clarifying in comment 47(a)(2)–2 that because repayment fees are considered finance charges, they must be disclosed as fees required to obtain the loan under § 226.47(a)(2).

47(a)(3) Repayment Terms

Section 226.47(a)(3), proposed as § 226.38(a)(3), requires disclosure of information related to repayment.

Loan term. Proposed § 226.38(a)(3)(i) implemented TILA section 128(e)(1)(G), which requires disclosure of the term of the private education loan. Proposed comment 38(a)(3)(i)–1 clarified that the term of the loan is the period of time during which regular principal and interest payments must be made on the loan. For example, where repayment begins upon consummation of the private education loan, the disclosed loan term would be the same as the full term of the loan. By contrast, where repayment does not begin until, for instance, after the student is no longer enrolled, the disclosed loan term would be shorter than the full term of the loan. If more than one repayment term is possible, the creditor must disclose the loan term as the longest possible repayment term. Proposed § 226.38(a)(3)(i) is adopted as § 226.47(a)(3)(i).

Payment deferral options. Proposed § 226.38(a)(3)(ii) required disclosure of information relating to the options offered by the creditor to the consumer to defer payments during the life of the loan, implementing TILA section 128(e)(1)(I). Under the Board's TILA section 128(e)(1)(R) authority, the proposal also required that if the creditor does not offer any options to defer payments, the creditor must state that fact. Proposed comment 38(a)(3)–2 clarified that payment deferral options include both options to defer payment while the student is enrolled and options for payment deferral, forbearance or payment modification during the loan's repayment term. The disclosure would have been required to include a description of the length of the deferment period, the types of payments that may be deferred, and a description of any payments that are required during the deferment period. The creditor would also have been permitted to disclose any conditions applicable to the deferment option, such as that deferment is permitted only while the student is continuously enrolled.

Under proposed § 226.38(a)(3)(iii) and proposed comment 38(a)(3)–3, if the creditor offered payment deferral options that applied while the student is enrolled in a covered educational institution, the creditor would be required to disclose the following additional information for each deferral option: (1) Whether interest will accrue while the student is enrolled in a covered educational institution; and (2) if interest accrues while the student is enrolled at a covered educational institution, whether payment of interest may be deferred and added to the principal balance.

Proposed comment 38(a)(3)–4 explained that disclosure of payment deferral options may be combined with the disclosure of cost estimates required in § 226.38(a)(4). For example, the creditor could describe each payment deferral option in the same chart or table that provides the cost estimates for each payment deferral option. This approach was used in the Board's proposed sample form contained in Appendix H–21.

A number of industry commenters requested clarification on the requirements of proposed § 226.38(a)(3)(ii). That section required creditors to disclose options the consumer may have to defer payment after the loan's repayment period begins, such as options for forbearance or deferral upon re-enrolling in an educational program. Comment 38(a)(3)(ii)–2 required a description of the length of the deferment period, the types of payments that may be deferred, and a description of any payments that are required during the deferment period for all payment deferral options, both in-school and after repayment begins. However, the Board's proposed model and samples form did not indicate where such information was to be provided. Commenters stated that descriptions of deferral options during the repayment period would be lengthy and could detract from the other information provided on the model forms.

The final rule adopts §§ 226.38(a)(3)(ii) and 38(a)(3)(iii) as §§ 226.47(a)(3)(ii) and 47(a)(3)(iii), largely as proposed. However, to conform to the final model and sample forms, the Board is clarifying in comment 47(a)(3)–2 that the creditor may disclose the length of the maximum initial in-school deferment period. In addition, comment 47(a)(3)–2 clarifies that if the creditor offers payment deferral options that may apply during the repayment period, the creditor need only disclose a statement referring the consumer to the legal obligation for more information. Comment 47(a)(3)–4 also clarifies that the creditor may combine all of the disclosures required under § 226.47(a)(3), including the loan term, with the cost estimate disclosure required in § 226.47(a)(4).

In addition, the final rule includes new § 226.47(a)(3)(iv) requiring a disclosure of private education loan discharge limitations in bankruptcy. The disclosure of limitations of discharge of private education loans in bankruptcy is mandated by TILA section 128(e)(2)(E) for the approval disclosures and TILA section 128(e)(4)(B) for the final disclosures. It is not statutorily required in the application and solicitation disclosures prescribed by TILA section 128(e)(1)(E). The Board requested comment on whether disclosure of education loan discharge limitations in bankruptcy should be included in the application and solicitation disclosures as implemented by proposed § 226.38(a). Consumer group commenters supported including the bankruptcy disclosures and other commenters who addressed the issue did not oppose it. The Board believes that the bankruptcy disclosures will be useful to consumers earlier in the lending process, when consumers are most likely to be considering a wide range of education financing options. The Board also believes adding bankruptcy disclosures to the application and solicitation disclosures provides for uniformity across the disclosure forms. Thus, the Board is exercising its authority under TILA section 128(e)(1)(R) by adding a disclosure similar to the disclosures required under §§ 226.47(b)(3)(vi) and 47(c)(3).

47(a)(4) Cost Estimates

Implementing TILA section 128(e)(1)(K), § 226.47(a)(4), proposed as § 226.38(a)(4), requires creditors to provide an example of the total cost to a consumer of a sample loan at the highest initial rate of interest actually offered by the creditor, from the time of consummation until the loan is repaid. The HEOA does not define the term ''total cost,'' and, as proposed, the Board interprets ''total cost'' to mean the total of payments disclosed in accordance with the rules in § 226.18(h). *See* comment 47(a)(4)–1.

Basis for estimates. Under proposed § 226.38(a)(4) and comment 38(a)(4)–2, creditors were required to disclose an example of the total cost of the loan calculated using the highest initial rate of interest applicable to the loan and the fees applicable to loans at the highest initial rate of interest. For example, if the creditor offers a range of rates and fees that depend on the consumer's creditworthiness and particular fees will apply to loans with the highest interest rate, then the creditor must include those fees in the total cost estimate.

In order to provide consumers with information about the effect that financing fees has on the total cost of the loan, proposed § 226.38(a)(4) and comment 38(a)(4)–2 required that the creditor base the total cost estimate on a loan amount of $10,000 plus the finance charges applicable to loans at the highest initial rate of interest. For example, if the creditor charges a 3% origination fee on loans with the highest initial interest rate, and finances the 3% fee, under the proposal the creditor would calculate the total cost of the loan based on a $10,300 total loan amount. However, while the creditor would have been required to base the calculation on the total loan amount, the creditor would have to disclose that the example provides the total cost of a $10,000 amount financed, rather than disclosing the total loan amount used in calculating the loan cost estimate.

The HEOA calls for an example based on the principal amount actually offered by the creditor. However, at the application stage, the creditor does not know the specific loan amount the consumer will request. Rather than permit each creditor to choose a loan amount upon which to base the disclosure, the Board believed that specifying uniform assumptions about the loan amount would allow consumers more easily to compare different loan products. The proposal allowed consumers to compare the cost of receiving a uniform $10,000 disbursement under different loans.

The Board also proposed to provide creditors with flexibility if they do not make loans of the size that the Board specified. If the creditor only offers a particular type of loan for less than $10,000, the creditor would be required to use a $5,000 principal amount.

The Board requested comment on alternative ways of ensuring that the total cost example reflects the cost of loan fees. Specifically, the Board requested comment on whether an assumed loan amount of $10,000 should be used without adding fees to the loan amount, but instead separately adding the fees to the total of payments. The Board requested comment on whether private education loan consumers have historically been more likely to add fees to the loan amount they request, or to deduct the fees from the loan amount requested (or pay them separately by cash or check). The Board also requested comment on the practical limitations, if any, for creditors to determine the fees that would be applicable to loans where the highest initial rate of interest applies. In addition, the Board requested comment on whether the total cost example should be based on an assumed amount financed of $10,000, as proposed, or on a higher or lower amount. The Board also requested comment on whether the assumption of a $5,000 amount financed when creditors do not offer loans of $10,000 or more was an appropriate alternative.

Commenters generally supported the Board's proposed approach to ensuring that the total loan cost example provided a consistent basis for calculating the total cost so that consumers could accurately compare loans. Specifically, most commenters supported a calculation method that assumed that prepaid finance charges are included in the total loan amount so that the total cost will reflect the effect of the consumer paying interest on the finance charges. Commenters supported requiring creditors to use a $10,000 amount financed or, if the creditor does not offer loans of $10,000 or more, a $5,000 amount financed. Commenters did not state that there were practical limitations on determining the amount of fees that would apply to loans at the highest rate.

Two industry group commenters noted that creditors are not uniform in the way they calculate prepaid finance charges that are based on a percentage of the loan amount. According to these commenters, the majority deduct prepaid finance charges from the total loan amount, rather than adding them to the loan amount. These commenters requested that the Board allow creditors to choose the method the creditor normally uses for assessing prepaid finance charges. In the alternative, the commenters suggested that if the Board imposed a uniform calculation method that it be based on the more common practice of deducting prepaid finance charges from the total loan amount.

In the final rule, § 226.47(a)(4) is adopted largely as proposed in § 226.38(a)(4), but with a change in the total cost calculation method. Comment 47(a)(4)–2.i, as proposed in comment 38(a)(4)–2, requires creditors to calculate the total cost estimate by determining all finance charges that would be applicable to loans with the highest initial rate of interest. For example, if a creditor charges a range of origination fees from 0% to 3%, but the 3% origination fee would apply to loans with the highest initial interest rate, the lender must assume the 3% origination fee is charged. Comment 47(a)(4)–2.i also requires the creditor to base the total cost example on a principal amount that results in a $10,000 amount financed when all prepaid finance charges are financed. The creditor must disclose the example as reflecting the $10,000 disbursement, rather than the full loan amount. If the creditor only offers a particular private education loan for less than $10,000, the creditor may assume a total loan amount that results in a $5,000 amount financed for that loan.

The Board recognizes that prepaid finance charges can be assessed and paid in different ways depending on the creditor's practices and the consumer's needs. However, the Board believes that in order for consumers to be able to easily compare the costs of different loan products using the total cost example on the application and solicitation disclosures, creditors must use uniform assumptions about the way prepaid finance charges are assessed and paid.

Comment 47(a)(4)–2.i, as proposed, requires creditors to assume that all prepaid finance charges are financed by the consumer rather than paid separately by cash or check. However, fees based on a percentage of the loan amount can be assessed in two different ways, even when they are financed. Under the proposal, creditors were required to assume that the fee was assessed as a percentage of a hypothetical $10,000 amount financed. Thus, a 3% fee resulted in a $300 charge. This charge, in turn, was added to the $10,000 amount financed resulting in a total principal loan amount of $10,300. Accordingly, the consumer would borrow $10,300 in order to obtain a $10,000 disbursement.

The assumption that fees are assessed as a percentage of the $10,000 amount financed and then added to the total loan amount reflects the practices of some, but not all creditors. Another practice assesses fees as a percentage of the total loan amount and then deducts the fees from the loan amount. For example, in this case a total loan amount of $10,309.28, times a 3% origination fee results in a finance charge of $309.28. The creditor does not, however, add an extra $309.28 to the loan balance. Instead, the creditor deducts the $309.28 from the loan amount and disburses $10,000 to the consumer. The resulting amount financed (the $10,309.28 principal loan amount less the $309.28 prepaid finance charge) is $10,000.

Under comment 47(a)(4)–2.ii in the final rule, if a prepaid finance charge is based on a percentage of the amount financed, for purposes of the example, the creditor must assume that the fee is assessed on the total loan amount, even if this is not the creditor's usual practice. In order to ensure that consumers may accurately compare total cost examples from different creditors, the Board is not allowing creditors to choose whether to add or subtract prepaid finance charges. Rather, based on comments received, the final rule requires creditors to use the method that appears to be more common.

Highest initial rate. Proposed § 226.38(a)(4)(i) required creditors to calculate the total cost example at the maximum rate of interest, and proposed comment 38(a)(4)–3 clarified that the ''maximum'' rate of interest meant the highest initial rate of interest disclosed in the range of rates under proposed § 226.38(a)(1)(i). Some industry commenters requested clarification in the regulation that the phrase ''maximum rate of interest'' used in proposed § 226.38(a)(4)(i) was the highest initial interest rate rather than the maximum possible interest rate. Section 226.47(a)(4)(i) is revised to clarify that the total cost example should be based on the highest rate required to be disclosed under § 226.47(a)(1). As a result, proposed comment 38(a)(4)–3 is unnecessary and therefore is not adopted.

Payment deferral options. Under comment 47(a)(4)–3, proposed as comment 38(a)(4)–4, the loan cost example must include an estimate of the total cost of the loan for each in-school deferral option disclosed in § 226.47(a)(3)(iii). For example, if the creditor provides the consumer with the option to begin making principal and interest payments immediately, to defer principal payments but begin making interest-only payments immediately, or to defer all principal and interest payments while in school, the creditor is required to disclose three estimates of the total cost of the loan, one for each deferral option.

Comment 47(a)(4)–3 also clarifies that if the creditor adds accrued interest to the loan balance (i.e., interest is capitalized), the estimate of the total loan cost should be based on the capitalization method that the creditor actually uses for the loan. For instance, for each deferred payment option where the creditor would capitalize interest on a quarterly basis, the total loan cost must be calculated assuming interest capitalizes on a quarterly basis.

Proposed comment 38(a)(4)–5 provided guidance on the assumed deferral period on which to base the total cost example. For loan programs intended for educational expenses of undergraduate students, the creditor would have been required to assume that the consumer defers payments for four years plus the loan's maximum applicable grace period, if any. For all other loans the creditor would have been required to assume that the consumer defers for two years plus the maximum applicable grace period, if any, or the maximum time the consumer may defer payments under the loan program, whichever time is less. The Board believed that consumers would be better able to compare loan cost examples for loans that allow the consumer to defer payments if those examples are based on uniform assumptions about how long the consumer will remain in school. The Board proposed to require creditors assume a four-year deferral period for consumers applying for undergraduate loans since most undergraduate programs are four years long. The Board believed that using a four-year term would ensure that the disclosure is most meaningful to consumers who are at the beginning of their undergraduate education, and therefore likely are considering education loans for the first time. For all other types of loans, the proposal required creditors assume a two-year enrollment period (or to use the maximum deferral period for the loan, if less than two-years). The Board believed that a two-year enrollment period represented a term that would be applicable to most other postsecondary education programs and would meaningfully inform consumers of the effect of deferring payment on the total costs of the loan for more than a minimal period of time.

The Board requested comment on the proposed deferral period assumptions for calculating the total cost examples under proposed § 226.38(a)(4). Specifically, the Board requested comment on whether creditors should be allowed to modify the total cost disclosure if the creditor knows a consumer's specific situation. For example, if the creditor knows that a consumer is a college senior, the Board asked whether the creditor should be allowed to provide a cost estimate based on a one-year deferral period, rather than a four-year deferral period. The Board also requested comment on whether two years is an appropriate term for non-undergraduate private education loans, or whether another term that would be a statistically more accurate representation of an average or median deferment period should be used. The Board also requested comment on whether lenders should be permitted to modify the disclosure for specific educational programs that are generally of a fixed length, such as three years for law school or four years for medical school.

Commenters generally supported the proposal to use uniform assumptions for determining the consumer's deferral period in cases where the consumer's actual situation was not known. However, most commenters supported allowing creditors to use more accurate assumptions where more information was known. Commenters supported allowing creditors to use the specific duration of an educational program of a known length, such as three years for law school. In addition, commenters noted that the term ''undergraduate'' may include students in two-year programs and that the four-year term assumption would not be appropriate for these students. Commenters also supported allowing creditors to tailor the deferral period assumption to the specific consumer's situation if known. Where the length of the educational program was not known, commenters did not oppose using a two-year term.

Comment 47(a)(4)–4, proposed as comment 38(a)(4)–5, has been revised to allow the creditor to use either of two methods for estimating the duration of deferral periods. Similar to the proposed rule, for loan programs intended for educational expenses of undergraduate students, the creditor may assume that the consumer defers payments for a four-year matriculation period, plus the loan's maximum applicable grace period, if any. For all other loans the creditor may assume that the consumer defers for a two-year matriculation period, plus the maximum applicable grace period, if any, or the maximum time the consumer may defer payments under the loan program, whichever is shorter.

Alternatively, if the creditor knows that the student will be enrolled in a program with a standard duration, the creditor may assume that the consumer defers payments for the full duration of the program (plus any grace period). For example, if a creditor makes loans intended for students enrolled in a four-year medical school degree program, the creditor may assume that the consumer defers payments for four years plus the loan's maximum applicable grace period, if any. However, the creditor may not modify the disclosure to correspond to a particular student's situation. For example, even if the creditor knows that a student will be a second-year medical school student, the creditor must assume a four-year deferral period.

The Board believes that the use of standardized assumptions will assist consumers when shopping for a private education loan. Providing consistent deferral periods is necessary in order for a consumer to compare the overall costs of different loans for particular educational programs. Consumers enrolled in an educational program may have difficulty comparing the total cost of two loans if one disclosure uses the consumer's actual deferral period and the other uses an assumed deferral period. The total cost may appear lower on the disclosure using the actual, shorter, deferral period, but the consumer may not be able to determine if the loan is actually less costly. Therefore, the Board is not permitting disclosures to be tailored to individual consumers.

47(a)(5) Eligibility

Proposed § 226.38(a)(5) implemented TILA section 128(e)(1)(J) which requires disclosure of the general eligibility criteria for a private education loan. The proposal specified the eligibility criteria that must be disclosed. The creditor would have to disclose any age or school enrollment eligibility requirements regarding the consumer or co-signer, if applicable. The Board requested comments on whether other types of eligibility requirements should be disclosed.

A few commenters suggested that the Board require more information about eligibility requirements. However, in the consumer testing conducted for the Board, few consumers suggested that more such information would be helpful. Because the disclosure of all eligibility criteria could be detailed and lengthy, the Board believes that requiring additional eligibility information would not be meaningful to consumers. Therefore, the final rule provides that the creditor provide any age or school enrollment eligibility requirements relating to the consumer or co-signer.

47(a)(6) Alternatives to Private Education Loans

The Board proposed § 226.38(a)(6), to implement TILA sections 128(e)(1)(L), (M), (N), and (Q) by requiring statements regarding the following alternatives to private education loans: (1) education loans offered or guaranteed by the Federal government and (2) school-specific education loan benefits and terms potentially offered by a covered educational institution.

Concerning Federal education loans, under the proposal, a creditor was required to disclose the following: (1) A statement that the consumer may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*), (2) the interest rates available under each program and whether the rates are fixed or variable, as prescribed in the Higher Education Act of 1965 (20 U.S.C. 1077a), and (3) a statement that the consumer may obtain additional information concerning Federal student financial assistance from the relevant institution of higher education, or at the Web site of the Department of Education, including an appropriate Web site address. After consulting with the Department of Education, the Board proposed comment 38(a)(6)(ii)–1, which explained that the disclosure must list the address of an appropriate U.S. Department of Education Web site such as ''*http://federalstudentaid.ed.gov.*''

To avoid overloading consumers with information and to ensure that consumers notice the most important information about Federal student loans, the Board proposed to exercise its authority under TILA section 105(a) to make exceptions to the statute by not requiring creditors to state that Federal loans may be obtained in lieu of or in addition to private education loans. Instead the Board's proposed model forms labelled the disclosure as ''Federal Loan Alternatives.'' *See* proposed App. H–18, H–19. The Board stated its belief that this exception was necessary and proper to effectuate meaningful disclosure of credit terms to consumers.

The Board also proposed to exercise its authority under TILA section 105(f) to exempt private education loans from the specific disclosure requirement about Federal loans, pursuant to the HOEA amendment to TILA sections 128(e)(1)(M) and 128(e)(2)(L). The Board believed that this specific requirement does not provide a meaningful benefit to consumers in the form of useful information or protection. In testing, consumers' understanding that Federal loans are available in lieu of or in addition to private education loans was enhanced by simply providing them a clear and prominent label indicating that the disclosures contained information about Federal loan alternatives. The Board considered that the private education loan population includes students who may lack financial sophistication and that the size of the loan could be relatively significant and important to the borrower. However, as explained above, the Board believed that the borrower would receive meaningful information about Federal loans through the other disclosures and the model form. The Board also recognized that private education loans would not be secured by the principal residence of the consumer, which is a factor for consideration under section 105(f). Furthermore, the HEOA provides significant rights, such as the right to cancel the loan. The Board believed that consumer protection would not be undermined by this exemption.

A few consumer group commenters urged the Board to retain the phrase that Federal loans are available ''in addition to or in lieu of'' private education loans. However, the Board's consumer testing during and after the comment period continued to indicate that consumers understood the disclosure about Federal student loans and that Federal loans are available in addition to or in lieu of private education loans. The Board believes that requiring additional verbiage to communicate something that consumers already understand could contribute to information overload, cause consumers to skip over the existing textual information about Federal student loans, and potentially cause consumers to miss more important information in the disclosures. Consumers tested found the information about Federal student loans to be clear and understandable. The Board is adopting proposed § 226.38(a)(6), as § 226.47(a)(6).

Under the proposal, for each title IV program enumerated in the disclosure (*e.g.,* Perkins, Stafford (both subsidized and unsubsidized), and PLUS loans), the creditor would be required to disclose the interest rate corresponding to each loan program, as well as whether those rates are fixed or variable. The Board proposed to require disclosure of whether the Federal loan rates are fixed or variable, under its TILA section 128(e)(1)(R) authority. The Board believed this additional disclosure to be necessary in order to provide consumers with a more complete description of the nature of the Federal loans' interest rates and to aid in comparison of Federal loan programs to private education loans. During the Board's consumer testing, consumers indicated that the disclosure that Federal student loans have fixed rates is important information to them. Federal student loan interest rates are set by statute. Currently, Federal student loan interest rates are fixed rates rather than variable rates, but this has not always been the case. For this reason, the proposal would require a disclosure of whether the rates are fixed or variable.

The statute that sets the Federal student loan interest rates currently contains a schedule with different fixed rates for loans originated at different times. *See* Higher Education Act of 1965 (20 U.S.C. 1077a). For example, the fixed rate on subsidized Stafford loans was 6.0% for loans originated or applied for (depending on the loan) before July 1, 2009. For loans after July 1, 2009, the current fixed interest rate is 5.6%. Where the interest rate for a loan varies depending on the date of disbursement or receipt of application, the creditor must disclose only the current interest rate as of the time the disclosure is provided.

To implement TILA section 128(e)(1)(L), the proposal also required the creditor to disclose that a covered educational institution may have school-specific education loan benefits and terms not detailed on the disclosure form. School-specific education loan benefits and terms might include loans with special terms negotiated by the school with particular creditors, or loans extended by the covered educational institution itself to its students. The creditor was not required to state what school-specific education loan benefits and terms might be available because these may vary widely, but rather was required to alert the consumer to the possibility that school-specific education loan benefits and terms might be available to the consumer.

47(a)(7) Rights of the Consumer

Proposed § 226.38(a)(7) implemented TILA section 128(e)(1)(O), by identifying for the consumer certain rights relating to the private education loan.

Thirty day right of acceptance. Proposed § 226.38(a)(7)(i) required the creditor to disclose that, should the consumer apply for the loan and the loan application be approved, the consumer would have the right to accept the terms of the loan at any time within 30 calendar days following notice of loan approval. TILA section 128(e)(1)(O)(i) requires a disclosure that the consumer has 30 days to accept and consummate the loan.

Prohibition on loan term changes. Under proposed § 226.38(a)(7)(ii), the creditor was required to state that, except for changes based on adjustments to the index used to determine the rate for the loan, the creditor may not change the rates and terms of the loan during the 30-day acceptance period described in proposed § 226.38(a)(7)(i). Proposed comment 39(c)–1 allowed the creditor to give consumers a period of time longer than 30 days in which to accept the loan. In the preamble to the proposed rule, the Board stated that creditors choosing to give consumers a period of time in which to accept the loan that is longer than 30 calendar days were required to disclose this alternate time period.

The Board proposed in § 226.39(c) to allow creditors to make changes to the rate and terms of the loan not only in response to adjustments to a variable rate, but also in cases where the change was requested by, or unequivocally beneficial to, the consumer. The Board did not propose, however, to require the application disclosure to state each possible condition under which the rate or terms might change. The Board requested comment on the appropriate amount of detail in the application disclosure.

The Board received one comment about the appropriate amount of detail in the statement on the application disclosure regarding the permissible changes to the rate or terms of the loan after the loan is approved. The industry commenter suggested that the Board should not require creditors to list every possible reason that rates and terms may change because of the limited amount of space on the two-page disclosure. The commenter suggested that it would be appropriate to disclose the most common reason or reasons that the rates and terms may change after approval.

The Board agrees that it is not necessary or useful to list each reason that rates and terms of a loan may change after approval and that a more general statement is sufficient to alert the consumer to the restrictions on changing the loan terms. The Board also believes a less detailed statement is appropriate in light of the changes made to § 226.48(c) (proposed as § 226.39(c)), which includes additional exceptions to the prohibition on changing the terms of the loan. Thus, in the final rule, § 226.47(a)(7) requires the creditor to state that if the loan for which the consumer is applying is approved, the terms of the loan will be available for 30 days. It also requires the creditor to state that the terms of the loan will not change during this period except as a result of adjustments to the interest rate and due to other changes permitted by law. The requirement in the final rules more closely resembles the language that was used on the application and solicitation disclosures in consumer testing which consumers found clear and understandable.

47(a)(8) Self-Certification Information

The Board proposed § 226.38(a)(8) to implement TILA section 128(e)(1)(P). It required a statement that before the loan may be consummated, the consumer must obtain the self-certification form required under proposed § 226.39(e), and sign and submit the completed form to the creditor.

The model forms used in consumer testing contained a basic statement that the consumer must complete the self-certification form as part of the application process and that the form may be obtained from the relevant institution of higher education. Consumers found the language in the model form to be clear and understandable and the Board believes that the self-certification form itself will provide consumers with sufficient instruction as to the steps the consumer must take to complete the form. Accordingly, § 226.47(a)(8) of the final rule conforms the required disclosure to the text used in the proposed model form.

As discussed in the section-by-section analysis under § 226.48(e), the disclosure regarding the self-certification form is required only for expenses to be used by a student enrolled in an institution of higher education. It would not apply to consolidation loans and would not apply to loans to students attending covered educational institutions that do not meet the definition of institution of higher education.

47(b) Approval Disclosures

Section 226.47(b), proposed as § 226.38(b), specifies the information that a creditor must disclose on or with any notice of approval provided to the consumer. Guidance on delivery of the disclosures required under § 226.47(b) is provided in § 226.46, corresponding commentary, and in the section-by-section analysis under § 226.46.

As discussed above in the section-by-section analysis under § 226.46(a), the creditor must make the closed-end credit disclosures required under §§ 226.17 and 226.18 as well as the private education loan disclosures required under § 226.47(b).

47(b)(1) Interest Rate

Implementing TILA section 128(e)(2)(A), § 226.47(b)(1)(i), proposed as § 226.38(b)(1)(i), requires a creditor to disclose the interest rate that applies to the private education loan for which the consumer has been approved.

Fixed or variable rate, rate limitations. Implementing TILA section 128(e)(2)(A) and (B), proposed §§ 226.38(b)(1)(ii) and (iii) required the creditor to disclose whether the interest rate is fixed or variable and any limitations, or the absence of limitations, on changes to the variable interest rate.

Proposed comment 38(b)(1)–1 clarified that a private education loan would only be considered to have a variable rate if the terms of the legal obligation allow the creditor to increase the rate originally disclosed to the consumer. However, a rate is not considered variable if increases result only from delinquency, default, assumption or acceleration. The comment also clarified that the creditor must make the other variable-rate disclosures required under §§ 226.18(f)(1)(i) and (iii)—the circumstances under which the rate may increase and the effect of an increase, respectively. The creditor would not be required to provide an example of the payment terms that would result from an increase under § 226.18(f)(1)(iv). Current comment 18(f)(1)(iv)–2 provides that creditors need not provide the hypothetical example for interim student credit extensions. However, the Board believes that the requirement to disclose the maximum monthly payment based on the maximum possible rate in § 226.38(b)(3)(viii) satisfies the requirement under § 226.18(f)(1)(iv) of an example of the payment terms that would result from an increase in the rate. In order to avoid duplicative examples of the effect of a rate increase, proposed comment 38(b)(1)–1 clarified that, although the creditor need not disclose a separate example under § 226.18(f)(1)(iv), the creditor is nevertheless required to disclose the maximum monthly payment in § 226.38(b)(2)(viii).

As explained in the section-by-section analysis under § 226.18 (discussing the proposed changes to comment 18(f)(1)(ii)–1), proposed comment 38(b)(1)–2 clarified that the rules regarding disclosure of limitations on interest rate increases for private education loans differ from the general rules in § 226.18(f)(1)(ii) and comment 18(f)(1)(ii)–1. Specifically, proposed § 226.38(b)(1)(iii) required that creditors explicitly disclose the lack of any limitations on interest rate adjustments. By contrast, existing comment 18(f)(1)(ii)–1 does not require creditors to disclose the absence of limits on interest rate adjustments. In addition, under proposed § 226.38(b)(1)(iii), limitations on rate increases include, rather than exclude, legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations. However, if the applicable rate limitation is in the form of a legal limit, such as a state's usury cap (rather than a maximum rate specified in the legal obligation between the parties), the creditor must disclose that the maximum rate is determined by law and may change.

As discussed in the section-by-section analysis under § 226.47(a)(1) above, commenters urged the Board allow disclosure of a variable interest rate only as calculated based on the index and margin used to make interest rate adjustments. The Board is adopting proposed § 226.38(b)(1) as § 226.47(b)(1) and adding new comment 47(b)(1)–3 to clarify that the disclosure of the interest rate must reflect the rate calculated based on the index and margin that will be used to make interest rate adjustments for the loan.

47(b)(2) Fees and Default or Late Payment Costs

Implementing TILA sections 128(e)(2)(E) and (F), proposed § 226.38(b)(2) and proposed comment 38(b)(2)–1 required the creditor to provide to the consumer the fee and penalty information required under proposed § 226.38(a)(2), as explained in the section-by-section analysis for § 226.47(a)(2). Under § 226.18(l) creditors are required to disclose any dollar or percentage charge that may be imposed before maturity due to late payment, other than a deferral or extension charge. Under the proposal, creditors were required to disclose any charges that must be disclosed under § 226.18(l) with the disclosures required under proposed § 226.38(b)(2). In addition, if the creditor includes the itemization of the amount financed under § 226.18(c), any fees disclosed as part of the itemization need not be separately disclosed elsewhere. The

Board is adopting proposed § 226.38(b)(2) as § 226.47(b)(2).

47(b)(3) Repayment Terms

Section 226.47(b)(3), proposed as § 226.38(b)(3), requires disclosure of information related to repayment.

Principal amount. Proposed § 226.38(b)(3)(i) implemented TILA section 128(e)(2)(D), which requires disclosure of the ''initial approved principal amount,'' by requiring disclosure of the loan's ''principal amount.''

Regulation Z currently uses the term ''principal loan amount'' as part of its requirement to disclose the ''amount financed.'' As explained below, however, the Board did not propose to equate the terms ''principal loan amount'' used in comment 18(b)(3)–1 with the ''principal amount'' disclosed under § 226.38(b)(3)(i).

Under current Regulation Z, the amount financed must be calculated in the following manner:

(1) Determining the principal loan amount * * * (subtracting any downpayment);

(2) Adding any other amounts that are financed by the creditor and are not part of the finance charge; and

(3) Subtracting any prepaid finance charge. 12 CFR 226.18(b).

Regarding the first part of this calculation, determining the ''principal loan amount,'' the commentary states that when loan fees are financed by the creditor, the creditor has the option (when the charges are not add-on or discount charges) of either including or excluding the amount of the finance charges in the principal loan amount. As the commentary points out, this means that the ''principal loan amount'' for this calculation may, but need not, equal the face amount of the note. Comment 18(b)(3)–1. If the creditor opts to include finance charges in the principal loan amount, the creditor should deduct these charges from the principal loan amount as prepaid finance charges when calculating the amount financed. *Id.*

Rather than equate Regulation Z's existing term ''principal loan amount'' with the ''principal amount'' required to be disclosed in proposed § 226.38(b)(3)(i), the Board's view was that the most straightforward and easy-to-understand approach was to define ''principal amount'' as the face amount of the note if the transaction occurred on the terms approved. The ''principal amount'' under proposed § 226.38(b)(3)(i) was to include all charges incorporated in the approved loan amount—in other words, the total amount borrowed. This amount should reflect what the face amount of the note would be if the loan were given based on the loan amount initially approved. For example, prepaid finance charges, as defined and discussed in comment 18(b)(3)–1, should be included if they would be included in the face amount of the note.

The Board believed that defining ''principal amount'' in this way would not cause consumer confusion with Regulation Z's use of the term ''principal loan amount'' in § 226.18(b), because ''principal loan amount'' is not currently a stand-alone disclosure in Regulation Z that consumers could confuse with the ''principal amount.'' Defining the ''principal amount'' in proposed § 226.38(b)(3)(i) as distinct from the term ''principal loan amount'' in § 226.18(b) may also reduce creditor confusion about whether the definition of ''principal amount'' changes how the ''amount financed'' is calculated under § 226.18(b). As noted above, ''principal loan amount'' is a term used only as part of the calculation of the ''amount financed'' disclosure. Current comment 18(b)(3)–1 permits creditors to decide whether to include or exclude prepaid finance charges in the ''principal loan amount,'' but solely for purposes of calculating the ''amount financed.''

In addition, in order to minimize potentially duplicative disclosures, proposed comment 38(b)(3)–1 explained that creditors may disclose the principal amount as part of the itemization of the amount financed. The creditor would be permitted to disclose the principal amount as part of the itemization of the amount financed only if the creditor states the principal amount as part of the itemization. The proposed sample form in Appendix H–22 provided an example of this disclosure. Also, as discussed above, the proposal revised § 226.17(a)(1) to allow the itemization of the amount financed to be included with the required disclosures, rather than disclosed separately.

Some commenters expressed confusion as to the distinction among the concepts of the ''principal amount'' required to be disclosed in proposed § 226.38(b)(3)(i), the ''principal loan amount'' used to calculate the amount financed, and the ''amount financed'' required to be disclosed in § 226.18(b), because the Board's sample forms did not include non-interest finance charges. Commenters were unclear as to where and how the principal amount was required to be disclosed on the model and sample forms.

Proposed § 226.38(b)(3)(i) is adopted as § 226.47(b)(3)(i). Comment 47(b)(3)–1 has been revised to clarify that the principal amount required to be disclosed under § 226.47(b)(3)(i) should be labelled the ''Total Loan Amount'' and that this amount may be different from the ''principal loan amount'' used to calculate the amount financed under comment 18(b)(3)–1. In addition, the Board's sample forms in Appendix H–22 and H–23 provide examples that include non-interest finance charges and better reflect the distinction between the principal amount and the amount financed.

The Board is also revising the model and sample disclosures in Appendix H to make the principal amount, labelled the ''Total Loan Amount,'' more prominent by placing it in a box labelled ''Total Loan Amount'' at the top left of the disclosure, where the disclosure of the amount financed was in the proposal. The Board's consumer testing indicated that consumers interpret the ''Amount Financed'' and the accompanying phrase ''the amount of credit provided to you or on your behalf'' to mean the loan's total principal amount. They do not readily understand that the amount financed may not include certain finance charges and thus may be less than the face amount of the note. Consumer testing indicated that consumers better understand the amount financed if it is disclosed as part of the itemization of the amount financed because consumers can see how the amount financed is arrived at based on the total principal amount.

The Board proposed to allow creditors to make the disclosure of the principal amount in § 226.47(b)(3)(i) as part of the itemization of the amount financed, if the creditor chose to include the itemization. However, because the final model forms disclose the principal amount more prominently, comment 47(b)(3)–1 has been revised to permit the creditor to make the disclosure of the amount financed under § 226.18(b)(3) as part of the itemization of the amount financed, if the creditor elects to include the itemization on the disclosures under § 228.18(c)(1).

Loan term. Proposed § 226.38(b)(3)(ii) and comment 38(b)(3)–2 implemented TILA section 128(e)(2)(G), which requires disclosure of the maximum term of the private education loan program. Under the proposal, the term of the loan was the period of time during which regular principal and interest payments must be made on the loan. For example, where repayment begins upon consummation of the private education loan, the disclosed loan term would be the same as the full term of the loan. By contrast, where repayment does not begin until, for instance, after the student is no longer enrolled, the disclosed loan term would be shorter than the full term of the loan. If more than one repayment term is possible, the creditor must disclose the loan term as the longest possible repayment term. Proposed § 226.38(b)(3)(ii) is adopted as § 226.47(b)(3)(ii).

Payment deferral options. Proposed § 226.38(b)(3)(iii) and proposed comment 38(b)(3)–3 required the creditor to provide information about deferral options, implementing TILA section 128(e)(2)(J). This disclosure was similar to the requirement under proposed § 226.38(a)(3)(ii), as explained in the section-by-section analysis for section § 226.47(a)(3)(ii). However, by the time the consumer receives the approval disclosure, the consumer may have chosen a deferral option already. The difference between proposed §§ 226.38(a)(3)(ii) and 226.38(b)(3)(iii) is that the creditor was required to explain the deferral option chosen by the consumer, if the consumer has chosen a deferral option, as well as any other deferral options that the consumer is permitted to choose in the future. The Board is adopting § 226.38(b)(3)(ii) as § 226.47(b)(3)(ii). The section-by-section analysis of the deferral options disclosure of § 226.47(a)(3)(ii) describes the information that must also be included in the explanation of deferral options under § 226.47(b)(3)(iii).

Payments required during enrollment. Proposed § 226.38(b)(3)(iv) and comment 38(b)(3)–4 required the creditor to disclose whether any payments are required on the loan while the student is enrolled, implementing TILA section 128(e)(2)(I). The creditor also was required to describe the payments required during enrollment, such as principal and interest payments or interest-only payments. The payments required during enrollment may depend on the deferral option chosen by the consumer. The disclosure under proposed § 226.38(b)(3)(iv) was required to correspond to the deferral option chosen by the consumer. The Board is adopting § 226.38(b)(3)(iv) as § 226.47(b)(3)(iv).

Estimate of interest accruing during enrollment. Also implementing TILA section 128(e)(2)(I), proposed § 226.38(b)(3)(v) applied only if interest is charged on the private education loan while the student is enrolled, and the consumer will not be paying interest on the loan during this time. This disclosure would require the creditor to give the consumer an estimate of the interest that will accrue on the loan during enrollment. The Board is adopting proposed § 226.38(b)(3)(v) as § 226.47(b)(3)(v).

Bankruptcy limitations. Proposed § 226.38(b)(3)(vi) required disclosure of a statement of limitations on the discharge of a private education loan in bankruptcy. Proposed comment 38(b)(3)–5 stated that a creditor may comply with proposed § 226.38(b)(vi) by disclosing the following statement: ''If you file for bankruptcy you may still be required to pay back this loan.'' To avoid overloading the consumer with information, the Board proposed to require a general statement that student loans may not be dischargeable in bankruptcy rather than require a detailed disclosure of student loan bankruptcy rules and limitations. The Board is adopting proposed § 226.38(b)(3)(vi) as § 226.47(b)(3)(vi).

Total amount for repayment. TILA section 128(e)(2)(H) requires the creditor to disclose an estimate of the total amount for repayment calculated based on: (1) the interest rate in effect on the date of approval; and (2) the maximum possible rate of interest applicable to the loan or, if a maximum rate cannot be determined, a good faith estimate of the maximum rate.

Proposed § 226.38(b)(3)(vii) defined the total amount for repayment in the same manner as the current Regulation Z closed-end credit disclosure of the total of payments. 12 CFR 226.18(h). Neither the HEOA nor its legislative history provides guidance on the definition of ''total amount for repayment.'' Regulation Z defines ''total of payments'' as the amount the consumer will have paid when the consumer has made all scheduled payments. 12 CFR 226.18(h). In some cases, the total of payments will not exactly match the total amount that the borrower must repay. For example, if the borrower pays prepaid finance charges separately in cash, the amount of these charges will not be reflected in the total of payments. However, the Board believes that requiring separate disclosures for the ''total amount for repayment'' and the ''total of payments'' would likely cause consumer confusion and that both terms are meant to capture the amount that the borrower will have paid after making all scheduled payments to repay the loan. Accordingly, in order to avoid duplication, proposed comment 38(b)(3)–6.i clarified that compliance with the total of payments disclosure under § 226.18(h) constitutes compliance with the requirement to disclose the total amount for repayment at the interest rate in effect on the date of approval.

Maximum rate. For the requirement that the creditor disclose an estimate of the total amount for repayment at the maximum possible rate of interest, proposed § 226.38(b)(3)(vii) and comment 38(b)(3)–6.ii required that either the maximum possible rate be used or, if a maximum rate cannot be determined, an assumed rate of 21%. For example, if the creditor were in a state without a usury limit on interest rates, and the legal agreement between the parties did not specify a maximum rate, the creditor would have to base the disclosure on a rate of 21%.

Under proposed comment 38(b)(3)–6.ii, a maximum rate included a legal limit in the nature of a usury or rate ceiling under state or Federal statutes or regulations, and the creditor was required to calculate the total amount for repayment based on that rate, and to disclose that the maximum rate is determined by law and may change.

TILA section 128(e)(2)(H) requires that, if a maximum rate cannot be determined, the creditor must use a good faith estimate of the maximum rate. The Board proposed to use its authority under the HEOA to add a requirement that where a maximum rate cannot be determined, the creditor use a rate of 21%. The Board stated its belief that such a rule is necessary and appropriate for consumers to make informed borrowing decisions. A rule providing a uniform maximum rate assumption also gives creditors more certainty in complying with the regulation. The Board proposed a rate of 21% because the Board believed that 21% was the most common rate within the range of usury rate ceilings that consumers in the private education loan market are likely to face. Thus, the Board believed that basing the disclosure on an assumed maximum rate of 21% would assist consumers in comparing different loans by providing consumers with an estimated total amount for repayment that will be similar between states with and without usury rate limitations.

In addition, under the Board's TILA section 128(e)(2)(P) and 128(e)(4)(B) authority, the proposal added a requirement that, if the legal obligation between the parties does not specify a maximum rate, the creditor must accompany the estimated total amount for repayment with a statement that: (1) No maximum interest rate applies to the private education loan; (2) the maximum interest rate used to calculate the total amount for repayment is an estimate; and (3) the total amount for repayment disclosed is an estimate and will be higher if the applicable interest rate increases. The Board believed that these additional disclosures were necessary to inform consumers that the examples in the disclosure statement are merely illustrative and that their loan in fact has no maximum rate.

The HEOA allows the creditor to disclose the total amount for repayment as an estimate. Proposed § 226.38(b)(3) also required only an estimated total amount for repayment. The Board recognized that permitting disclosure of an estimate of the total amount for repayment is necessary because the interest rates on most private education loans are variable and the repayment schedule is often not known at the time that the approval disclosures must be provided to the consumer.

The Board requested comment on whether a specific maximum rate assumption should be used for disclosures where a maximum rate cannot be determined, and, if so, whether 21% was the most appropriate rate or whether another rate should be used. The Board also requested comment on whether, if a maximum rate of interest was to be specified, the Board should publish the rate periodically, based on a median or a commonly used usury rate applicable to private education loans in various states. The Board also requested comment on alternative approaches by which creditors may make a good faith estimate of a maximum possible rate when a maximum rate cannot be determined.

The Board received a number of comments on the proposal to require disclosure of the total amount for repayment at an assumed rate of 21% if a maximum interest rate could not be determined. Commenters generally supported the approach used in the proposed rule although a few commenters suggested specific higher or lower rates to be used as a maximum rate assumption, or to require a creditor to use its actual interest rate history. For example, consumer group commenters suggested that a rate of 36% represented an average of state law usury ceilings, but cited in support a study of payday lending laws. By contrast, some industry commenters suggested that historically a rate of 21% was higher than had actually been charged to consumers for private education loans. One government agency supported using the greater of 21% or the highest rate actually charged by the creditor during a recent period of time. One industry commenter stated that it was subject to a state usury ceiling of 25% and expressed concern that allowing other lenders with no rate cap to base the disclosure example on a maximum rate of 21% was unfair to creditors in states with higher usury ceilings. The commenter expressed concern that some consumers would incorrectly conclude that it was preferable to take a loan from a creditor in a state with no usury ceiling than from a creditor in a state with a ceiling greater than 21%. Some commenters also suggested that the Board should publish from time to time an assumed rate to be used in calculating the total for repayment where a maximum rate cannot be determined.

The Board is adopting proposed § 226.38(b)(3)(vii) as § 226.47(b)(3)(vii) largely as proposed, but the final rule requires a disclosure based on an assumed rate of 25% where a maximum rate cannot be determined, rather than 21%. The Board proposed using a rate of 21% based on the most common rate in the range of usury rate ceilings that consumers in the private education loan market are likely to face. However, the Board believes that basing the example on the most common state usury rate could disadvantage creditors in states with higher usury ceilings. The highest state law usury rate actually applicable to student loans mentioned by commenters was 25%. In addition, consumers shown a disclosure where no maximum rate applied understood in testing that the example used only an assumed rate of 21%. However, a few consumers stated that they usually expect an assumption to be a ''round number'' such as 20% or 25%, not a number like 21%. Based on consumer testing results, the Board also believes that using an assumed rate of 25% will help indicate to consumers that the disclosure is based on an example. The Board is not publishing a rate because commenters did not suggest a methodology by which the Board could choose a more appropriate rate. In addition, the Board believes that requiring all creditors to use the same assumption, rather than historic rates, will better assist consumers in comparing loans because a creditor's past interest rates may not be predictive of future interest rates.

In response to one state education loan provider's comment, the Board is adding comment 47(b)(3)–6.iii to clarify that if terms of the legal obligation provide a limitation on the amount that the interest rate may increase at any one time, the creditor may reflect the effect of the interest rate limitation in calculating the total cost example. For example, if the legal obligation provides that the interest rate may not increase by more than three percentage points each year, the creditor may, at its option, assume that the rate increases by three percentage points each year until it reaches that maximum possible rate, or if a maximum rate cannot be determined, an interest rate of 25%.

Maximum monthly payment. Proposed § 226.38(b)(3)(viii) implemented TILA section 128(e)(2)(O) by requiring the creditor to disclose the maximum monthly payment based on the maximum rate of interest applicable to the loan or, if a maximum rate cannot be determined, for the reasons discussed above, an assumed rate of 21%. In addition, as discussed above, under the Board's TILA section 128(e)(2)(P) and 128(e)(4)(B) authority, the proposal added a requirement that the creditor state that: (1) No maximum interest rate applies to the loan; (2) the maximum interest rate used to calculate the maximum monthly payment amount is an estimate; and (3) the maximum monthly payment amount is an estimate and will be higher if the applicable interest rate increases.

As with proposed § 226.38(b)(3)(vii), the Board requested comment on other approaches by which creditors may calculate a maximum payment when a maximum rate cannot be determined. Commenters combined their comments on proposed § 226.38(b)(3)(viii) with their comments on proposed § 226.38(b)(3)(vii).

For the reasons discussed above, the Board is adopting proposed § 226.38(b)(3)(viii) as § 226. 47(b)(3)(viii) largely as proposed except that if a maximum rate cannot be determined, an assumed rate of 25% must be used.

47(b)(4) Alternatives to Private Education Loans

Implementing TILA section 128(e)(2)(M), the Board proposed §§ 226.38(b)(4) to require the creditor to provide the information about alternatives to private education loans for financing education that were also required under proposed §§ 226.38(a)(6)(i)–(iii) and explained in the section-by-section analysis for §§ 226.47(a)(6). The Board proposed to use its authority under TILA sections 105(a) and 105(f) to make exceptions to the statute by not requiring creditors to state that Federal loans may be obtained in lieu of or in addition to private education loans. As explained in the section-by-section analysis for §§ 226.47(a)(6), the Board believes that this exception is necessary and proper to effectuate meaningful disclosure of credit terms to consumers. The Board is adopting §§ 226.38(a)(6) as §§ 226.47(a)(6).

47(b)(5) Rights of the Consumer

In implementing TILA section 128(e)(2)(L), proposed § 226.38(b)(5) required a creditor to disclose that the consumer had the right to accept the loan on the terms approved for up to 30 calendar days. The proposed disclosure also informed the consumer that the rate and terms of the loan would not change during this period, except for changes to the rate based on adjustments to the index used for the loan.

Under the Board's TILA section 128(e)(2)(P) authority, the proposed disclosure required a creditor to include the specific date on which the 30-day period expired and to indicate that the consumer may accept the terms of the loan until that date. For example, under the proposal, if the consumer received the disclosures on June 1, the disclosure was required to state that the consumer could accept the loan until July 1. The Board believed that this disclosure was necessary to inform consumers of the precise date when the 30-day period expired because the date the consumer was deemed to receive the disclosure may have differed slightly from the date the consumer actually received the disclosure. The creditor was also required to disclose the method or methods by which the consumer could communicate acceptance. The Board believed that this disclosure was necessary to ensure consumers understood the specific steps required to accept the loan. Proposed comment 39(c)–3, discussed below, provided guidance to creditors on disclosing methods by which consumers may communicate acceptance.

Section 226.47(b)(5) of the final rule requires a statement that the consumer may accept the terms of the loan until the acceptance period under § 226.48(c)(1) has expired. As discussed in the section-by-section analysis in § 226.47(a)(7), the disclosure also requires a statement similar to the statement in the application disclosure that, except for changes as a result of adjustments to the interest rate and other changes permitted by law, the rates and terms of the loan may not be changed by the creditor during the acceptance period. As in the application disclosure, the requirements of this provision more closely resemble the language used on the approval disclosures in consumer testing, which consumers found to be clear and understandable.

Section 226.47(b)(5) also requires the creditor to include the specific date on which the acceptance period expires, based upon the date on which the consumer receives the disclosures. It further requires the disclosure to specify the method or methods by which the consumer may accept the loan, such as by telephone or by mailing a signed acceptance.

47(c) Final Disclosures

Section 226.47(c), proposed as § 226.38(c), requires the creditor to disclose to the consumer a third set of disclosures after the consumer accepts the loan in accordance with § 226.48(c)(1). Section 226.47(c) implements TILA section 128(e)(4), which requires the creditor to provide this final set of disclosures contemporaneously with consummation. Regulation Z defines ''consummation'' as the time that a consumer becomes contractually obligated on a credit transaction. *See* 12 CFR 226.2(a)(13). The corresponding commentary defers to state law to determine when consummation occurs. *See* comment 2(a)(13)–1. As discussed earlier in the section-by-section analysis under § 226.46, to avoid confusion about when the final private education loan disclosures should be given due to differing state law definitions of consummation, and to ensure that consumers have a meaningful opportunity to exercise their cancellation right under TILA section 128(c)(8), the Board interprets ''contemporaneously with consummation'' to require creditors to provide these final disclosures after acceptance and, under § 226.48(d), at least three days before disbursement.

47(c)(1) Interest Rate

Section 226.47(c)(1), proposed as § 226.38(c)(1), requires creditors to disclose the interest rate that applies to the private education loan accepted by the consumer.

Fixed or variable rate, rate limitations. As proposed in § 226.38(c)(1), § 226.47(c)(1) requires the creditor to provide to the consumer the rate information required under §§ 226.47(b)(1)(ii) and (iii), as explained in the section-by-section analysis for those sections.

47(c)(2) Fees and Default or Late Payment Costs

As proposed in § 226.38(c)(2), § 226.47(c)(2) requires the creditor to provide to the consumer the fee and default or late payment information required under § 226.47(b)(2), as explained in the section-by-section analysis for that section.

47(c)(3) Repayment Terms

As proposed in § 226.38(c)(3), § 226.47(c)(3) requires the creditor to provide to the consumer the repayment information required under § 226.47(b)(3), as explained in the section-by-section analysis for that section.

47(c)(4) Cancellation Right

Section 226.47(c)(4) is adopted as proposed in § 226.38(c)(4). Section 226.47(c)(4) and comment 47(c)–1 implement TILA section 128(e)(4)(C) by requiring the creditor to disclose to the consumer the following information:

(i) The consumer has the right to cancel the loan, without being penalized, at any time before the cancellation period under § 226.48(d) has expired; and

(ii) Loan proceeds will not be disbursed until after the cancellation period expires.

Under the Board's TILA section 128(e)(4)(B) authority, § 226.47(c)(4) adds a requirement that creditor disclose the specific date on which the cancellation period expires and include the methods or methods by which the consumer may cancel the loan.

Comment 47(c)–2, proposed as comment 38(c)–2, clarifies that the statement of the right to cancel must be more conspicuous than any other disclosure required under § 226.47(c), except for the finance charge, the interest rate, and the creditor's identity. *See* § 226.46(c)(2)(iii). Under comment 47(c)–2, the right to cancel statement is deemed more conspicuous than other disclosures if the creditor segregates the statement from other the disclosures, places the statement at or near the top of the disclosure document, and highlights the statement in relation to other required disclosures. Examples of appropriate highlighting given in comment 47(c)–2 are that the statement may be outlined with a prominent, noticeable box; printed in contrasting color; printed in larger type, bold print or different type face; underlined; or set off with asterisks. Comments 48(d)–1, and 2, discussed below in the section-by-section analysis under § 226.48(d), provide additional guidance about how the creditor must notify the consumer of the cancellation right and how the consumer may exercise this right.

Alternatives to Private Education Loans

Based on the results of the Board's consumer testing, the Board proposed to use its authority under TILA section 105(a) to create an exception from the requirement in TILA section 128(e)(4)(b) that the creditor provide the consumer with information about Federal alternatives to private education loans. Consumers overwhelmingly indicated that this information would not be meaningful or useful to them at the time when they would receive the final disclosures. Consumers indicated that by the time they had applied for and accepted a private education loan, they already would have made a decision as to whether or not to seek other loan alternatives.

The Board also proposed to exercise its authority under TILA section 105(f) to exempt private education loans from the specific requirement to disclose information about Federal loan alternatives in the final disclosure form. The Board believed that this disclosure requirement does not provide a meaningful benefit to consumers in the form of useful information or protection. The Board considered that the private education loan consumer population may contain students who lack financial sophistication and that the size of the loan could be relatively significant and important to the borrower. However, as explained above, consumers tested indicated that this disclosure was not useful at this final stage in the loan process. Borrowers would receive the information about Federal loans at application and approval. The Board also recognized that private education loans would not be secured by the principal residence of the consumer, which is a factor for consideration under section 105(f). Furthermore, the HEOA provides significant rights, such as the right to cancel the loan. The Board believed that consumer protection would not be undermined by this exemption.

The Board requested comment on whether it should adopt this proposed exception. Some consumer group commenters urged the Board to retain the disclosures about Federal loan alternatives stating a concern that consumers in a testing context received the various private education loan disclosure forms close together in time, but that consumers in the marketplace would receive them at different times and may not recall the information about Federal loan alternatives.

For the reasons stated in the proposal, the Board is not requiring disclosure of Federal loan alternatives on the final disclosure form. The Board's consumer testing conducted after the proposed rule was issued confirmed that consumers would not find this information beneficial at the stage in the lending process where they receive the final disclosure form.

Section 226.48 Limitations on Private Education Loans

Section 226.48, proposed as § 226.39, contains rules and limitations on private education loans. It includes a prohibition on co-branding in the marketing of private education loans, rules governing the 30-day acceptance period and three-day cancellation period for private education loans, the requirement that the creditor obtain a self-certification form from the consumer before consummating a private education loan, and the requirement that creditors in preferred lender arrangements provide certain information to covered educational institutions.

48(a) Co-Branding Prohibited

The HEOA prohibits creditors from using the name, emblem, mascot, or logo of a covered educational institution, or other words, pictures, or symbols readily identified with a covered educational institution in the marketing of private education loans in any way that implies that the covered educational institution endorses the creditor's loans.

Proposed § 226.39(a)(1) implemented this prohibition by prohibiting creditors from referencing a covered educational institution in a way that implies that the educational institution endorses the creditor's loans. At the same time, the Board recognized that a creditor may at times have legitimate reasons for using the name of a covered educational institution. For instance, some educational institutions' financial aid Web sites might provide links to specific creditors' Web sites. Creditors might provide a welcome page to the student that references the name of the school that provided the link. Some creditors may have school-specific terms or benefits and may need to use the name of the school to provide accurate information to consumers about the nature and availability of its loan products.

For these reasons, proposed § 226.39(a)(2) provided creditors with the following safe harbor for those cases where the creditor's marketing does make reference to an educational institution. Marketing that refers to an educational institution would not be deemed to imply endorsement if the marketing clearly and conspicuously discloses that the educational institution does not endorse the creditor's loans, and that the creditor is not affiliated with the educational institution. This safe harbor approach is consistent with the views expressed in the Conference Report to the HEOA, which states that the conferees intended that creditors could demonstrate that they are not implying endorsement by the covered educational institution by providing a clear and conspicuous disclaimer that the use of the name, emblem, mascot, or logo of a covered educational institution, or other words, pictures, or symbols readily identified with a covered educational institution, in no way implies endorsement by the covered educational institution of the creditor's private education loans and that the creditor is not affiliated with the covered educational institution. The Board stated its belief that this safe harbor approach will inform consumers that a reference to a covered educational institution does not mean that the institution endorses the loan being marketed while also providing clarity about how to market private education loans without violating TILA and Regulation Z.

Proposed comment 39(a)–1 clarified the term ''marketing'' as used in proposed § 226.39. The term included all ''advertisements'' as that term is defined in Regulation Z. 12 CFR 226.2(a)(2). The proposal explained that the term marketing is broader than advertisement, however, and includes documents that are part of the negotiation of the specific private education loan transaction. For example, applications or solicitations, promissory notes or contract documents would be considered marketing. The Board believed that a broader meaning of marketing is needed to cover documents, such as promissory notes, that are not considered advertisements, but that may use the name of the educational institution prominently in a potentially misleading way. For example, naming the loan the ''University of ABC Loan'' could mislead consumers into believing that the loan was offered by the educational institution.

Proposed comment 39(a)–2 clarified that referencing a covered educational institution in a way that implies that the educational institution, rather than the creditor, is offering or making the loan is a form of implying that the educational institution endorses the loan and was therefore not permitted under proposed § 226.39(a)(1). However, the use of a creditor's own name, even if that name includes the name of a covered educational institution, would not imply endorsement. For example, a credit union whose name includes the name of a covered educational institution would not be prohibited from using its own name. In addition, authorized use of a state seal by a state or an institution of higher education in the marketing of state education loan products would not imply endorsement.[13]

[13] *See* Joint Explanatory Statement of the Committee of Conference on H.R. 4137, Title X, Subtitle A, § 1011. The Conference Report states that the prohibition is not intended to prohibit a credit union whose name includes the name of a covered educational institution from using its own name in marketing its private education loans. In addition, it is not intended to prohibit states or

Proposed comment 39(a)–3.i provided a model clause that creditors may use in complying with the safe harbor proposed in § 226.39(a)(2). The creditor would be considered to have complied with proposed § 226.39(a)(2) if the creditor includes a clear and conspicuous statement, using the creditor's name and the covered educational institution's name, that ''[Name of creditor]'s loans are not endorsed by [name of school] and [name of creditor] is not affiliated with [name of school].''

The Board received comments from educational institutions arguing that the prohibition on co-branding should not apply if the educational institution is itself the creditor. The Board also received comments from creditors suggesting that use of the educational institution's name on the promissory note, if no more conspicuous than the text of the promissory note does not imply endorsement and should not be prohibited. By contrast, consumer groups suggested that the Board engage in consumer testing to ensure that the proposed disclosures were effective in indicating that a private education loan was not endorsed by the educational institution.

Proposed §§ 226.39(a)(1) and 39(a)(2) are adopted as §§ 226.48(a)(1) and 48(a)(2) largely as proposed. However, consistent with comment 47–2, which permits a creditor to use its own name, § 226.48(a)(1) has been clarified to not apply to a covered educational institution if the institution is the creditor. In addition, comments 47(d)–3.i and 47(d)–3.ii of the final rule require the safe harbor model clauses be provided with equal prominence and in close proximity to the reference to the school. Consistent with the Board's interpretation of the equal prominence and close proximity standards in the advertising rules in §§ 226.16 and 24, the statement would be deemed equally prominent and closely proximate if it is the same type size and is located immediately next to or directly above or below the reference to the school, without any intervening text or graphical displays. The Board believes that requiring equal prominence and close proximity for the use of the safe harbor statements will ensure that marketing material clearly communicates to consumers the identity of the creditor making the loan and, if applicable, that the school does not endorse the creditor's loans.

The final rule does not exclude use of the school's name in the promissory note from the general rule, even if the school's name is no more prominent than other text. The Board does not believe that the relative prominence of the school's name within the promissory note, by itself, determines whether or not the use of the school's name is misleading.

48(b) Preferred Lender Arrangements

In the proposal, the Board recognized that in certain instances the prohibition on creditors' implying endorsement from covered educational institutions would not be appropriate because it would not be factually correct. The HEOA specifically allows covered educational institutions to endorse the private education loans of creditors with which they have a ''preferred lender arrangement.'' The HEOA defines a ''preferred lender arrangement'' as an arrangement or agreement between a creditor and a school under which the creditor provides loans to the school's students or their families, and the school recommends, promotes, or endorses the creditor's loans. HEOA, Title I, § 120 (adding Section 152 to the Higher Education Act). Thus, where a creditor and a covered educational institution have a preferred lender arrangement, a creditor's statement that a school did not endorse its loans would be misleading.

The Board proposed to exercise its authority under TILA section 105(a) to provide an exception to the co-branding prohibition for creditors that have preferred lender arrangements. As explained above, the Board believes that this provision is necessary and proper to assure an accurate and meaningful disclosure to consumers of the relationship between the creditor and the educational institution. Proposed § 226.39(b) allowed the creditor to refer to the covered educational institution, but required that the creditor clearly and conspicuously disclose that the loan is not being offered or made by the educational institution, but rather by the creditor. The Board believes that a disclosure that the loan is provided by a creditor and not by the school would address consumer confusion about whether the loan was actually made by the school, or merely endorsed by the school.

The proposed requirement that creditors with preferred lender arrangements make a disclosure when referring to a school follows a prohibition on co-branding for preferred lenders contained in section 152 of the Higher Education Act, as added by the HEOA, which is similar to the newly added co-branding prohibition in TILA. Section 152 of the Higher Education Act prohibits a creditor in a preferred lender arrangement from making a reference to a covered educational institution in any way that implies that the loan is offered or made by such institution or organization instead of the creditor. HEOA, Title I, Section 120 (adding Section 152(a)(2) to the Higher Education Act). Thus, proposed § 226.39(b) reconciled the two co-branding prohibitions contained in the HEOA.

Proposed comment 39(a)–3.ii provided a model clause that creditors could use in complying with proposed § 226.39(b). The creditor would be considered to have complied with proposed § 226.39(b) if the creditor included a clear and conspicuous statement, using the name of the creditor's loan or loan program, the creditor's name and the covered educational institution's name, that ''[Name of loan or loan program] is not being offered or made by [name of school], but by [name of creditor].''

The Board requested comment on whether creditors should be offered a safe harbor from the prohibition on co-branding, and, if so, whether other types of safe harbors should be considered. The Board also requested comment on how the co-branding prohibition should apply to creditors with preferred lender arrangements with covered educational institutions. The Board also requested comment on whether there are other examples of marketing that should be included in the co-branding prohibition.

The Board received comments from educational institutions and some lenders indicating that the proposed exception to the co-branding prohibition might conflict the Department of Education's, or other state law code-of-conduct provisions. Some educational institutions expressed concern that the proposed rule would permit the creditor to claim endorsement without the educational institution's consent if the educational institution merely placed a creditor on a suggested list of lenders provided to students.

The Board is adopting § 226.48(b) largely as proposed in § 226.39(b). However, the final rule clarifies that it does not authorize creditors to claim endorsement by an educational institution without the institution's having actually endorsed the creditor's loan program. After consulting with the Department of Education, the Board still believes that such endorsements may be permissible. The final rule has also been clarified to apply only when an endorsement of the creditor's loans by the educational institution is not

institutions of higher education from using state seals, with appropriate authorization, in the marketing of state education loan products.

prohibited by other applicable law or regulation. In addition, the statement that must accompany the reference to the educational institution must be equally prominent and closely proximate as discussed in the section-by-section analysis under § 226.48(a) above.

48(c) Consumer's Right To Accept

The HEOA provides consumers with a 30-day period following receipt of the approval disclosures in which to accept a private education loan. It also prohibits creditors from changing the rate or terms of the loan, except for changes based on adjustments to the index used for the loan, until the 30-day period has expired. Section 226.48(c), proposed as § 226.39(c), implements the 30-day acceptance period for private education loans.

Under the proposal, the 30-day period began following the consumer's receipt of the approval disclosures required in proposed § 226.38(b). Proposed comment 39(c)–1 required creditors to provide at least 30 days from the date the consumer received the disclosures required under proposed § 226.38(b) for the consumer to accept a private education loan. It also allowed creditors to provide a longer period of time at the creditor's option. It clarified that if the creditor placed the disclosures in the mail, the consumer was considered to have received them three business days after they were mailed. The proposed comment also clarified that the consumer could accept the loan at any time before the end of the 30 day period.

Commenters agreed with the proposal requiring a minimum 30-day acceptance period and the provision that a consumer could accept the loan at any time within the 30-day period. Therefore, proposed § 226.39(c) and comment 39(c)–1 are adopted as § 226.48(c) and comment 48(c)–1, respectively.

The HEOA does not specify the method by which the consumer may accept the terms of the loan. Proposed comment 39(c)–2 allowed the creditor to specify a method or methods by which acceptance could occur. Under the proposal, the creditor could specify that acceptance be made orally or in writing or could permit either form of acceptance. The creditor could also allow the consumer to accept electronically, but could not make electronic acceptance the sole form of acceptance.

Commenters generally agreed with the proposed comment on permissible methods of acceptance. However, some commenters suggested that creditors should be permitted to require electronic communication to be the only means of acceptance if the creditor provided the approval disclosure to the consumer electronically. The Board believes that requiring a form of acceptance in addition to electronic communication is generally appropriate because not all consumers have access to electronic forms of communication. However, the Board agrees with commenters that electronic communication could be permissible as the only means of acceptance when the consumer has already indicated a willingness to communicate electronically by consenting to and receiving a disclosure electronically, pursuant to the E-Sign Act. Comment 48(c)–2, proposed as comment 39(c)–2, is adopted and revised to permit electronic communication as the only means of acceptance if the creditor has provided the approval disclosure electronically in compliance with the consumer consent and other applicable provisions of the E-Sign Act.

Proposed § 226.39(c)(2) prohibited creditors from changing the terms of the loan, with a few specified exceptions, before the loan disbursement, or the expiration of the 30-day acceptance period if the consumer did not accept the loan during that time. To ensure that consumers receive the benefit of the entire 30-day period in which to accept the loan, the Board proposed to prohibit creditors from changing the rate and terms of the loan until the date of disbursement, if the consumer accepted within the 30-day period.

Proposed § 226.39(c)(2) prohibited only those changes that would affect the rate or terms required to be disclosed under proposed §§ 226.38(b) and (c), the approval and final disclosures, respectively. The Board interpreted the prohibition on changes to the rate or terms of the loan to cover only the disclosed terms.

In the proposal, the Board provided three exceptions to the provision that the rate and terms of private education loans required to be disclosed could not be changed. Proposed § 226.39(c)(2) did not prohibit changes based on adjustments to the index used for a loan, implementing TILA section 128(e)(6)(B). In addition, in the proposal, the Board exercised its authority under TILA section 105(a) to make exceptions to effectuate the purposes of the statute to allow the creditor to make changes that would unequivocally benefit the consumer, similar to the rule for home-equity plans in § 226.5b(f)(3)(iv). The Board also proposed to exercise its authority under TILA section 105(f) in permitting unequivocally beneficial changes by exempting creditors from HEOA's prohibition on making changes to the loan prior to the date of acceptance of the terms of the loan and consummation of the transaction. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(6)(B)).

The proposal also did not prohibit changes made in connection with accommodating a request by the consumer. Proposed § 226.39(c)(3) and proposed comment 39(c)–3 allowed creditors to change a loan's rate or terms in response to a request from a consumer. The proposed rule did not limit the changes that could be made. For example, the creditor was permitted to provide for a shorter repayment term as a condition of granting the consumer's request to borrow a lesser loan amount. However, under the proposal if the creditor chose to modify the terms of the loan in response to a consumer's request, the creditor needed to provide a new set of approval disclosures and provide the consumer with a new 30-day acceptance period.

The HEOA provides that a consumer has 30 days in which to accept the terms of a private education loan and consummate the transaction, and that the creditor may not change the rate and terms of the loan during this time. The statute does not explicitly state under what conditions, if any, a creditor could withdraw the loan offer or change the loan's terms in response to a change in a material condition of the loan. The Board requested comment on whether there were instances where a material condition of the loan offer was not met such that the creditor should be permitted to withdraw the offer or change the terms of the loan.

Commenters generally agreed with the permissible exceptions to the restrictions on changes to the loan's rate and terms. Industry commenters, however, suggested that creditors should be permitted to give approval disclosures at a conditional approval stage, and be allowed to change the terms of the loan based upon information received later, such as verification of income, verification of citizenship, validation of co-borrower information, and validation that the loan transaction is in compliance with applicable laws. Industry commenters also argued for an exception to enable creditors to change the terms of a loan based on revised information regarding a consumer's educational expenses and financial need provided in a school certification or other communication from a school. They argued that if creditors were not permitted to give approval disclosures at a conditional approval stage, loan approvals and approval disclosures would be delayed while verifications, compliance checks, and school certifications were completed.

The Board agrees that it is important to inform consumers of a loan approval and the applicable rates and terms early in the loan process, so that consumers have as much time as possible to shop for a private education loan with the most favorable terms. However, the HEOA provides that the rates and terms of the private education loan may not be changed by a creditor during the 30-day period in which the consumer has the right to accept the loan terms and consummate the transaction, except for changes based on adjustments to the index used for a loan.[14] Thus, permitting conditions contemplated by the commenters would require the Board to make multiple exceptions, which could undermine the statutory provision. This would also prevent the consumer from being able to adequately shop for the best loan terms because the consumer would not know the final terms of the offer until the final disclosure was provided. Moreover, the Board believes that while private education loan approvals may be delayed in order for creditors to verify certain information, creditors will still have an incentive to approve the loans expeditiously in order to respond to the needs of their customers.

However, the Board does believe that two of the exceptions suggested by the industry commenters are appropriate, in addition to those exceptions provided in the proposed rules and, for the reasons stated below, is adopting them pursuant to its TILA Section 105(a) authority in order to effectuate the purposes of and facilitate compliance with TILA. In response to concerns that the provision would require creditors to consummate a loan that is legally impermissible, in § 226.48(c)(3) and comment 48(c)–4 in the final rules, the Board makes clear that a creditor may withdraw an offer prior to consummation if the extension of credit would be prohibited by law. The creditor also may withdraw an offer prior to consummation if the creditor has reason to believe that the consumer has committed fraud in connection with the application.

The Board also understands that it is common for students' financial assistance packages to change in a short time period for a variety of reasons, such as changes to the student's and family's financial situation or the availability of grants. The Board shares commenters' concerns that those whose financial assistance amount increases after their private education loan has been approved could end up over-borrowing, which, among other things, could adversely affect a student's eligibility for Federal student loans. Thus, section 226.48(c)(3) and comment 48(c)–4 permit the creditor to reduce the loan amount based upon a certification or other information received from a covered educational institution or from the consumer that indicates the student's cost of attendance has decreased or that other financial aid has increased. A creditor may make corresponding changes to the rate and other terms, but only to the extent that the consumer would have received the changed terms if the consumer had applied for the reduced loan amount. For example, assume a consumer applies for, and is approved for, a $10,000 loan at a 7% interest rate. However, the consumer's school certifies that the consumer's financial need is only $8,000. The creditor may reduce the loan amount for which the consumer is approved to $8,000. The creditor may also, for example, increase the interest rate on the loan to 7.125%, but only if the consumer would have received a rate of 7.125% if the consumer had originally applied for a $8,000 loan.

The Board is also adopting the exceptions to the restrictions on changing the rates and terms of the loan that were set forth in the proposed rules. The Board continues to believe a permissible change that would unequivocally benefit the consumer is appropriate. Disallowing such a change could complicate the credit process and unnecessarily increase costs for consumers and creditors who, for example, would otherwise have to repeat the application process in order to change the terms. In addition, consumers retain their right under HEOA to cancel the loan. Therefore, the Board is adopting the exception proposed in § 226.39(c)(2) and comment 39(c)–3 that permits a creditor to make changes if they will unequivocally benefit the consumer in the final rules as § 226.48(c)(3) and comment 48(c)–4. The final rules clarify that the permissible changes may be made to both the interest rate and the terms of the loan. For example, a creditor is permitted to reduce the interest rate or lower the amount of a fee.

The Board is also adopting proposed § 226.39(c)(2) as § 226.48(c)(3) in the final rules, permitting changes based on adjustments to the index used for a loan, as mandated in the HEOA. The final rules clarify that while changes to the interest rate are permissible under this exception, changes to other loan terms based on adjustments to the index used for a loan are not permissible.

The Board has clarified in § 226.48(c)(3)(ii) and comment 48(c)–4 that if the creditor changes the rate or terms of the loan under § 226.48(c)(3), the creditor need not provide the approval disclosures required under § 226.47(b) for the changed loan terms, nor must the creditor provide an additional 30 days to accept the new terms of the loan. However, the creditor must provide the final disclosures required under § 226.47(c).

In addition to the changes to the rates and terms of the loan permitted in § 226.48(c)(3), the Board also continues to believe that it is in the consumer's interest to be able to request changes to specific terms of the loan, even if this results in changes to the rate or other terms. The Board understands that it is common for a consumer's private education loan needs to change even until immediately prior to consummation of the loan. For example, a consumer may seek to defer repayment during enrollment in school after the consumer has already applied for the loan. The Board seeks to ensure that consumers retain the benefit of the 30-day acceptance period while also providing consumers with flexibility to move forward with a transaction with a creditor without having to cancel a loan, or loan offer, and expend time and money re-applying. Thus, the Board is also adopting proposed § 226.39(c)(3) and comment 39(c)–4 as § 226.48(c)(4) and comment 48(c)–5 to permit a creditor, at its option, to change the rate or terms of a loan in order to accommodate a request from a consumer. The final rule also clarifies that, except for the permissible changes to the rates and terms in § 226.48(c)(3) discussed above, a creditor may not withdraw or change the rate or terms of the original loan for which the consumer was approved unless the consumer accepts the terms of the loan offered in response to the consumer's request. For example, assume a consumer applies for a $10,000 loan and is approved for the $10,000 amount at an interest rate of 6%. After the creditor has provided the approval disclosures, the consumer's financial need increases, and the consumer requests to a loan amount of $15,000. In this situation, the creditor is permitted to offer a $15,000 loan, and to make any other changes such as raising the interest rate to 7%, in response to the consumer's request. However, because the consumer may choose not to accept the offer for the $15,000 loan at the higher interest rate, the creditor may not withdraw or

[14] Title X, Subtitle A, § 1021(a) (amending TILA Section 128(e)).

change the rate or terms of the offer for the $10,000 loan, except as permitted under § 226.48(c)(3), unless the consumer accepts the $15,000 loan.

The Board believes that consumers could be discouraged from requesting changes to loan terms unless the original offer for which the consumer was approved is held open until the consumer accepts the counter-offer. For similar reasons, the Board has clarified in § 226.48(c)(4)(ii) that if the creditor offers to make changes based on a request from the consumer, the creditor must provide the disclosures required under § 226.47(b) for the new loan terms. The creditor must also provide the consumer with an additional 30 days to accept the new terms of the loan and must not change the new loan's rate and terms except as specified in §§ 226.48(c)(3) and 226.48(c)(4).

48(d) Consumer's Right To Cancel

Section 226.48(d), adopted substantially as proposed in § 226.39(d), provides the consumer with the right to cancel a private education loan without penalty until midnight of the third business day following receipt of the final disclosures required in § 226.47(c). It also prohibits the creditor from disbursing any funds until the expiration of the three-business day period. As proposed, the consumer's right to cancel applies regardless of whether or not the consumer is legally obligated on the loan at the time that the final disclosures were provided.

Comment 48(d)–1, proposed as comment 39(d)–1, provides guidance on calculating the three-business day time period and when a consumer's request to cancel would be considered timely. It also clarifies that the creditor may provide a period of time longer than three business days in which the consumer may cancel, and that the creditor may disburse funds after the minimum three-business day period so long as the creditor honors the consumer's later timely cancellation request. Comment 48(d)–2, proposed as comment 39(d)–2, provides guidance to creditors on specifying a method or methods by which the consumer may cancel the loan. The creditor is permitted to require cancellation be communicated orally or in writing. Under the proposal, the creditor was also permitted to allow cancellation to be communicated electronically, but was not permitted to require only electronic communication because the Board believed that not all consumers have access to electronic communication. In the final rule, comment 48(d)–2 clarifies that if the creditor has provided the final disclosure electronically in accordance with the E-Sign Act, the creditor may allow electronic communication as the only means of acceptance.

Comment 48(d)–3, proposed as comment 39(d)–3 clarifies the requirement that the creditor allow cancellation without penalty. The prohibition extended only to fees charged specifically for canceling the loan. The creditor is not required to refund fees, such as an application fee, when charged to all consumers whether loans are cancelled or not.

The Board requested comment on whether creditors should be required to accept cancellation requests until midnight, or whether they should be allowed to set a reasonable deadline for communicating cancellation on the third business day. The Board also requested comment on whether creditors should be allowed to provide for a longer period during which consumers may cancel the loan, and, if so, whether creditors should be allowed to disburse funds after the minimum three-business-day period.

Commenters generally supported permitting creditors to provide a period longer than three days in which to cancel the loan and allowing loan funds to be disbursed after the third day if the creditor provides additional time in which to cancel. A few industry commenters suggested that creditors be allowed to set a reasonable cut-off time for cancellation requests on the third business day, such as 5 p.m. However, because the final rule allows creditors to provide the consumer with more than three days in which to cancel, the final rule adopts the midnight cutoff time on the third day.

48(e) Self-Certification Form

The HEOA requires that, before a creditor may consummate a private education loan, it obtain from the consumer a self-certification form. Proposed § 226.39(e) implemented this requirement. The HEOA requires that a creditor obtain the self-certification form only from consumers of private education loans intended for students attending an institution of higher education. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(3)). Thus, the proposal did not require a self-certification form with respect to every covered educational institution, but only those that met the definition of an institution of higher education in proposed § 226.37(b)(2). Moreover, proposed comment 39(e)–1 clarified that the requirement applied even if the student was not currently attending an institution of higher education, but would use the loan proceeds for postsecondary educational expenses while attending such institution. For example, a creditor would have been required to obtain the form before consummating a private education loan provided to a high school senior for expenses to be incurred during the consumer's first year of college. At the same time, proposed comment 39(e)–1 clarified that the self-certification requirement would not apply to loans where the self-certification information would not be applicable, such as loans intended to consolidate existing education loans. The self-certification form provides the consumer with information about the student's education costs to be incurred in the future (such as the cost of attendance and the amount of financial aid available). Even if the student were still enrolled, the information on the self-certification form would not apply to a consolidation loan, because the consolidation loan would cover expenses the student incurred in the past.

Section 155(a)(2) of the Higher Education Act of 1965, as added by the HEOA, provides that the form shall be made available to the consumer by the relevant institution of higher education. HEOA, Title X, Subtitle B, Sec. 1021(b). Although the HEOA requires that the creditor obtain the completed and signed self-certification form before consummating the loan, it does not specify that the creditor must obtain the form directly from the consumer. Proposed comment 39(e)–1 allowed the creditor to obtain the self-certification form either directly from the consumer or through the institution of higher education. Compliance with the self-certification requirement may be simplified for all parties if the educational institution is permitted to obtain the completed form from the consumer and forward it to the creditor. The consumer may find it easier to return the form to the educational institution as part of the institution's overall financial aid process. The creditor and educational institution may also find it easier to include the self-certification form as part of a larger package of information communicated by the institution to the creditor about the student's eligibility and cost of attendance.

Both Section 128(e)(3) of TILA and Section 155 of the Higher Education Act of 1965 provide that the self-certification form may be provided to the consumer in electronic form. Under Section 155 of the Higher Education Act of 1965, the Department of Education must develop the form and ensure that institutions of higher education make it available to consumers in written or electronic form. Because the form will be provided by educational institutions to consumers, the Board did not propose to impose consumer consent or other requirements on creditors in order to accept the form in electronic form. The self-certification form may also be signed by the consumer in electronic form. Under Section 155(a)(5) of the Higher Education Act of 1965, the Department of Education must provide a place on the form for the applicant's written or electronic signature. Proposed comment 39(e)–2 provided that a consumer's electronic signature is considered valid if it meets the requirements promulgated by the Department of Education under Section 155(a)(5) of the Higher Education Act of 1965.

The Board received numerous comments from industry, educational institutions, and individual financial aid officers and their representatives about the self-certification requirement. These comments requested that the Board exempt from the self-certification requirement any private education loan for which the creditor certifies the borrower's cost of attendance, other financial aid, and financial need information with the school. Commenters expressed concern that the self-certification requirement would be duplicative of the current school certification process when that process is used. In particular, individual financial aid officers expressed concern that the self-certification process would greatly increase the burden on financial aid offices with few staff. Educational institutions also suggested that the self-certification process was likely to be less meaningful when the educational institution is the creditor because the educational institution provides the form as well as the information the consumer must use to complete the form, but must also receive the form back from the consumer.

Section 226.48(e) of the final rule does not provide an exception from the self-certification requirement for school-certified loans. The HEOA requires creditors to obtain the self-certification form in all cases. The Board believes that self-certification form is intended not only to ensure that the educational institution and creditor are aware of the cost of attendance at the educational institution and about the consumer's other financial aid and need, but also to provide the consumer with this information. Thus, even where the school and the creditor share this information directly, the self-certification form seeks to ensure consumers are aware of their own educational expenses, the financial aid for which they qualify, and their remaining financial need.

The final rule does, however, permit creditors to provide the self-certification form directly to the consumer with the information the consumer requires in order to complete the form. Nothing in the HEOA prohibits creditors or anyone else from providing the form to the consumer and the Board notes that the form necessarily will be provided by the creditor when the creditor is the educational institution. The HEOA requires a statement on the self-certification form that the consumer is encouraged to communicate with the financial aid office about the availability of other financial aid. The Board believes that allowing the creditor to provide the form will ensure that creditors have the ability to consummate private education loans and disburse loan funds in a timely manner and that this will benefit consumers, especially if financial aid offices are unable to process self-certification requests.

48(f) Provision of Information by Preferred Lenders

The HEOA requires a creditor that has a preferred lender arrangement with a covered educational institution to provide the educational institution annually, by a date determined by the Board in consultation with the Secretary of Education, with the information required to be disclosed on ''the model form'' developed by the Board for each type of private education loan the creditor plans to offer for the next award year (meaning the period from July 1 of the current calendar year to June 30 of the next year). HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(11)). TILA Section 128(e)(11) refers to the information on ''the model form'' but the HEOA requires the Board to develop three model forms and Section 128(e)(11) does not specify which of the model forms the creditor should use. However, the approval and consummation forms contain transaction-specific data that cannot be known for the next year. Thus, the final rule requires, as proposed, that the creditor provide the general loan information required on the application form in § 226.47(a), rather than the transaction-specific information required in the approval and final disclosure forms.

After consultation with the Department of Education, the Board proposed to require that creditors provide information by January 1 of each year. Proposed § 226.39(f) required that the creditor provide only the information about rates, terms and eligibility that are applicable to the creditor's specific loan products. The Board did not believe that educational institutions needed the other information required to be disclosed in § 226.38(a), such as information about the availability of Federal student loans. In addition, the Board believed that educational institutions could perform their own calculations of the total cost of the creditors' loans and did not need the cost estimate disclosure required under § 226.38(a)(4). Comment 39(f)–1 provided creditors with the flexibility to comply with this requirement by providing educational institutions with copies of their application disclosure forms if they chose, or to provide only the required information.

The Board requested comment on the appropriate date by which creditors must provide the required information and on what information should be required. Industry and educational institution commenters suggested that April 1 of each year would be a more appropriate date. Commenters stated that creditors often do not settle on credit terms for the upcoming school year and schools do not compile preferred lender lists until closer to April 1. In addition, commenters noted that under the Department of Education's negotiated rulemaking, the definition of preferred lender arrangement was likely to be very broad and that creditors may not know by April 1, or at all, that they are on a school's preferred lender list and thus party to a preferred lender arrangement. These commenters requested that they be required to provide the information by April 1 or within 30 days of learning that they were party to a preferred lender arrangement. Educational institution commenters also requested that the Board require disclosure of the total cost examples contained in the application forms, stating they may not always have the information or resources necessary to reproduce the calculations.

Under § 226.48(e), the final rule requires creditors to provide the required information by April 1 of each calendar year or within 30 days of entering into, or learning that the creditor is a party to, a preferred lender arrangement. The information must cover private education loans that the creditor plans to offer students for the period from July 1 of the current calendar year to June 30 of the next calendar year (that is, the next award year). In addition, the creditor is required to provide the information required in §§ 226.47(a)(1)–(5), which includes the total cost examples.

Comment 48(e)–1 clarifies that a creditor is not required to comply if the creditor is not aware that it is a party to a preferred lender arrangement. For example, if a creditor is placed on a covered educational institution's preferred lender list without the creditor's knowledge, the creditor is not required to comply with § 226.48(f).

Appendix H—Closed-End Model Forms and Clauses

Appendix H to part 226 contains model forms, model clauses and sample forms applicable to closed-end loans. Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. The Board proposed to add several model and sample forms to Appendix H to part 226. The Board also proposed to add commentary to the model and sample forms in Appendix H to part 226, as discussed below.

Current model form H–2 contains boxes at the top of the form with disclosures in the following order: the annual percentage rate, the finance charge, the amount financed, and the total of payments. Proposed model forms H–19, and H–20 contain a similar box-style arrangement, but reordered the disclosures as follows: The amount financed, the interest rate, the finance charge and the total of payments.[15] The proposed order reflected a mathematical progression of the disclosures that consumer testing indicates may enhance understanding of these terms: the consumer borrows the amount financed, is charged interest which, along with fees, yields a finance charge and a total of payments. While the Board believed that proposed order may enhance consumer understanding in the context of private education loans, the Board also recognized that consumers may be accustomed to the current order from other loan contexts. The Board requested comment on whether it should maintain a uniform order for the disclosures, or whether it should adopt the proposed order for private education loans.

A few industry and consumer group commenters suggested that the Board maintain the boxes in the order provided in model form H–1. However, the final model forms H–19 and H–20 contain further changes to the boxes displayed at the top of the forms. In the final model forms, the amount financed is disclosed as part of the itemization of the amount financed and the total loan amount is in the top left box where the amount financed was in the proposed forms. Consumer testing indicated that disclosing the total loan amount, interest rate, finance charge and total of payments in this manner enhanced consumer understanding. Consumers were able to follow the mathematical progression of the terms and understand the finance charge and total of payments based on the total loan amount, interest rate and itemization of the amount financed. For these reasons the Board is maintaining the order of the boxes as proposed.[16]

Permissible changes to the model and sample forms. The commentary to Appendices G and H to part 226 currently states that creditors may make certain changes in the format and content of the model forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability. *See* comment app. G and H–1. However, the Board proposed to adopt format requirements with respect to the model forms for disclosures applicable to private education loans, such as requiring certain disclosures be grouped together under specific headings. Proposed comment app. H–25.i provided a list of acceptable changes to the model forms. Proposed comment app. H–25.ii provided guidance on the design of the model forms that would not be required but would be encouraged.

The Board also proposed sample forms H–21, H–22, and H–23 to illustrate various ways of adapting the model forms to the individual transactions described in the commentary to appendix H. The deletions and rearrangements shown relate only to the specific transactions described in proposed comments app. H–26, H–27, and H–28. As a result, the samples do not provide the general protection from civil liability provided by the model forms.

The Board conducted consumer testing on the proposed forms and on later revisions of the proposed forms. The Board also received comments on the proposed forms requesting clarification as to whether certain changes could be made. For example, commenters requested the ability to move the notice of the right to cancel to accommodate a form that could be used with windowed envelopes.

The Board is adopting final model forms H–18, H–19, and H–20, and final sample forms H–21, H–22, and H–23, that have been revised to reflect the consumer testing conducted for the Board and public comment. The Board is also adopting comment H–25 to provide a list of acceptable changes to the model forms and guidance on the design of the forms. For example, in response to public comment, the Board tested a version of the sample final form with the notice of the right to cancel in the top right instead of the top left and consumers did not find the notice less conspicuous. The final rule allows creditors to place the notice of the right to cancel in the top right of the form to accommodate windowed envelopes.

V. Effective Date

The HEOA's amendments to TILA have various effective dates. The TILA amendments for which the Board is not required to issue regulations became effective on the date of the HEOA's enactment, August 14, 2008. HEOA Section 1003.

The Board is required to issue regulations for paragraphs (1), (2), (3), (4), (6), (7), and (8) of section 128(e) and section 140(c) of TILA. The Board's regulations are to have an effective date not later than six months after their issuance. HEOA Section 1002. However, the HEOA's amendments to TILA for which the Board must issue regulations take effect on the earlier of the date on which the Board's regulations become effective or 18 months after the date of the HEOA's enactment. HEOA Section 1003. Consequently, the latest date at which the provisions of the HEOA described above could become effective is February 14, 2010.

The Board requested comment on whether six months would be an appropriate implementation period for the proposed rules or whether the Board should specify a shorter implementation period. Commenters stated that compliance with the proposed rule would require significant updates to disclosure systems, processes, and training, and requested that the Board provide no less than a six-month implementation period. The final rule provides creditors until February 14, 2010 to comply.

Compliance with the final rules is mandatory for private education loans for which the creditor receives an application on or after February 14, 2010. Transition rules are provided for private education loans for which applications were received before the mandatory compliance date in comment 1(d)(6)–2.

[15] The disclosure of the interest rate and annual percentage rate is discussed in the section-by-section analysis in § 226.17.

[16] In addition, the Board notes that current comment app. H–1 specifically permits creditors to rearrange the order of the finance charge and amount financed boxes in model forms H–1 and H–2.

In addition, TILA section 128(e)(5) requires the Board to develop model forms for the disclosures required under TILA section 128(e) within two years of the HEOA's date of enactment. The Board is adopting model forms along with this final rule. The Board is also adopting a rule to implement TILA section 128(e)(11) which requires lenders to provide certain information to covered educational institutions with which they have preferred lender arrangements.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). In addition, the Board, under OMB delegated authority, will extend for three years the current recordkeeping and disclosure requirements in connection with Regulation Z. The collection of information that is required by this final rule is found in 12 CFR part 226. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0199.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). Since the Board does not collect any information, no issue of confidentiality arises. The respondents/recordkeepers are creditors and other entities subject to Regulation Z, including for-profit financial institutions and small businesses.

TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required to, among other things, disclose information about the initial costs and terms and to provide periodic statements of account activity, notice of changes in terms, and statements of rights concerning billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and home equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for twenty-four months (§ 226.25), but Regulation Z does not specify the types of records that must be retained.

Under the PRA, the Board accounts for the paperwork burden associated with Regulation Z for the state member banks and other creditors supervised by the Board that engage in lending covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Board-regulated institutions as: state member banks, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other Federal agencies account for the paperwork burden imposed on the entities for which they have administrative enforcement authority. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Board provides model forms, which are appended to the regulation.

As discussed above, on March 24, 2009, the Board published in the **Federal Register** a notice of proposed rulemaking to implement the HEOA (74 FR 12,464). The comment period for this notice expired May 26, 2009. No comments that specifically addressed current or proposed paperwork burden estimates were received. The final rule will impose a one-time increase in the total annual burden under Regulation Z by 45,440 hours from 734,127 to 779,567 hours. In addition, the Board estimates that, on a continuing basis, the requirements will increase the annual burden by 231,744 hours [17] from 734,127 to 965,871 hours. The total annual burden will increase by 277,184 hours, from 734,127 to 1,011,311 hours.[18] This burden increase will affect all Board-regulated institutions that are deemed to be respondents for the purposes of the PRA.

The Board has a continuing interest in the public's opinions of its collections of information. At any time, comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

VII. Regulatory Flexibility Analysis

In accordance with Section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), the Board is publishing a final regulatory flexibility analysis for the proposed amendments to Regulation Z. The RFA requires an agency either to provide a final regulatory flexibility analysis with a final rule or certify that the final rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.[19] The size standard to be considered a small business is: $175 million or less in assets for banks and other depository institutions; $25.5 million or less in annual revenues for flight training schools; and $7.0 million or less in annual revenues for all other non-bank entities that are likely to be subject to the final regulations.

The Board believes that this final rule will not have a significant economic impact on a substantial number of small entities. The final amendments to Regulation Z are narrowly designed to implement the revisions to TILA made by the HEOA. Creditors must comply with the HEOA's requirements by February 14, 2010, whether or not the Board amends Regulation Z to conform the regulation to the statute. The Board's final rule is intended to facilitate compliance by eliminating duplication between Regulation Z's existing requirements and the statutory requirements imposed by the HEOA and to provide guidance on compliance with the HEOA's requirements.

A. Statement of the Need for, and Objectives of, the Final Rule

Section 1002 of the HEOA requires the Board to prescribe regulations prohibiting creditors from co-branding and requiring creditors to make certain disclosures and perform related requirements when making private education loans. More specifically, the regulations must address, but are not limited to, the following aspects of sections 128 and 140 of the TILA: (i) Prohibiting a creditor from marketing

[17] The increase of 270 hours corrects a transposition of 231,474 hours published in the proposed rules.

[18] The burden estimate for this rulemaking includes the burden addressing changes to implement provisions of the Mortgage Disclosure Improvement Act of 2008, as announced in a separate final rulemaking. *See* 74 FR 23,289 (May 19, 2009).

[19] *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

private education loans in any way that implies that the covered educational institution endorses the private education loans it offers; (ii) requiring a creditor to make certain disclosures to the consumer in an application (or solicitation without requiring an application), with the approval, and with the consummation of the private education loan; (iii) requiring the creditor to obtain from the consumer a self-certification form prior to consummation; (iv) allowing at least 30 days following receipt of the approval disclosures for the consumer to accept and consummate the loan, and prohibiting certain changes in rates and terms until either consummation or expiration of such period of time; and (v) requiring a three-day right to cancel following consummation and prohibiting disbursement of funds until the three-day period expires.

Moreover, section 1021(a)(5) of the HEOA requires the Board, in consultation with the Secretary of Education, to develop and issue model disclosure forms that may be used to comply with the amended section 128 of the TILA.

In addition, the regulations interpret certain definitions included in title X of the HEOA to clarify the meaning of terms used in section 1011(a) of the HEOA, including the definitions of private education loan, and covered educational institution. The HEOA does not require the Board to issue regulations to implement these definitions, but the definitions are intended to clarify the required regulations pursuant to the Board's authority under section 105(a) of the TILA.

The Board is issuing the final regulations and model forms both to fulfill its statutory duty to implement the provisions of sections 1002 and 1021(a)(5) of the HEOA and, in the case of the definition interpretations, to better clarify the requirements under the aforementioned sections. Parts I and IV of the **SUPPLEMENTARY INFORMATION** describe in detail the reasons, objectives, and legal basis for each component of the final rule.

B. Summary of Issues Raised by Comments in Response to the Initial Regulatory Flexibility Analysis

In connection with the proposed rule to implement the HEOA, the Board sought information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the rule to small institutions. The Board received several comments from small banks, credit unions, and educational institutions and trade associations that represent them. The commenters asserted that compliance with a final rule to implement the HEOA would increase costs and delay consummation of private education loans. However, these comments did not contain specific information about costs that will be incurred or changes in operating procedures that will be required to comply with the final rule. In general, the comments discussed the impact of statutory requirements rather than any impact that the Board's proposed rule itself would generate.

C. Description and Estimate of Small Entities to Which the Regulation Applies

The final regulations apply to any ''creditor'' as defined in Regulation Z (12 CFR 226.2(a)(17)) that extends a private education loan.

The total number of small entities likely to be affected by the final rule is unknown because the Board does not have data on the number of small creditors that make private education loans. The rule has broad applicability, applying to any creditor that makes loans expressly for postsecondary educational expenses, but excluding open-end credit, real estate-secured loans, and loans made, insured, or guaranteed by the Federal government under title IV of the Higher Education Act of 1965. It could apply not only to depository institutions and finance companies, but also schools that meet the creditor definition and extend private education loans to their students. The Board requested but did not receive specific comment regarding the number and type of small entities that would be affected by the proposed rule.

Based on the best information available, the Board makes the following estimate of small entities that would be affected by this final rule: Based on an average of data reported in Call Reports [20] at quarter end between April 1, 2008 and March 31, 2009, approximately 4,362 banks, 393 thrifts, and 7,038 credit unions, totaling 11,793 institutions, would be considered small entities that are subject to the final rules. The Board cannot identify the percentage of these small institutions that extend private education loans and thus are subject to the rulemaking. However, because the final rules cover all private education loans regardless of their size or whether they are for multiple purposes, the Board believes a majority of the 11,793 institutions would be covered by the final rules.

The Board is not aware of data that provides information regarding finance companies' size in terms of annual revenues, and therefore cannot identify with certainty the number of small finance companies that extend private education loans that would be subject to the final rule. However, the size standard for these companies is $7.0 million or less in annual revenues (rather than assets), and the Board believes the size standard for depository institutions—$175 million or less in asset size—is likely to provide a comparable estimate. A 2005 compilation of surveys conducted by the Board indicates that 211 finance companies have an asset size of $100 million or less, and an additional 36 finance companies have an asset size between $100 million and $1 billion. Thus, the Board estimates that there are no more than a total of 247 small finance companies. The Board is unable, however, to locate data demonstrating the number of these small finance companies that extend private education loans.

The final rule would also apply to covered educational institutions that extend private education loans to their students, including flight training schools. Accordingly to information on the Federal Aviation Administration Web site, there are approximately 588 flight training schools nationwide. The Board is unaware of data that shows how many of those flight training schools would be deemed small institutions and, of those small flight schools, how many extend private education loans.

The final rule would also apply to other types of postsecondary schools, including both accredited and unaccredited postsecondary schools. In order to calculate an estimate of small accredited postsecondary schools, the Board relied on data collected by the Department of Education through its Integrated Postsecondary Education Data System (IPEDS). The Board used IPEDS data showing the revenue of all schools that participate in the Department's financial aid programs for postsecondary students, all of which are accredited. According to this IPEDS data, the estimated number of small accredited postsecondary schools is 3,159.[21]

The Board is not aware of sources of data on either the number of non-

[20] Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041), Thrift Financial Report (1313), and NCUA Call Reports (NCUA 5300).

[21] Of these small accredited postsecondary schools, 396 are public institutions, 678 are private not-for-profit institutions, and 2,085 are private for-profit institutions.

accredited postsecondary schools nationwide or their revenues. However, based on estimates provided by several trade organizations representing for-profit postsecondary schools, the Board believes that the number of non-accredited for-profit schools is approximately three times the number of accredited for-profit schools. Based on the assumption that all non-accredited schools are for-profit institutions, and using the IPEDS data showing that there were approximately 2,600 accredited for-profit postsecondary schools in 2005, the Board estimates there are 7,800 non-accredited postsecondary schools nationwide.

In order to approximate how many of those 7,800 non-accredited postsecondary schools are small entities, the Board believes that available data on for-profit schools with programs less than two years is likely to provide the closest comparable data to that of non-accredited postsecondary schools. According to this data, approximately 95 percent of for-profit schools with programs less than two years—and therefore approximately 95 percent of non-accredited postsecondary schools—have $7 million or less in revenue.[22] Thus, the Board estimates that 7,410 non-accredited postsecondary schools qualify as small entities.[23]

With respect to both accredited and unaccredited postsecondary schools, the Board is not aware of a source of data regarding the number of these small institutions that extend private education loans. Anecdotal information and informal survey results from representatives of several state associations of for-profit schools produced conflicting results regarding how many small schools extend private education loans.

D. Reporting, Recordkeeping and Other Compliance Requirements

The compliance requirements of the final regulations are described in detail in parts I and IV of the SUPPLEMENTARY INFORMATION above.

The final regulations generally prohibit a creditor from marketing private education loans in a way that implies that the covered educational institution endorses the private education loans it offers. A creditor will need to analyze the regulations, determine whether it is engaging in marketing private education loans, and establish procedures to ensure the marketing does not imply such endorsement.

The final regulations also require creditors to make certain disclosures to the consumer on or with an application (or solicitation without requiring an application), with the approval, and with the consummation of the private education loan. The creditor is also required to obtain a self-certification form prior to consummation. The creditor must allow at least 30 days following the consumer's receipt of the approval disclosure documents for the consumer to accept the loan and must not change certain rates and terms until either consummation or expiration of such period of time. A creditor also must provide a three-day right to cancel following consummation and is generally prohibited from disbursing funds until the three-day period expires. A creditor will need to analyze the regulations, determine when and to whom such notices must be given, and design, generate, and provide those notices in the appropriate circumstances. The creditor must also ensure the receipt of the self-certification form prior to consummation and that the applicable rates and terms do not change in the period of time following the consumer's receipt of the approval disclosure documents.

The Board requested but did not receive specific information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small institutions. The precise costs to small entities of updating their systems and disclosures are difficult to predict. These costs will depend on a number of unknown factors, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures.

E. Steps Taken To Minimize the Economic Impact on Small Entities

The steps the Board has taken to minimize the economic impact and compliance burden on small entities, including the factual, policy, and legal reasons for selecting any alternatives adopted and why certain alternatives were not accepted, are described in the in parts I and IV of the SUPPLEMENTARY INFORMATION above. The Board believes that these changes minimize the significant economic impact on small entities while still meeting the requirements of the HEOA.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

Subpart A—General

■ 2. Section 226.1 is amended by revising paragraph (b), redesignating paragraph (d)(6) as paragraph (d)(7), and adding new paragraph (d)(6) to read as follows:

§ 226.1 Authority, purpose, coverage, organization, enforcement and liability.

* * * * *

(b) *Purpose.* The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The regulation also gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not govern charges for consumer credit. The regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on home-equity plans that are subject to the requirements of § 226.5b and mortgages that are subject to the requirements of § 226.32. The regulation prohibits certain acts or practices in connection with credit secured by a consumer's principal dwelling. The regulation also regulates certain practices of creditors who extend private education loans as defined in § 226.46(b)(5).

* * * * *

(d) * * *

(6) Subpart F relates to private education loans. It contains rules on disclosures, limitations on changes in terms after approval, the right to cancel the loan, and limitations on co-branding in the marketing of private education loans.

* * * * *

[22] This approximation is supported by similar estimates provided by representatives of several state associations of for-profit schools, who estimated that 90 to 95 percent of their institutions would qualify as small businesses.

[23] While the numbers of accredited and unaccredited postsecondary schools include flight training schools, the Board could not locate sources of data that would prevent this overlap.

■ 2. Section 226.2 is amended by revising paragraph (a)(6) to read as follows:

§ 226.2 Definitions and rules of construction.

(a) * * *

(6) *Business Day* means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§ 226.15 and 226.23, and for purposes of § 226.19(a)(1)(ii), § 226.19(a)(2), § 226.31, and § 226.46(d)(4), the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

* * * * *

■ 3. Section 226.3 is amended by revising paragraph (b) to read as follows:

§ 226.3 Exempt transactions.

* * * * *

(b) *Credit over $25,000.* An extension of credit in which the amount financed exceeds $25,000 or in which there is an express written commitment to extend credit in excess of $25,000, unless the extension of credit is:

(1) Secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer; or

(2) A private education loan as defined in § 226.46(b)(5).

* * * * *

Subpart C—Closed-End Credit

■ 4. Section 226.17 is amended by revising paragraphs (a), (b), (e), (f), (g) and (i) to read as follows:

§ 226.17 General disclosure requirements.

(a) *Form of disclosures.* (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by §§ 226.17(g), 226.19(b), and 226.24 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related [37] to the disclosures required under § 226.18 or § 226.47.[38] The itemization of the amount financed under § 226.18(c)(1) must be separate from the other disclosures under § 226.18, except for private education loan disclosures made in compliance with § 226.47.

(2) Except for private education loan disclosures made in compliance with § 226.47, the terms "finance charge" and "annual percentage rate," when required to be disclosed under § 226.18 (d) and (e) together with a corresponding amount or percentage rate, shall be more conspicuous than any other disclosure, except the creditor's identity under § 226.18(a). For private education loan disclosures made in compliance with § 226.47, the term "annual percentage rate," and the corresponding percentage rate must be less conspicuous than the term "finance charge" and corresponding amount under § 226.18(d), the interest rate under §§ 226.47(b)(1)(i) and (c)(1), and the notice of the right to cancel under § 226.47(c)(4).

(b) *Time of disclosures.* The creditor shall make disclosures before consummation of the transaction. In certain residential mortgage transactions, special timing requirements are set forth in § 226.19(a). In certain variable-rate transactions, special timing requirements for variable-rate disclosures are set forth in § 226.19(b) and § 226.20(c). For private education loan disclosures made in compliance with § 226.47, special timing requirements are set forth in § 226.46(d). In certain transactions involving mail or telephone orders or a series of sales, the timing of disclosures may be delayed in accordance with paragraphs (g) and (h) of this section.

* * * * *

(e) *Effect of subsequent events.* If a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of this regulation, although new disclosures may be required under paragraph (f) of this section, § 226.19, § 226.20, or § 226.48(c)(4).

(f) *Early disclosures.* Except for private education loan disclosures made in compliance with § 226.47, if disclosures required by this subpart are given before the date of consummation of a transaction and a subsequent event makes them inaccurate, the creditor shall disclose before consummation (subject to the provisions of § 226.19(a)(2) and § 226.19(a)(5)(iii)): [39]

(1) * * *

(2) * * *

(g) *Mail or telephone orders—delay in disclosures.* Except for private education loan disclosures made in compliance with § 226.47, if a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or facsimile machine without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment, if the following information for representative amounts or ranges of credit is made available in written form or in electronic form to the consumer or to the public before the actual purchase order or request:

(1) * * *

(2) * * *

* * * * *

(i) *Interim student credit extensions.* For transactions involving an interim credit extension under a student credit program for which an application is received prior to the mandatory compliance date of §§ 226.46, 47, and 48, the creditor need not make the following disclosures: the finance charge under § 226.18(d), the payment schedule under § 226.18(g), the total of payments under § 226.18(h), or the total sale price under § 226.18(j) at the time the credit is actually extended. The creditor must make complete disclosures at the time the creditor and consumer agree upon the repayment schedule for the total obligation. At that time, a new set of disclosures must be made of all applicable items under § 226.18.

* * * * *

§§ 226.37–226.45 [Reserved.]

■ 5. Sections 226.37 through 226.45 are reserved.

■ 6. A new Subpart F consisting of §§ 226.46, 226.47, and 226.48 are added to read as follows:

Subpart F—Special Rules for Private Education Loans

[37] The disclosures may include an acknowledgment of receipt, the date of the transaction, and the consumer's name, address, and account number.

[38] The following disclosures may be made together with or separately from other required disclosures: the creditor's identity under § 226.18(a), the variable rate example under § 226.18(f)(1)(iv), insurance or debt cancellation under § 226.18(n), and certain security interest charges under § 226.18(o).

[39] [Reserved.]

Subpart F—Special Rules for Private Education Loans

§ 226.46 Special disclosure requirements for private education loans.

(a) *Coverage.* The requirements of this subpart apply to private education loans as defined in § 226.46(b)(5). A creditor may, at its option, comply with the requirements of this subpart for an extension of credit subject to §§ 226.17 and 226.18 that is extended to a consumer for expenses incurred after graduation from a law, medical, dental, veterinary, or other graduate school and related to relocation, study for a bar or other examination, participation in an internship or residency program, or similar purposes.

(1) *Relation to other subparts in this part.* Except as otherwise specifically provided, the requirements and limitations of this subpart are in addition to and not in lieu of those contained in other subparts of this Part.

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) *Covered educational institution* means:

(i) An educational institution that meets the definition of an institution of higher education, as defined in paragraph (b)(2) of this section, without regard to the institution's accreditation status; and

(ii) Includes an agent, officer, or employee of the institution of higher education. An agent means an institution-affiliated organization as defined by section 151 of the Higher Education Act of 1965 (20 U.S.C. 1019) or an officer or employee of an institution-affiliated organization.

(2) *Institution of higher education* has the same meaning as in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001–1002) and the implementing regulations published by the U.S. Department of Education.

(3) *Postsecondary educational expenses* means any of the expenses that are listed as part of the cost of attendance, as defined under section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll), of a student at a covered educational institution. These expenses include tuition and fees, books, supplies, miscellaneous personal expenses, room and board, and an allowance for any loan fee, origination fee, or insurance premium charged to a student or parent for a loan incurred to cover the cost of the student's attendance.

(4) *Preferred lender arrangement* has the same meaning as in section 151 of the Higher Education Act of 1965 (20 U.S.C. 1019).

(5) *Private education loan* means an extension of credit that:

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

(ii) Is extended to a consumer expressly, in whole or in part, for postsecondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends;

(iii) Does not include open-end credit any loan that is secured by real property or a dwelling; and

(iv) Does not include an extension of credit in which the covered educational institution is the creditor if:

(A) The term of the extension of credit is 90 days or less; or

(B) 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.

(c) *Form of disclosures*—(1) *Clear and conspicuous.* The disclosures required by this subpart shall be made clearly and conspicuously.

(2) *Transaction disclosures.* (i) The disclosures required under §§ 226.47(b) and (c) shall be made in writing, in a form that the consumer may keep. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related to the disclosures required under §§ 226.47(b) and (c), which include the disclosures required under § 226.18.

(ii) The disclosures may include an acknowledgement of receipt, the date of the transaction, and the consumer's name, address, and account number. The following disclosures may be made together with or separately from other required disclosures: the creditor's identity under § 226.18(a), insurance or debt cancellation under § 226.18(n), and certain security interest charges under § 226.18(o).

(iii) The term ''finance charge'' and corresponding amount, when required to be disclosed under § 226.18(d), and the interest rate required to be disclosed under §§ 226.47(b)(1)(i) and (c)(1), shall be more conspicuous than any other disclosure, except the creditor's identity under § 228.18(a).

(3) *Electronic disclosures.* The disclosures required under §§ 226.47(b) and (c) may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by § 226.47(a) may be provided to the consumer in electronic form on or with an application or solicitation that is accessed by the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act. The form required to be received under § 226.48(e) may be accepted by the creditor in electronic form as provided for in that section.

(d) *Timing of disclosures*—(1) *Application or solicitation disclosures.*

(i) The disclosures required by § 226.47(a) shall be provided on or with any application or solicitation. For purposes of this subpart, the term solicitation means an offer of credit that does not require the consumer to complete an application. A ''firm offer of credit'' as defined in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)) is a solicitation for purposes of this section.

(ii) The creditor may, at its option, disclose orally the information in § 226.47(a) in a telephone application or solicitation. Alternatively, if the creditor does not disclose orally the information in § 226.47(a), the creditor must provide the disclosures or place them in the mail no later than three business days after the consumer has applied for the credit, except that, if the creditor either denies the consumer's application or provides or places in the mail the disclosures in § 226.47(b) no later than three business days after the consumer requests the credit, the creditor need not also provide the § 226.47(a) disclosures.

(iii) Notwithstanding paragraph (d)(1)(i), for a loan that the consumer may use for multiple purposes including, but not limited to, postsecondary educational expenses, the creditor need not provide the disclosures required by § 226.47(a).

(2) *Approval disclosures.* The creditor shall provide the disclosures required by § 226.47(b) before consummation on or with any notice of approval provided to the consumer. If the creditor mails notice of approval, the disclosures must be mailed with the notice. If the creditor communicates notice of approval by telephone, the creditor must mail the disclosures within three business days of providing the notice of approval. If the creditor communicates notice of approval electronically, the creditor may provide the disclosures in electronic form in accordance with § 226.46(d)(3); otherwise the creditor must mail the disclosures within three business days of communicating the notice of approval. If the creditor communicates approval in person, the creditor must provide the disclosures to the consumer at that time.

(3) *Final disclosures.* The disclosures required by § 226.47(c) shall be

provided after the consumer accepts the loan in accordance with § 226.48(c)(1).

(4) *Receipt of mailed disclosures.* If the disclosures under paragraphs (d)(1), (d)(2) or (d)(3), are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

(e) *Basis of disclosures and use of estimates*—(1) *Legal obligation.* Disclosures shall reflect the terms of the legal obligation between the parties.

(2) *Estimates.* If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided, and shall state clearly that the disclosure is an estimate.

(f) *Multiple creditors; multiple consumers.* If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor will comply with the requirements that this part imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation.

(g) *Effect of subsequent events*—(1) *Approval disclosures.* If a disclosure under § 226.47(b) becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of Regulation Z (12 CFR part 226), although new disclosures may be required under § 226.48(c).

(2) *Final disclosures.* If a disclosure under § 226.47(c) becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of Regulation Z (12 CFR part 226).

§ 226.47 Content of disclosures.

(a) *Application or solicitation disclosures.* A creditor shall provide the disclosures required under paragraph (a) of this section on or with a solicitation or an application for a private education loan.

(1) *Interest Rates.*

(i) The interest rate or range of interest rates applicable to the loan and actually offered by the creditor at the time of application or solicitation. If the rate will depend, in part, on a later determination of the consumer's creditworthiness or other factors, a statement that the rate for which the consumer may qualify will depend on the consumer's creditworthiness and other factors, if applicable.

(ii) Whether the interest rates applicable to the loan are fixed or variable.

(iii) If the interest rate may increase after consummation of the transaction, any limitations on the interest rate adjustments, or lack thereof; a statement that the consumer's actual rate could be higher or lower than the rates disclosed under paragraph (a)(1)(i) of this section, if applicable; and, if the limitation is determined by applicable law, that fact.

(iv) Whether the applicable interest rates typically will be higher if the loan is not co-signed or guaranteed.

(2) *Fees and default or late payment costs.*

(i) An itemization of the fees or range of fees required to obtain the private education loan.

(ii) Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.

(3) *Repayment terms.*

(i) The term of the loan, which is the period during which regularly scheduled payments of principal and interest will be due.

(ii) A description of any payment deferral options, or, if the consumer does not have the option to defer payments, that fact.

(iii) For each payment deferral option applicable while the student is enrolled at a covered educational institution:

(A) Whether interest will accrue during the deferral period; and

(B) If interest accrues, whether payment of interest may be deferred and added to the principal balance.

(iv) A statement that if the consumer files for bankruptcy, the consumer may still be required to pay back the loan.

(4) *Cost estimates.* An example of the total cost of the loan calculated as the total of payments over the term of the loan:

(i) Using the highest rate of interest disclosed under paragraph (a)(1) of this section and including all finance charges applicable to loans at that rate;

(ii) Using an amount financed of $10,000, or $5000 if the creditor only offers loans of this type for less than $10,000; and

(iii) Calculated for each payment option.

(5) *Eligibility.* Any age or school enrollment eligibility requirements relating to the consumer or co-signer.

(6) *Alternatives to private education loans.*

(i) A statement that the consumer may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*).

(ii) The interest rates available under each program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) and whether the rates are fixed or variable.

(iii) A statement that the consumer may obtain additional information concerning Federal student financial assistance from the institution of higher education that the student attends, or at the Web site of the U.S. Department of Education, including an appropriate Web site address.

(iv) A statement that a covered educational institution may have school-specific education loan benefits and terms not detailed on the disclosure form.

(7) *Rights of the consumer.* A statement that if the loan is approved, the terms of the loan will be available and will not change for 30 days except as a result of adjustments to the interest rate and other changes permitted by law.

(8) *Self-certification information.* A statement that, before the loan may be consummated, the consumer must complete the self-certification form and that the form may be obtained from the institution of higher education that the student attends.

(b) *Approval disclosures.* On or with any notice of approval provided to the consumer, the creditor shall disclose the information required under § 226.18 and the following information:

(1) *Interest rate.*

(i) The interest rate applicable to the loan.

(ii) Whether the interest rate is fixed or variable.

(iii) If the interest rate may increase after consummation of the transaction, any limitations on the rate adjustments, or lack thereof.

(2) *Fees and default or late payment costs.*

(i) An itemization of the fees or range of fees required to obtain the private education loan.

(ii) Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.

(3) *Repayment terms.*

(i) The principal amount of the loan for which the consumer has been approved.

(ii) The term of the loan, which is the period during which regularly scheduled payments of principal and interest will be due.

(iii) A description of the payment deferral option chosen by the consumer, if applicable, and any other payment deferral options that the consumer may elect at a later time.

(iv) Any payments required while the student is enrolled at a covered educational institution, based on the deferral option chosen by the consumer.

(v) The amount of any unpaid interest that will accrue while the student is enrolled at a covered educational institution, based on the deferral option chosen by the consumer.

(vi) A statement that if the consumer files for bankruptcy, the consumer may still be required to pay back the loan.

(vii) An estimate of the total amount of payments calculated based on:

(A) The interest rate applicable to the loan. Compliance with § 226.18(h) constitutes compliance with this requirement.

(B) The maximum possible rate of interest for the loan or, if a maximum rate cannot be determined, a rate of 25%.

(C) If a maximum rate cannot be determined, the estimate of the total amount for repayment must include a statement that there is no maximum rate and that the total amount for repayment disclosed under paragraph (b)(3)(vii)(B) of this section is an estimate and will be higher if the applicable interest rate increases.

(viii) The maximum monthly payment based on the maximum rate of interest for the loan or, if a maximum rate cannot be determined, a rate of 25%. If a maximum cannot be determined, a statement that there is no maximum rate and that the monthly payment amount disclosed is an estimate and will be higher if the applicable interest rate increases.

(4) *Alternatives to private education loans.*

(i) A statement that the consumer may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*).

(ii) The interest rates available under each program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*), and whether the rates are fixed or variable.

(iii) A statement that the consumer may obtain additional information concerning Federal student financial assistance from the institution of higher education that the student attends, or at the Web site of the U.S. Department of Education, including an appropriate Web site address.

(5) *Rights of the consumer.*

(i) A statement that the consumer may accept the terms of the loan until the acceptance period under § 226.48(c)(1) has expired. The statement must include the specific date on which the acceptance period expires, based on the date upon which the consumer receives the disclosures required under this subsection for the loan. The disclosure must also specify the method or methods by which the consumer may communicate acceptance.

(ii) A statement that, except for changes to the interest rate and other changes permitted by law, the rates and terms of the loan may not be changed by the creditor during the period described in paragraph (b)(5)(i) of this section.

(c) *Final disclosures.* After the consumer has accepted the loan in accordance with § 226.48(c)(1), the creditor shall disclose to the consumer the information required by § 226.18 and the following information:

(1) *Interest rate.* Information required to be disclosed under §§ 226.47(b)(1).

(2) *Fees and default or late payment costs.* Information required to be disclosed under § 226.47(b)(2).

(3) *Repayment terms.* Information required to be disclosed under § 226.47(b)(3).

(4) *Cancellation right.* A statement that:

(i) the consumer has the right to cancel the loan, without penalty, at any time before the cancellation period under § 226.48(d) expires, and

(ii) loan proceeds will not be disbursed until after the cancellation period under § 226.48(d) expires. The statement must include the specific date on which the cancellation period expires and state that the consumer may cancel by that date. The statement must also specify the method or methods by which the consumer may cancel. If the creditor permits cancellation by mail, the statement must specify that the consumer's mailed request will be deemed timely if placed in the mail not later than the cancellation date specified on the disclosure. The disclosures required by this paragraph (c)(4) must be made more conspicuous than any other disclosure required under this section, except for the finance charge, the interest rate, and the creditor's identity, which must be disclosed in accordance with the requirements of § 226.46(c)(2)(iii).

§ 226.48 Limitations on private education loans.

(a) *Co-branding prohibited.* (1) Except as provided in paragraph (b) of this section, a creditor, other than the covered educational institution itself, shall not use the name, emblem, mascot, or logo of a covered educational institution, or other words, pictures, or symbols identified with a covered educational institution, in the marketing of private education loans in a way that implies that the covered education institution endorses the creditor's loans.

(2) A creditor's marketing of private education loans does not imply that the covered education institution endorses the creditor's loans if the marketing includes a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the covered educational institution that the covered educational institution does not endorse the creditor's loans and that the creditor is not affiliated with the covered educational institution.

(b) *Endorsed lender arrangements.* If a creditor and a covered educational institution have entered into an arrangement where the covered educational institution agrees to endorse the creditor's private education loans, and such arrangement is not prohibited by other applicable law or regulation, paragraph (a)(1) of this section does not apply if the private education loan marketing includes a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the covered educational institution that the creditor's loans are not offered or made by the covered educational institution, but are made by the creditor.

(c) *Consumer's right to accept.* (1) The consumer has the right to accept the terms of a private education loan at any time within 30 calendar days following the date on which the consumer receives the disclosures required under § 226.47(b).

(2) Except for changes permitted under paragraphs (c)(3) and (c)(4), the rate and terms of the private education loan that are required to be disclosed under §§ 226.47(b) and (c) may not be changed by the creditor prior to the earlier of:

(i) The date of disbursement of the loan; or

(ii) The expiration of the 30 calendar day period described in paragraph (c)(1) of this section if the consumer has not accepted the loan within that time.

(3) *Exceptions not requiring re-disclosure.* (i) Notwithstanding paragraph (c)(2) of this section, nothing in this section prevents the creditor from:

(A) Withdrawing an offer before consummation of the transaction if the extension of credit would be prohibited by law or if the creditor has reason to believe that the consumer has committed fraud in connection with the loan application;

(B) Changing the interest rate based on adjustments to the index used for a loan;

(C) Changing the interest rate and terms if the change will unequivocally benefit the consumer; or

(D) Reducing the loan amount based upon a certification or other information received from the covered educational institution, or from the consumer, indicating that the student's cost of attendance has decreased or the consumer's other financial aid has increased. A creditor may make corresponding changes to the rate and other terms only to the extent that the consumer would have received the terms if the consumer had applied for the reduced loan amount.

(ii) If the creditor changes the rate or terms of the loan under this paragraph (c)(3), the creditor need not provide the disclosures required under § 228.47(b) for the new loan terms, nor need the creditor provide an additional 30-day period to the consumer to accept the new terms of the loan under paragraph (c)(1) of this section.

(4) *Exceptions requiring re-disclosure.* (i) Notwithstanding paragraphs (c)(2) or (c)(3) of this section, nothing in this section prevents the creditor, at its option, from changing the rate or terms of the loan to accommodate a specific request by the consumer. For example, if the consumer requests a different repayment option, the creditor may, but need not, offer to provide the requested repayment option and make any other changes to the rate and terms.

(ii) If the creditor changes the rate or terms of the loan under this paragraph (c)(4), the creditor shall provide the disclosures required under § 228.47(b) and shall provide the consumer the 30-day period to accept the loan under paragraph (c)(1) of this section. The creditor shall not make further changes to the rates and terms of the loan, except as specified in paragraphs (c)(3) and (4) of this section. Except as permitted under § 226.48(c)(3), unless the consumer accepts the loan offered by the creditor in response to the consumer's request, the creditor may not withdraw or change the rates or terms of the loan for which the consumer was approved prior to the consumer's request for a change in loan terms.

(d) *Consumer's right to cancel.* The consumer may cancel a private education loan, without penalty, until midnight of the third business day following the date on which the consumer receives the disclosures required by § 226.47(c). No funds may be disbursed for a private education loan until the three-business day period has expired.

(e) *Self-certification form.* For a private education loan intended to be used for the postsecondary educational expenses of a student while the student is attending an institution of higher education, the creditor shall obtain from the consumer or the institution of higher education the form developed by the Secretary of Education under section 155 of the Higher Education Act of 1965, signed by the consumer, in written or electronic form, before consummating the private education loan.

(f) *Provision of information by preferred lenders.* A creditor that has a preferred lender arrangement with a covered educational institution shall provide to the covered educational institution the information required under §§ 226.47(a)(1) through (5), for each type of private education loan that the lender plans to offer to consumers for students attending the covered educational institution for the period beginning July 1 of the current year and ending June 30 of the following year. The creditor shall provide the information annually by the later of the 1st day of April, or within 30 days after entering into, or learning the creditor is a party to, a preferred lender arrangement.

■ 7. In Part 226, Appendix H is amended by adding new entries H–18 through H–23 to the table of contents at the beginning of the appendix, and adding new Forms H–18, H–19, H–20, H–21, H–22, and H–23.

Appendix H to Part 226—Closed-End Model Forms and Clauses

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H-18 Private Education Loan Application and Solicitation Model Form

[Creditor Name]
[Creditor Address]
[Creditor Phone Number]

Loan Interest Rate & Fees

Your **starting interest rate** will be between

% and %

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. [Description of how starting rate is determined]. 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 [Index] Rate (as published in the [source of index]). For more information on this rate, see the reference notes.

[Indication of **maximum rate** or **lack thereof**]

Loan Fees

[Itemization of fees]

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 [number of repayment options] 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 [term of loan]** (includes associated fees)
1. [REPAYMENT OPTION] [Description]	$10,000	[Rate]	[Loan Term] [description of when repayment begins]	**[Total Cost]**
2. [REPAYMENT OPTION] [Description]	$10,000	[Rate]	[Loan Term] [description of when repayment begins]	**[Total Cost]**
3. [REPAYMENT OPTION] [Description]	$10,000	[Rate]	[Loan Term] [description of when repayment begins]	**[Total Cost]**

About this example

[Description of example assumptions]
[Description of other loan terms, if applicable]

Federal Loan Alternatives

Loan program	Current Interest Rates by Program Type	
PERKINS for Students	[Rate] fixed	
STAFFORD for Students	[Rate] fixed	Undergraduate subsidized
	[Rate] fixed	Undergraduate unsubsidized & Graduate
PLUS for Parents and Graduate / Professional Students	[Rate] fixed	Federal Family Education Loan
	[Rate] 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

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 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
- [Variable interest rate information, if applicable]

Eligibility Criteria
- [Description of eligibility criteria]

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-19 Private Education Loan Approval Model Form

BORROWER:
[Borrower Name]
[Borrower Address]

CREDITOR:
[Creditor Name]
[Creditor Address]

Loan Rates & Estimated Total Costs

Total Loan Amount	Interest Rate	Finance Charge	Total of Payments
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	[Amount]
Amount paid to others on your Behalf: • [Institution Name]	+ [Amount]
Amount Financed [Description]	= [Amount]
Initial finance charges (total) • [Charge Type], [Amount] • [Charge Type], [Amount]	+ [Amount]
Total Loan Amount	= **[Amount]**

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 [Index] Rate (as published in the [source of index]). For more information on this rate, see reference notes.
- Although your rate will vary, **it will never exceed [maximum interest rate]** (the maximum allowable [by law] for this loan).
- Your **Annual Percentage Rate (APR) is [Rate]**. 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

- [Itemization of Fees, if applicable]

Estimated Repayment Schedule & Terms

[LOAN TERM]	[PAYMENT PERIOD, e.g. MONTHLY PAYMENTS] at [Interest Rate]% the current interest rate of your loan	at [Maximum Rate]% the maximum interest rate possible for your loan
[Dates of Deferment Period, if applicable] deferment period	**No payment required** ([Amount of accrued interest] interest will accrue during this time)	**No payment required** (Interest will accrue during this time)
[Payment Due Dates] [number of monthly payments] monthly payments	[Payment Amount]	[Payment Amount]
[Payment Due Dates] [number of monthly payments] monthly payments	[Payment Amount]	[Payment Amount]

The estimated **Total of Payments** at the Maximum Rate of Interest would be **[Total Payment Amount]**.

Federal Loan Alternatives

Loan program	Current Interest Rates by Program Type	
PERKINS for Students	[Rate] fixed	
STAFFORD for Students	[Rate] fixed	Undergraduate subsidized
	[Rate] fixed	Undergraduate unsubsidized & Graduate
PLUS for Parents and Graduate / Professional Students	[Rate] fixed	Federal Family Education Loan
	[Rate] 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

Next Steps & Terms of Acceptance

This offer is good until:

[Date of Acceptance Deadline]

1. **Find Out About Other Loan Options.**
   Contact your school's financial aid office for more information.
2. **You Have Until [Date of Acceptance Deadline] to Accept this Offer**
   The terms of this offer will not change except as permitted by law and the variable interest rate may change based on the market.

To Accept the Terms of this loan,

[Description of method of acceptance]

REFERENCE NOTES

Variable Interest Rate:

- Your loan has a variable Interest Rate that is based on a publicly available index, the [Index Name], which is currently [Rate]. Your rate is calculated each month by adding a margin of [Margin Rate] to the [Index].
- 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.
- [Description of effect of an increase]

Bankruptcy Limitations

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

Repayment Options:

- [Description of deferment options, if applicable]

Prepayments:

- [Prepayment disclosure]

Security

- You are giving a security interest in [description, if applicable]

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-20 Private Education Loan Final Model Form

Page 1 of 2

BORROWER:
[Borrower Name]
[Borrower Address]

CREDITOR:
[Creditor Name]
[Creditor Address]

RIGHT TO CANCEL

You have a right to cancel this transaction, without penalty, by midnight on [deadline for cancellation]. No funds will be disbursed to you or to your school until after this time. You may cancel by calling us at [Creditor Phone Number].

Loan Rates & Estimated Total Costs

Total Loan Amount	Interest Rate	Finance Charge	Total of Payments
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	[Amount]
Amount paid to others on your Behalf: • [Institution Name]	+ [Amount]
Amount Financed [Description]	= [Amount]
Initial finance charges (total) • [Charge Type], [Amount] • [Charge Type], [Amount]	+ [Amount]
Total Loan Amount	= [Amount]

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 [Index] Rate (as published in the [source of index]). 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 [Rate].** 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

- [Itemization of Fees, if applicable]

Estimated Repayment Schedule & Terms

[LOAN TERM]	[PAYMENT PERIOD, e.g. MONTHLY PAYMENTS] at [Interest Rate]% the current interest rate of your loan	No Maximum Rate example at 25%
[Dates of Deferment Period, if applicable] deferment period	**No payment required** ([Amount of accrued interest] interest will accrue during this time)	**No payment required** (Interest will accrue during this time)
[Payment Due Dates] [number of monthly payments] monthly payments	[Payment Amount]	[Payment Amount] (your payments will be higher if the rate increases above 25%)
[Payment Due Dates] [number of monthly payments] monthly payments	[Payment Amount]	[Payment Amount] (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 **[Total Payment Amount].** 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 [Index Name], which is currently [Rate]. Your rate is calculated each month by adding a margin of [Margin Rate] to the [Index].
- 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.
- [Description of effect of an increase]

Bankruptcy Limitations

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

Repayment Options:

- [Description of deferment options, if applicable]

Prepayments:

- [Prepayment disclosure]

Security

- You are giving a security interest in [description, if applicable]

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-21 Private Education Loan Application and Solicitation Sample

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)
1. **DEFER PAYMENTS** 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**
2. **PAY ONLY THE INTEREST** 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	**$50,707**
3. **MAKE FULL PAYMENTS** 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	
PERKINS for Students	5% fixed	
STAFFORD for Students	5.6% fixed	Undergraduate subsidized
	6.8% fixed	Undergraduate unsubsidized & Graduate
PLUS 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

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 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

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: • ABC State University	+ $10,000
Amount Financed (total amount provided)	= $10,000
Initial finance charges (total) • Origination Fee ($300) • Loan Guarantee Fee ($300)	+ $600
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.
- 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 at 7.375% the current interest rate of your loan	MONTHLY PAYMENTS 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

The estimated **Total of Payments** at the Maximum Rate of Interest would be **$154,928.**

Federal Loan Alternatives

Loan program	Current Interest Rates by Program Type	
PERKINS for Students	5% fixed	
STAFFORD for Students	5.6% fixed	Undergraduate subsidized
	6.8% fixed	Undergraduate unsubsidized & Graduate
PLUS 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

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: • ABC State University	+ $10,000
Amount Financed (total amount provided)	= $10,000
Initial finance charges (total) • Origination Fee ($300) • Loan Guarantee Fee ($300)	+ $600
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%.

Page 2 of 2

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.

■ 8. In Supplement I to Part 226:
■ a. Under *Section 226.1 paragraph 1(d)(6)* is revised and new *paragraph (1)(d)(7)* is added.
■ b. Under *Section 226.2,* paragraph *2(a) Definitions, 2(a)(6) Business day,* paragraph 2(a)(6)–2 is revised.
■ c. Under *Section 226.3,* the heading to *3(b) Credit Over $25,000 Not Secured by Real Property or a Dwelling,* and heading to *3(f) Student Loan Programs,* are revised.
■ d. Under *Section 226.17:*
■ (i) In paragraph *17(a) Form of Disclosures,* paragraphs 17(a)(1)–4, 17(a)(1)–6, 17(a)(2) are revised;
■ (ii) In paragraph *17(b) Time of Disclosures,* paragraph 17(b)–1 is revised;
■ (iii) In paragraph *17(i) Interim Student Credit Extensions,* paragraph 17(i)–1 is revised and new paragraph 17(i)–2 is added;
■ (iv) Paragraphs 17(i)–2, 17(i)–3, and 17(i)–4 are redesignated as paragraphs 17(i)–3, 17(i)–4, and 17(i)–5, respectively.
■ e. Under *Section 226.18, paragraph 18(f)(1)(ii), paragraph 18(f)(1)(iv)–2,* and *paragraph 18(k)(1)* are revised.
■ f. The following new paragraphs are added:
■ (i) *Subpart F—Special Rules for Private Education Loans* is added,
■ (ii) *Section 226.46—Requirements for Private Education Loans,* is added
■ (iii) *Section 226.47—Content of Disclosures,* is added; and
■ (iv) *Section 226.48—Limitations on Private Education Loans* is added.
■ g. Under the heading, *Appendixes G and H—Open-End and Closed-End Model Forms and Clauses,* paragraph 1 is revised.
■ h. Under *Appendix H—Closed-End Model Forms and Clauses,* paragraphs 21 through 24 are revised, and paragraphs 25 through 28 are added.

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart A—General

* * * * *

Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability

* * * * *

Paragraph 1(d)(6)

1. *Mandatory compliance dates.* Compliance with the Board's revisions to Regulation Z published on August 14, 2009 is mandatory for private education loans for which the creditor receives an application on or after February 14, 2010. Compliance with the final rules on co-branding in §§ 226.48(a) and (b) is mandatory for marketing occurring on or after February 14, 2010. Compliance with the final rules is optional for private education loan transactions for which an application was received prior to February 14, 2010, even if consummated after the mandatory compliance date.

2. *Optional compliance.* A creditor may, at its option, provide the approval and final disclosures required under §§ 226.47(b) or (c) for private education loans where an application was received prior to the mandatory compliance date. If the creditor opts to provide the disclosures, the creditor must also comply with the applicable timing and other rules in §§ 226.46 and 226.48 (including providing the consumer with the 30-day acceptance period under § 226.48(c), and the right to cancel under § 226.48(d)). For example if the creditor receives an application on January 25, 2010 and approves the consumer's application on or after February 14, 2010, the creditor may, at its option, provide the approval disclosures under § 226.47(b), the final disclosures under § 226.47(c) and comply with the applicable requirements §§ 226.46 and 226.48. The creditor must also obtain the self-certification form as required in § 226.48(e), if applicable. Or, for example, if the creditor receives an application on January 25, 2010 and approves the consumer's application before February 14, 2010, the creditor may, at its option, provide the final disclosure under § 226.47(c) and comply with the applicable timing and other requirements of §§ 226.46 and 226.48, including providing the consumer with the right to cancel under § 226.48(d). The creditor must also obtain the self-certification form as required in § 226.48(e), if applicable.

Paragraph 1(d)(7)

1. [Reserved.]

Section 226.2—Definitions and Rules of Construction

2(a) Definitions.

* * * * *

2(a)(6) Business day.

* * * * *

2. *Rule for rescission, disclosures for certain mortgage transactions, and private education loans.* A more precise rule for what is a business day (all calendar days except Sundays and the Federal legal holidays specified in 5 U.S.C. 6103(a)) applies when the right of rescission, the receipt of disclosures for certain dwelling-secured mortgage transactions under §§ 226.19(a)(1)(ii), 226.19(a)(2), 226.31(c), or the receipt of disclosures for private education loans under § 226.46(d)(4) is involved. Four Federal legal holidays are identified in 5 U.S.C. 6103(a) by a specific date: New Year's Day, January 1; Independence Day, July 4; Veterans Day, November 11; and Christmas Day, December 25. When one of these holidays (July 4, for example) falls on a Saturday, Federal offices and other entities might observe the holiday on the preceding Friday (July 3). In cases where the more precise rule applies, the observed holiday (in the example, July 3) is a business day.

* * * * *

Section 226.3—Exempt Transactions

* * * * *

3(b) Credit over $25,000.

* * * * *

3(f) Student Loan Programs

1. *Coverage.* This exemption applies to loans made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*). This exemption does not apply to private education loans as defined by § 226.46(b)(5).

* * * * *

Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

* * * * *

17(a) Form of Disclosures

Paragraph 17(a)(1)

* * * * *

4. *Content of segregated disclosures.* Footnotes 37 and 38 contain exceptions to the requirement that the disclosures under § 226.18 be segregated from material that is not directly related to those disclosures. Footnote 37 lists the items that may be added to the segregated disclosures, even though not directly related to those disclosures. Footnote 38 lists the items required under § 226.18 that may be deleted from the segregated disclosures and appear elsewhere. Any one or more of these additions or deletions may be combined and appear either together with or separate from the segregated disclosures. The itemization of the amount financed under § 226.18(c), however, must be separate from the other segregated disclosures under § 226.18, except for private education loan disclosures made in compliance with § 226.47. If a creditor chooses to include the security interest charges required to be itemized under § 226.4(e) and § 226.18(o) in the amount financed itemization, it need not list these charges elsewhere.

* * * * *

6. *Multiple-purpose forms.* The creditor may design a disclosure statement that can be used for more than one type of transaction, so long as the required disclosures for individual transactions are clear and conspicuous. (See the Commentary to appendices G and H for a discussion of the treatment of disclosures that do not apply to specific transactions.) Any disclosure listed in § 226.18 (except the itemization of the amount financed under § 226.18(c) for transactions other than private education loans) may be included on a standard disclosure statement even though not all of the creditor's transactions include those features. For example, the statement may include:

- The variable rate disclosure under § 226.18(f).
- The demand feature disclosure under § 226.18(i).
- A reference to the possibility of a security interest arising from a spreader clause, under § 226.18(m).
- The assumption policy disclosure under § 226.18(q).
- The required deposit disclosure under § 226.18(r).

* * * * *

Paragraph 17(a)(2)

1. *When disclosures must be more conspicuous.* The following rules apply to the requirement that the terms ''annual percentage rate'' (except for private education loan disclosures made in compliance with § 226.47) and ''finance charge'' be shown more conspicuously:

- The terms must be more conspicuous only in relation to the other required disclosures under § 226.18. For example, when the disclosures are included on the contract document, those two terms need not be more conspicuous as compared to the heading on the contract document or information required by state law.
- The terms need not be more conspicuous except as part of the finance charge and annual percentage rate disclosures under § 226.18 (d) and (e), although they may, at the creditor's option, be highlighted wherever used in the required disclosures. For example, the terms may, but need not, be highlighted when used in disclosing a prepayment penalty under § 226.18(k) or a required deposit under § 226.18(r).
- The creditor's identity under § 226.18(a) may, but need not, be more prominently displayed than the finance charge and annual percentage rate.
- The terms need not be more conspicuous than figures (including, for example, numbers, percentages, and dollar signs).

2. *Making disclosures more conspicuous.* The terms ''finance charge'' and (except for private education loan disclosures made in compliance with § 226.47) ''annual percentage rate'' may be made more conspicuous in any way that highlights them in relation to the other required disclosures. For example, they may be:

- Capitalized when other disclosures are printed in capital and lower case.
- Printed in larger type, bold print or different type face.
- Printed in a contrasting color.
- Underlined.
- Set off with asterisks.

17(b) Time of Disclosures

1. *Consummation.* As a general rule, disclosures must be made before ''consummation'' of the transaction. The disclosures need not be given by any particular time before consummation, except in certain mortgage transactions and variable-rate transactions secured by the consumer's principal dwelling with a term greater than one year under § 226.19, and in private education loan transactions disclosed in compliance with §§ 226.46 and 226.47. (See the commentary to § 226.2(a)(13) regarding the definition of consummation.)

* * * * *

17(i) Interim Student Credit Extensions

1. *Definition.* Student credit plans involve extensions of credit for education purposes where the repayment amount and schedule are not known at the time credit is advanced. These plans include loans made under any student credit plan, whether government or private, where the repayment period does not begin immediately. (Certain student credit plans that meet this definition are exempt from Regulation Z. See § 226.3(f).)

2. *Relation to other sections.* For disclosures made before the mandatory compliance date of the disclosures required under §§ 226.46, 47, and 48, paragraph 17(i) permitted creditors to omit from the disclosures the terms set forth in that paragraph at the time the credit was actually extended. However, creditors were required to make complete disclosures at the time the creditor and consumer agreed upon the repayment schedule for the total obligation. At that time, a new set of disclosures of all applicable items under § 226.18 was required. Most student credit plans are subject to the requirements in §§ 226.46, 47, and 48. Consequently, for applications for student credit plans received on or after the mandatory compliance date of §§ 226.46, 47, and 48, the creditor may not omit from the disclosures the terms set forth in paragraph 17(i). Instead, the creditor must comply with §§ 226.46, 47, and 48, if applicable, or with §§ 226.17 and 226.18.

3. *Basis of disclosures.* * * *

4. *Consolidation.* * * *

5. *Approved student credit forms.* See the commentary to appendix H regarding disclosure forms approved for use in certain student credit programs for which applications were received prior to the mandatory compliance date of §§ 226.46, 47, and 48.

* * * * *

Section 226.18—Content of Disclosures

* * * * *

Paragraph 18(f)(1)(ii)

1. *Limitations.* This includes any maximum imposed on the amount of an increase in the rate at any time, as well as any maximum on the total increase over the life of the transaction. Except for private education loans disclosures, when there are no limitations, the creditor may, but need not, disclose that fact, and limitations do not include legal limits in the nature of usury or rate ceilings under State or Federal statutes or regulations. (See § 226.30 for the rule requiring that a maximum interest rate be included in certain variable-rate transactions.) For disclosures with respect to private education loan disclosures, see comment 47(b)(1)–2.

* * * * *

Paragraph 18(f)(1)(iv)

* * * * *

2. *Hypothetical example not required.* The creditor need not provide a hypothetical example in the following transactions with a variable-rate feature:

- Demand obligations with no alternate maturity date.
- Private education loans as defined in § 226.46(b)(5).
- Multiple-advance construction loans disclosed pursuant to appendix D, Part I.

* * * * *

Paragraph 18(k)(1)

1. *Penalty.* This applies only to those transactions in which the interest calculation takes account of all scheduled reductions in principal, as well as transactions in which interest calculations are made daily. The

term penalty as used here encompasses only those charges that are assessed strictly because of the prepayment in full of a simple-interest obligation, as an addition to all other amounts. Items which are penalties include, for example:

- Interest charges for any period after prepayment in full is made. (See the commentary to § 226.17(a)(1) regarding disclosure of interest charges assessed for periods after prepayment in full as directly related information.)
- A minimum finance charge in a simple-interest transaction. (See the commentary to § 226.17(a)(1) regarding the disclosure of a minimum finance charge as directly related information.) Items which are not penalties include, for example, loan guarantee fees.

* * * * *

Subpart F—Special Rules for Private Education Loans

Section 226.46—Special Disclosure Requirements for Private Education Loans

46(a) Coverage

1. *Coverage.* This subpart applies to all private education loans as defined in § 226.46(b)(5). Coverage under this subpart is optional for certain extensions of credit that do not meet the definition of ''private education loan'' because the credit is not extended, in whole or in part, for ''postsecondary educational expenses'' defined in § 226.46(b)(3). If a transaction is not covered and a creditor opts to comply with any section of this subpart, the creditor must comply with all applicable sections of this subpart. If a transaction is not covered and a creditor opts not to comply with this subpart, the creditor must comply with all applicable requirements under §§ 226.17 and 226.18. Compliance with this subpart is optional for an extension of credit for expenses incurred after graduation from a law, medical, dental, veterinary, or other graduate school and related to relocation, study for a bar or other examination, participation in an internship or residency program, or similar purposes. However, if any part of such loan is used for postsecondary educational expenses as defined in § 226.46(b)(3), then compliance with Subpart F is mandatory not optional.

46(b) Definitions

46(b)(1) Covered Educational Institution

1. *General.* A covered educational institution includes any educational institution that meets the definition of an institution of higher education in § 226.46(b)(2). An institution is also a covered educational institution if it otherwise meets the definition of an institution of higher education, except for its lack of accreditation. Such an institution may include, for example, a university or community college. It may also include an institution, whether accredited or unaccredited, offering instruction to prepare students for gainful employment in a recognized profession, such as flying, culinary arts, or dental assistance. A covered educational institution does not include elementary or secondary schools.

2. *Agent.* For purposes of § 226.46(b)(1), the term agent means an institution-affiliated organization as defined by section 151 of the Higher Education Act of 1965 (20 U.S.C 1019) or an officer or employee of an institution-affiliated organization. Under section 151 of the Higher Education Act, an institution-affiliated organization means any organization that is directly or indirectly related to a covered institution and is engaged in the practice of recommending, promoting, or endorsing education loans for students attending the covered institution or the families of such students. An institution-affiliated organization may include an alumni organization, athletic organization, foundation, or social, academic, or professional organization, of a covered institution, but does not include any creditor with respect to any private education loan made by that creditor.

46(b)(2) Institution of higher education.

1. *General.* An institution of higher education includes any institution that meets the definitions contained in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001–1002) and implementing Department of Education regulations (34 CFR 600). Such an institution may include, for example, a university or community college. It may also include an institution offering instruction to prepare students for gainful employment in a recognized profession, such as flying, culinary arts, or dental assistance. An institution of higher education does not include elementary or secondary schools.

46(b)(3) Postsecondary educational expenses.

1. *General.* The examples listed in § 226.46(b)(3) are illustrative only. The full list of postsecondary educational expenses is contained in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll).

46(b)(4) Preferred lender arrangement.

1. *General.* The term ''preferred lender arrangement'' is defined in section 151 of the Higher Education Act of 1965 (20 U.S.C 1019). The term refers to an arrangement or agreement between a creditor and a covered educational institution (or an institution-affiliated organization as defined by section 151 of the Higher Education Act of 1965 (20 U.S.C 1019)) under which a creditor provides private education loans to consumers for students attending the covered educational institution and the covered educational institution recommends, promotes, or endorses the private education loan products of the creditor. It does not include arrangements or agreements with respect to Federal Direct Stafford/Ford loans, or Federal PLUS loans made under the Federal PLUS auction pilot program.

46(b)(5) Private education loan.

1. *Extended expressly for postsecondary educational expenses.* A private education loan is one that is extended expressly for postsecondary educational expenses. The term includes loans extended for postsecondary educational expenses incurred while a student is enrolled in a covered educational institution as well as loans extended to consolidate a consumer's pre-existing private education loans.

2. *Multiple-purpose loans.* i. *Definition.* A private education loan may include an extension of credit not excluded under § 226.46(b)(5) that the consumer may use for multiple purposes including, but not limited to, postsecondary educational expenses. If the consumer expressly indicates that the proceeds of the loan will be used to pay for postsecondary educational expenses by indicating the loan's purpose on an application, the loan is a private education loan.

ii. *Coverage.* A creditor generally will not know before an application is received whether the consumer intends to use the loan for postsecondary educational expenses. For this reason, the creditor need not provide the disclosures required by § 226.47(a) on or with the application or solicitation for a loan that may be used for multiple purposes. *See* § 226.47(d)(1)(i). However, if the consumer expressly indicates that the proceeds of the loan will be used to pay for postsecondary educational expenses, the creditor must comply with §§ 226.47(b) and (c) and § 226.48. For purposes of the required disclosures, the creditor must calculate the disclosures based on the entire amount of the loan, even if only a part of the proceeds is intended for postsecondary educational expenses. The creditor may rely solely on a check-box, or a purpose line, on a loan application to determine whether or not the applicant intends to use loan proceeds for postsecondary educational expenses.

iii. *Examples.* The creditor must comply only if the extension of credit also meets the other parts of the definition of private education loan. For example, if the creditor uses a single application form for both open-end and closed-end credit, and the consumer applies for open-end credit to be used for postsecondary educational expenses, the extension of credit is not covered. Similarly, if the consumer indicates the extension of credit will be used for educational expenses that are not postsecondary educational expenses, such as elementary or secondary educational expenses, the extension of credit is not covered. These examples are only illustrative, not exhaustive.

3. *Short-term loans.* Some covered educational institutions offer loans to students with terms of 90 days or less to assist the student in paying for educational expenses, usually while the student waits for other funds to be disbursed. Under § 226.46(b)(5)(iv)(A) such loans are not considered private education loans, even if interest is charged on the credit balance. (Because these loans charge interest, they are not covered by the exception under § 226.46(b)(5)(iv)(B).) However, these loans are extensions of credit subject to the requirements of §§ 226.17 and 18. The legal agreement may provide that repayment is required when the consumer or the educational institution receives certain funds. If, under the terms of the legal obligation, repayment of the loan is required when the certain funds are received by the consumer or the educational institution (such as by deposit into the consumer's or educational institution's account), the disclosures should be based on the creditor's estimate of the time the funds will be delivered.

4. *Billing plans*. Some covered educational institutions offer billing plans that permit a consumer to make payments in installments. Such plans are not considered private education loans, if 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 plan is payable in more than four installments. However, such plans may be extensions of credit subject to the requirements of §§ 226.17 and 18.

46(c) Form of Disclosures

1. *Form of disclosures—relation to other sections*. Creditors must make the disclosures required under this subpart in accordance with § 226.46(c). Section 226.46(c)(2) requires that the disclosures be grouped together and segregated from everything else. In complying with this requirement, creditors may follow the rules in § 226.17, except where specifically provided otherwise. For example, although § 226.17(b) requires creditors to provide only one set of disclosures before consummation of the transaction, §§ 226.47(b) and (c) require that the creditor provide the disclosures under § 226.18 both upon approval and after the consumer accepts the loan.

Paragraph 46(c)(3)

1. *Application and solicitation disclosures—electronic disclosures*. If the disclosures required under § 226.47(a) are provided electronically, they must be provided on or with the application or solicitation reply form. Electronic disclosures are deemed to be on or with an application or solicitation if they meet one of the following conditions:

i. They automatically appear on the screen when the application or solicitation reply form appears;

ii. They are located on the same Web ''page'' as the application or solicitation reply form without necessarily appearing on the initial screen, if the application or reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable; or

iii. They are posted on a Web site and the application or solicitation reply form is linked to the disclosures in a manner that prevents the consumer from by passing the disclosures before submitting the application or reply form.

46(d) Timing of Disclosures

1. *Receipt of disclosures*. Under § 226.46(d)(4), if the creditor places the disclosures in the mail, the consumer is considered to have received them three business days after they are mailed. For purposes of § 226.46(d)(4), ''business day'' means all calendar days except Sundays and the legal public holidays referred to in § 226.2(a)(6). *See* comment 2(a)(6)–2. For example, if the creditor places the disclosures in the mail on Thursday, June 4, the disclosures are considered received on Monday, June 8.

Paragraph 46(d)(1)

1. *Invitations to apply*. A creditor may contact a consumer who has not been pre-selected for a private education loan about taking out a loan (whether by direct mail, telephone, or other means) and invite the consumer to complete an application. Such a contact does not meet the definition of solicitation, nor is it covered by this subpart, unless the contact itself includes the following:

i. An application form in a direct mailing, electronic communication or a single application form as a ''take-one'' (in racks in public locations, for example);

ii. An oral application in a telephone contact; or

iii. An application in an in-person contact.

Paragraph 46(d)(2)

1. *Timing*. The creditor must provide the disclosures required by § 226.47(b) at the time the creditor provides to the consumer any notice that the loan has been approved. However, nothing in this section prevents the creditor from communicating to the consumer that additional information is required from the consumer before approval may be granted. In such a case, a creditor is not required to provide the disclosures at that time. If the creditor communicates notice of approval to the consumer by mail, the disclosures must be mailed at the same time as the notice of approval. If the creditor communicates notice of approval by telephone, the creditor must place the disclosures in the mail within three business days of the telephone call. If the creditor communicates notice of approval in electronic form, the creditor may provide the disclosures in electronic form. If the creditor has complied with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*) the creditor may provide the disclosures solely in electronic form; otherwise, the creditor must place the disclosures in the mail within three business days of the communication.

46(g) Effect of subsequent events

1. *Approval disclosures*. Inaccuracies in the disclosures required under § 226.47(b) are not violations if attributable to events occurring after disclosures are made, although creditors are restricted under § 226.48(c)(2) from making certain changes to the loan's rate or terms after the creditor provides an approval disclosure to a consumer. Since creditors are required provide the final disclosures under § 226.47(c), they need not make new approval disclosures in response to an event that occurs after the creditor delivers the required approval disclosures, except as specified under § 226.48(c)(4). For example, at the time the approval disclosures are provided, the creditor may not know the precise disbursement date of the loan funds and must provide estimated disclosures based on the best information reasonably available and labelled as an estimate. If, after the approval disclosures are provided, the creditor learns from the educational institution the precise disbursement date, new approval disclosures would not be required, unless specifically required under § 226.48(c)(4) if other changes are made. Similarly, the creditor may not know the precise amounts of each loan to be consolidated in a consolidation loan transaction and information about the precise amounts would not require new approval disclosures, unless specifically required under § 226.48(c)(4) if other changes are made.

2. *Final disclosures*. Inaccuracies in the disclosures required under § 226.47(c) are not violations if attributable to events occurring after disclosures are made. For example, if the consumer initially chooses to defer payment of principal and interest while enrolled in a covered educational institution, but later chooses to make payments while enrolled, such a change does not make the original disclosures inaccurate.

Section 226.47—Content of Disclosures

1. *As applicable*. The disclosures required by this subpart need be made only as applicable, unless specifically required otherwise. The creditor need not provide any disclosure that is not applicable to a particular transaction. For example, in a transaction consolidating private education loans, or in transactions under § 226.46(a) for which compliance with this subpart is optional, the creditor need not disclose the information under §§ 226.47(a)(6), and (b)(4), and any other information otherwise required to be disclosed under this subpart that is not applicable to the transaction. Similarly, creditors making loans to consumers where the student is not attending an institution of higher education, as defined in § 226.46(b)(2), need not provide the disclosures regarding the self-certification form in § 226.47(a)(8).

47(a) Application or Solicitation Disclosures

Paragraph 47(a)(1)(i)

1. *Rates actually offered*. The disclosure may state only those rates that the creditor is actually prepared to offer. For example, a creditor may not disclose a very low interest rate that will not in fact be offered at any time. For a loan with variable interest rates, the ranges of rates will be considered actually offered if:

i. For disclosures in applications or solicitations sent by direct mail, the rates were in effect within 60 days before mailing;

ii. For disclosures in applications or solicitations in electronic form, the rates were in effect within 30 days before the disclosures are sent to a consumer, or for disclosures made on an Internet Web site, within 30 days before being viewed by the public;

iii. For disclosures in printed applications or solicitations made available to the general public, the rates were in effect within 30 days before printing; or

iv. For disclosures provided orally in telephone applications or solicitations, the rates are currently available at the time the disclosures are provided.

2. *Creditworthiness and other factors*. If the rate will depend, at least in part, on a later determination of the consumer's creditworthiness or other factors, the disclosure must include a statement that the rate for which the consumer may qualify at approval will depend on the consumer's creditworthiness and other factors. The creditor may, but is not required to, specify

any additional factors that it will use to determine the interest rate. For example, if the creditor will determine the interest rate based on information in the consumer's or co-signer's credit report and the type of school the consumer attends, the creditor may state, ''Your interest rate will be based on your credit history and other factors (co-signer credit and school type).''

3. *Rates applicable to the loan.* For a variable-rate private education loan, the disclosure of the interest rate or range of rates must reflect the rate or rates calculated based on the index and margin that will be used to make interest rate adjustments for the loan. The creditor may provide a description of the index and margin or range of margins used to make interest rate adjustments, including a reference to a source, such as a newspaper, where the consumer may look up the index.

Paragraph 47(a)(1)(iii)

1. *Coverage.* The interest rate is considered variable if the terms of the legal obligation allow the creditor to increase the interest rate originally disclosed to the consumer and the requirements of section 226.47(a)(1)(iii) apply to all such transactions. The provisions do not apply to increases resulting from delinquency (including late payment), default, assumption, or acceleration.

2. *Limitations.* The creditor must disclose how often the rate may change and any limit on the amount that the rate may increase at any one time. The creditor must also disclose any maximum rate over the life of the transaction. If the legal obligation between the parties does specify a maximum rate, the creditor must disclose any legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations. However, if the applicable maximum rate is in the form of a legal limit, such as a state's usury cap (rather than a maximum rate specified in the legal obligation between the parties), the creditor must disclose that the maximum rate is determined by applicable law. The creditor must also disclose that the consumer's actual rate may be higher or lower than the initial rates disclosed under § 226.47(a)(1)(i), if applicable.

Paragraph 47(a)(1)(iv)

1. *Co-signer or guarantor—changes in applicable interest rate.* The creditor must state whether the interest rate typically will be higher if the loan is not co-signed or guaranteed by a third party. The creditor is required to provide a statement of the effect on the interest rate and is not required to provide a numerical estimate of the effect on the interest rate. For example, a creditor may state: ''Rates are typically higher without a co-signer.''

47(a)(2) Fees and Default or Late Payment Costs

1. *Fees or range of fees.* The creditor must itemize fees required to obtain the private education loan. The creditor must give a single dollar amount for each fee, unless the fee is based on a percentage, in which case a percentage must be stated. If the exact amount of the fee is not known at the time of disclosure, the creditor may disclose the dollar amount or percentage for each fee as an estimated range.

2. *Fees required to obtain the private education loan.* The creditor must itemize the fees that the consumer must pay to obtain the private education loan. Fees disclosed include all finance charges under § 226.4, such as loan origination fees, credit report fees, and fees charged upon entering repayment, as well as fees not considered finance charges but required to obtain credit, such as application fees that are charged whether or not credit is extended. Fees disclosed include those paid by the consumer directly to the creditor and fees paid to third parties by the creditor on the consumer's behalf. Creditors are not required to disclose fees that apply if the consumer exercises an option under the loan agreement after consummation, such as fees for deferment, forbearance, or loan modification.

47(a)(3) Repayment Terms

1. *Loan term.* The term of the loan is the maximum period of time during which regularly scheduled payments of principal and interest will be due on the loan.

2. *Payment deferral options—general.* The creditor must describe the options that the consumer has under the loan agreement to defer payment on the loan. When there is no deferment option provided for the loan, the creditor must disclose that fact. Payment deferral options required to be disclosed include options for immediate deferral of payments, such as when the student is currently enrolled at a covered educational institution. The description may include of the length of the maximum initial in-school deferment period, the types of payments that may be deferred, and a description of any payments that are required during the deferment period. The creditor may, but need not, disclose any conditions applicable to the deferment option, such as that deferment is permitted only while the student is continuously enrolled in school. If payment deferral is not an option while the student is enrolled in school, the creditor may disclose that the consumer must begin repayment upon disbursement of the loan and that the consumer may not defer repayment while enrolled in school. If the creditor offers payment deferral options that may apply during the repayment period, such as an option to defer payments if the student returns to school to pursue an additional degree, the creditor must include a statement referring the consumer to the contract document or promissory note for more information.

3. *Payment deferral options—in school deferment.* For each payment deferral option applicable while the student is enrolled at a covered educational institution the creditor must disclose whether interest will accrue while the student is enrolled at a covered educational institution and, if interest does accrue, whether payment of interest may be deferred and added to the principal balance.

4. *Combination with cost estimate disclosure.* The disclosures of the loan term under § 226.47(a)(3)(i) and of the payment deferral options applicable while the student is enrolled at a covered educational institution under §§ 226.47(a)(3)(ii) and (iii) may be combined with the disclosure of cost estimates required in § 226.47(a)(4). For example, the creditor may describe each payment deferral option in the same chart or table that provides the cost estimates for each payment deferral option. *See* Appendix H–21.

5. *Bankruptcy limitations.* The creditor may comply with § 226.47(a)(3)(iv) by disclosing the following statement: ''If you file for bankruptcy you may still be required to pay back this loan.''

47(a)(4) Cost Estimates

1. *Total cost of the loan.* For purposes of § 226.47(a)(4), the creditor must calculate the example of the total cost of the loan in accordance with the rules in § 226.18(h) for calculating the loan's total of payments.

2. *Basis for estimates.* i. The creditor must calculate the total cost estimate by determining all finance charges that would be applicable to loans with the highest rate of interest required to be disclosed under § 226.47(a)(1)(i). For example, if a creditor charges a range of origination fees from 0% to 3%, but the 3% origination fee would apply to loans with the highest initial rate, the lender must assume the 3% origination fee is charged. The creditor must base the total cost estimate on a total loan amount that includes all prepaid finance charges and results in a $10,000 amount financed. For example, if the prepaid finance charges are $600, the creditor must base the estimate on a $10,600 total loan amount and an amount financed of $10,000. The example must reflect an amount provided of $10,000. If the creditor only offers a particular private education loan for less than $10,000, the creditor may assume a loan amount that results in a $5,000 amount financed for that loan.

ii. If a prepaid finance charge is determined as a percentage of the amount financed, for purposes of the example, the creditor should assume that the fee is determined as a percentage of the total loan amount, even if this is not the creditor's usual practice. For example, suppose the consumer requires a disbursement of $10,000 and the creditor charges a 3% origination fee. In order to calculate the total cost example, the creditor must determine the loan amount that will result in a $10,000 amount financed after the 3% fee is assessed. In this example, the resulting loan amount would be $10,309.28. Assessing the 3% origination fee on the loan amount of $10,309.28 results in an origination fee of $309.28, which is withheld from the loan funds disbursed to the consumer. The principal loan amount of $10,309.28 minus the prepaid finance charge of $309.28 results in an amount financed of $10,000.

3. *Calculated for each option to defer interest payments.* The example must include an estimate of the total cost of the loan for each in-school deferral option disclosed in § 226.47(a)(3)(iii). For example, if the creditor provides the consumer with the option to begin making principal and interest payments immediately, to defer principal payments but begin making interest-only payments immediately, or to defer all principal and interest payments while in school, the creditor is required to disclose three estimates of the total cost of the loan,

one for each deferral option. If the creditor adds accrued interest to the loan balance (*i.e.,* interest is capitalized), the estimate of the total loan cost should be based on the capitalization method that the creditor actually uses for the loan. For instance, for each deferred payment option where the creditor would capitalize interest on a quarterly basis, the total loan cost must be calculated assuming interest capitalizes on a quarterly basis.

4. *Deferment period assumptions.* Creditors may use either of the following two methods for estimating the duration of in-school deferment periods:

i. For loan programs intended for educational expenses of undergraduate students, the creditor may assume that the consumer defers payments for a four-year matriculation period, plus the loan's maximum applicable grace period, if any. For all other loans, the creditor may assume that the consumer defers for a two-year matriculation period, plus the maximum applicable grace period, if any, or the maximum time the consumer may defer payments under the loan program, whichever is shorter.

ii. Alternatively, if the creditor knows that the student will be enrolled in a program with a standard duration, the creditor may assume that the consumer defers payments for the full duration of the program (plus any grace period). For example, if a creditor makes loans intended for students enrolled in a four-year medical school degree program, the creditor may assume that the consumer defers payments for four years plus the loan's maximum applicable grace period, if any. However, the creditor may not modify the disclosure to correspond to a particular student's situation. For example, even if the creditor knows that a student will be a second-year medical school student, the creditor must assume a four-year deferral period.

47(a)(6)(ii)

1. *Terms of Federal student loans.* The creditor must disclose the interest rates available under each program under title IV of the Higher Education Act of 1965 and whether the rates are fixed or variable, as prescribed in the Higher Education Act of 1965 (20 U.S.C. 1077a). Where the fixed interest rate for a loan varies by statute depending on the date of disbursement or receipt of application, the creditor must disclose only the interest rate as of the time the disclosure is provided.

47(a)(6)(iii)

1. *Web site address.* The creditor must include with this disclosure an appropriate U.S. Department of Education Web site address such as ''Federalstudentaid.ed.gov.''

47(b) Approval Disclosures

47(b)(1) Interest Rate

1. *Variable rate disclosures.* The interest rate is considered variable if the terms of the legal obligation allow the creditor to increase the interest rate originally disclosed to the consumer. The provisions do not apply to increases resulting from delinquency (including late payment), default, assumption, or acceleration. In addition to disclosing the information required under §§ 226.47(b)(ii) and (iii), the creditor must disclose the information required under §§ 226.18(f)(1)(i) and (iii)—the circumstances under which the rate may increase and the effect of an increase, respectively. The creditor is required to disclose the maximum monthly payment based on the maximum possible rate in § 226.47(b)(3)(viii), and the creditor need not disclose a separate example of the payment terms that would result from an increase under § 226.18(f)(1)(iv).

2. *Limitations on rate adjustments.* The creditor must disclose how often the rate may change and any limit on the amount that the rate may increase at any one time. The creditor must also disclose any maximum rate over the life of the transaction. If the legal obligation between the parties does provide a maximum rate, the creditor must disclose any legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations. However, if the applicable maximum rate is in the form of a legal limit, such as a State's usury cap (rather than a maximum rate specified in the legal obligation between the parties), the creditor must disclose that the maximum rate is determined by applicable law. Compliance with § 226.18(f)(1)(ii) (requiring disclosure of any limitations on the increase of the interest rate) does not necessarily constitute compliance with this section. Specifically, this section requires that if there are no limitations on interest rate increases, the creditor must disclose that fact. By contrast, comment 18(f)(1)(ii)–1 states that if there are no limitations the creditor need not disclose that fact. In addition, under this section, limitations on rate increases include, rather than exclude, legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations.

3. *Rates applicable to the loan.* For a variable-rate loan, the disclosure of the interest rate must reflect the index and margin that will be used to make interest rate adjustments for the loan. The creditor may provide a description of the index and margin or range of margins used to make interest rate adjustments, including a reference to a source, such as a newspaper, where the consumer may look up the index.

Paragraph 47(b)(2)

1. *Fees and default or late payment costs.* Creditors may follow the commentary for § 226.47(a)(2) in complying with § 226.47(b)(2). Creditors must disclose the late payment fees required to be disclosed under § 226.18(l) as part of the disclosure required under § 226.47(b)(2)(ii). If the creditor includes the itemization of the amount financed under § 226.18(c)(1), any fees disclosed as part of the itemization need not be separately disclosed elsewhere.

47(b)(3) Repayment Terms

1. *Principal amount.* The principal amount must equal what the face amount of the note would be as of the time of approval, and it must be labeled ''Total Loan Amount.'' *See* Appendix H–18. This amount may be different from the ''principal loan amount'' used to calculate the amount financed under comment 18(b)(3)–1, because the creditor has the option under that comment of using a ''principal loan amount'' that is different from the face amount of the note. If the creditor elects to provide an itemization of the amount financed under § 226.18(c)(1) the creditor need not disclose the amount financed elsewhere.

2. *Loan term.* The term of the loan is the maximum period of time during which regularly scheduled payments of principal and interest are due on the loan.

3. *Payment deferral options applicable to the consumer.* Creditors may follow the commentary for § 226.47(a)(3)(ii) in complying with § 226.47(b)(3)(iii).

4. *Payments required during enrollment.* Required payments that must be disclosed include payments of interest and principal, interest only, or other payments that the consumer must make during the time that the student is enrolled. Compliance with § 226.18(g) constitutes compliance with § 226.47(b)(3)(iv).

5. *Bankruptcy limitations.* The creditor may comply with § 226.47(b)(3)(vi) by disclosing the following statement: ''If you file for bankruptcy you may still be required to pay back this loan.''

6. *An estimate of the total amount for repayment.* The creditor must disclose an estimate of the total amount for repayment at two interest rates:

i. The interest rate in effect on the date of approval. Compliance with the total of payments disclosure requirement of § 226.18(h) constitutes compliance with this requirement.

ii. The maximum possible rate of interest applicable to the loan or, if the maximum rate cannot be determined, a rate of 25%. If the legal obligation between the parties specifies a maximum rate of interest, the creditor must calculate the total amount for repayment based on that rate. If the legal obligation does not specify a maximum rate but a usury or rate ceiling under State or Federal statutes or regulations applies, the creditor must use that rate. If a there is no maximum rate in the legal obligation or under a usury or rate ceiling, the creditor must base the disclosure on a rate of 25% and must disclose that there is no maximum rate and that the total amount for repayment disclosed under § 226.47(b)(3)(vii)(B) is an estimate and will be higher if the applicable interest rate increases.

iii. If terms of the legal obligation provide a limitation on the amount that the interest rate may increase at any one time, the creditor may reflect the effect of the interest rate limitation in calculating the total cost example. For example, if the legal obligation provides that the interest rate may not increase by more than three percentage points each year, the creditor may assume that the rate increases by three percentage points each year until it reaches that maximum possible rate, or if a maximum rate cannot be determined, an interest rate of 25%.

7. *The maximum monthly payment.* The creditor must disclose the maximum payment that the consumer could be required to make under the loan agreement, calculated using the maximum rate of interest

applicable to the loan, or if the maximum rate cannot be determined, a rate of 25%. The creditor must determine and disclose the maximum rate of interest in accordance with comments 47(b)(3)–6.ii and 47(b)(3)–6.iii. In addition, if a maximum rate cannot be determined, the creditor must state that there is no maximum rate and that the monthly payment amounts disclosed under § 226.47(b)(3)(viii) are estimates and will be higher if the applicable interest rate increases.

47(b)(4) Alternatives to Private Education Loans

1. *General.* Creditors may use the guidance provided in the commentary for § 226.47(a)(6) in complying with § 226.47(b)(4).

47(b)(5) Rights of the Consumer

1. *Notice of acceptance period.* The disclosure that the consumer may accept the terms of the loan until the acceptance period under § 226.48(c)(1) has expired must include the specific date on which the acceptance period expires and state that the consumer may accept the terms of the loan until that date. Under § 226.48(c)(1), the date on which the acceptance period expires is based on when the consumer receives the disclosures. If the creditor mails the disclosures, the consumer is considered to have received them three business days after the creditor places the disclosures in the mail *See* § 226.46(d)(4). If the creditor provides an acceptance period longer than the minimum 30 calendar days, the disclosure must reflect the later date. The disclosure must also specify the method or methods by which the consumer may communicate acceptance.

47(c) Final Disclosures

1. *Notice of right to cancel.* The disclosure of the right to cancel must include the specific date on which the three-day cancellation period expires and state that the consumer has a right to cancel by that date. *See* comments 48(d)–1 and 2. For example, if the disclosures were mailed to the consumer on Friday, June 1, and the consumer is deemed to receive them on Tuesday, June 5, the creditor could state: ''You have a right to cancel this transaction, without penalty, by midnight on June 8, 2009. No funds will be disbursed to you or to your school until after this time. You may cancel by calling us at 800–XXX–XXXX.'' If the creditor permits cancellation by mail, the statement must specify that the consumer's mailed request will be deemed timely if placed in the mail not later than the cancellation date specified on the disclosure. The disclosure must also specify the method or methods by which the consumer may cancel.

2. *More conspicuous.* The statement of the right to cancel must be more conspicuous than any other disclosure required under this section except for the finance charge, the interest rate, and the creditor's identity. *See* § 226.46(c)(2)(iii). The statement will be deemed to be made more conspicuous if it is segregated from other disclosures, placed near or at the top of the disclosure document, and highlighted in relation to other required disclosures. For example, the statement may be outlined with a prominent, noticeable box; printed in contrasting color; printed in larger type, bold print, or different type face; underlined; or set off with asterisks.

Section 226.48—Limitations on Private Education Loans

1. *Co-branding—definition of marketing.* The prohibition on co-branding in §§ 226.48(a) and (b) applies to the marketing of private education loans. The term marketing includes any advertisement under § 226.2(a)(2). In addition, the term marketing includes any document provided by the creditor to the consumer related to a specific transaction, such as an application or solicitation, a promissory note or a contract provided to the consumer. For example, prominently displaying the name of the educational institution at the top of the application form or promissory note without mentioning the name of the creditor, such as by naming the loan product the ''University of ABC Loan,'' would be prohibited.

2. *Implied endorsement.* A suggestion that a private education loan is offered or made by the covered educational institution instead of by the creditor is included in the prohibition on implying that the covered educational institution endorses the private education loan under § 226.48(a)(1). For example, naming the loan the ''University of ABC Loan,'' suggests that the loan is offered by the educational institution. However, the use of a creditor's full name, even if that name includes the name of a covered educational institution, does not imply endorsement. For example, a credit union whose name includes the name of a covered educational institution is not prohibited from using its own name. In addition, the authorized use of a state seal by a state or an institution of higher education in the marketing of state education loan products does not imply endorsement.

3. *Disclosure.* i. A creditor is considered to have complied with § 226.48(a)(2) if the creditor's marketing contains a clear and conspicuous statement, equally prominent and closely proximate to the reference to the covered educational institution, using the name of the creditor and the name of the covered educational institution that the covered educational institution does not endorse the creditor's loans and that the creditor is not affiliated with the covered educational institution. For example, ''[Name of creditor]'s loans are not endorsed by [name of school] and [name of creditor] is not affiliated with [name of school].'' The statement is considered to be equally prominent and closely proximate if it is the same type size and is located immediately next to or directly above or below the reference to the educational institution, without any intervening text or graphical displays.

ii. A creditor is considered to have complied with § 226.48(b) if the creditor's marketing contains a clear and conspicuous statement, equally prominent and closely proximate to the reference to the covered educational institution, using the name of the creditor's loan or loan program, the name of the covered educational institution, and the name of the creditor, that the creditor's loans are not offered or made by the covered educational institution, but are made by the creditor. For example, ''[Name of loan or loan program] is not being offered or made by [name of school], but by [name of creditor].'' The statement is considered to be equally prominent and closely proximate if it is the same type size and is located immediately next to or directly above or below the reference to the educational institution, without any intervening text or graphical displays.

Paragraph 48(c)

1. *30 day acceptance period.* The creditor must provide the consumer with at least 30 calendar days from the date the consumer receives the disclosures required under § 226.47(b) to accept the terms of the loan. The creditor may provide the consumer with a longer period of time. If the creditor places the disclosures in the mail, the consumer is considered to have received them three business days after they are mailed under § 226.46(d)(4). For purposes of determining when a consumer receives mailed disclosures, ''business day'' means all calendar days except Sundays and the legal public holidays referred to in § 226.2(a)(6). *See* comment 46(d)–1. The consumer may accept the loan at any time before the end of the 30 day period.

2. *Method of acceptance.* The creditor must specify a method or methods by which the consumer can accept the loan at any time within the 30-day acceptance period. The creditor may require the consumer to communicate acceptance orally or in writing. Acceptance may also be communicated electronically, but electronic communication must not be the only means provided for the consumer to communicate acceptance unless the creditor has provided the approval disclosure electronically in compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E–Sign Act) (15 U.S.C. § 7001 et seq.). If acceptance by mail is allowed, the consumer's communication of acceptance is considered timely if placed in the mail within the 30-day period.

3. *Prohibition on changes to rates and terms.* The prohibition on changes to the rates and terms of the loan applies to changes that affect those terms that are required to be disclosed under §§ 226.47(b) and (c). The creditor is permitted to make changes that do not affect any of the terms disclosed to the consumer under those sections.

4. *Permissible changes to rates and terms—re-disclosure not required.* Creditors are not required to consummate a loan where the extension of credit would be prohibited by law or where the creditor has reason to believe that the consumer has committed fraud. A creditor may make changes to the rate based on adjustments to the index used for the loan and changes that will unequivocally benefit the consumer. For example, a creditor is permitted to reduce the interest rate or lower the amount of a fee. A creditor may also reduce the loan amount based on a certification or other information received from a covered educational institution or from the consumer indicating

that the student's cost of attendance has decreased or the amount of other financial aid has increased. A creditor may also withdraw the loan approval based on a certification or other information received from a covered educational institution or from the consumer indicating that the student is not enrolled in the institution. For these changes permitted by § 226.48(c)(3), the creditor is not required to provide a new set of approval disclosures required under § 226.47(b) or provide the consumer with a new 30-day acceptance period under § 226.48(c)(1). The creditor must provide the final disclosures under § 226.47(c).

5. *Permissible changes to rates and terms—school certification.* If the creditor reduces the loan amount based on information that the student's cost of attendance has decreased or the amount of other financial aid has increased, the creditor may make certain corresponding changes to the rate and terms. The creditor may change the rate or terms to those that the consumer would have received if the consumer had applied for the reduced loan amount. For example, assume a consumer applies for, and is approved for, a $10,000 loan at a 7% interest rate. However, after the consumer receives the approval disclosures, the consumer's school certifies that the consumer's financial need is only $8,000. The creditor may reduce the loan amount for which the consumer is approved to $8,000. The creditor may also, for example, increase the interest rate on the loan to 7.125%, but only if the consumer would have received a rate of 7.125% if the consumer had originally applied for an $8,000 loan.

5. *Permissible changes to rates and terms—re-disclosure required.* A creditor may make changes to the interest rate or terms to accommodate a request from a consumer. For example, assume a consumer applies for a $10,000 loan and is approved for the $10,000 amount at an interest rate of 6%. After the creditor has provided the approval disclosures, the consumer's financial need increases, and the consumer requests to a loan amount of $15,000. In this situation, the creditor is permitted to offer a $15,000 loan, and to make any other changes such as raising the interest rate to 7%, in response to the consumer's request. The creditor must provide a new set of disclosures under § 226.47(b) and provide the consumer with 30 days to accept the offer under § 226.48(c) for the $15,000 loan offered in response to the consumer's request. However, because the consumer may choose not to accept the offer for the $15,000 loan at the higher interest rate, the creditor may not withdraw or change the rate or terms of the offer for the $10,000 loan, except as permitted under § 226.48(c)(3), unless the consumer accepts the $15,000 loan.

Paragraph 48(d)

1. *Right to cancel.* If the creditor mails the disclosures, the disclosures are considered received by the consumer three business days after the disclosures were mailed. For purposes of determining when the consumer receives the disclosures, the term ''business day'' is defined as all calendar days except Sunday and the legal public holidays referred to in § 226.2(a)(6). *See* § 226.46(d)(4). The consumer has three business days from the date on which the disclosures are deemed received to cancel the loan. For example, if the creditor places the disclosures in the mail on Thursday, June 4, the disclosures are considered received on Monday, June 8. The consumer may cancel any time before midnight Thursday, June 11. The creditor may provide the consumer with more time to cancel the loan than the minimum three business days required under this section. If the creditor provides the consumer with a longer period of time in which to cancel the loan, the creditor may disburse the funds three business days after the consumer has received the disclosures required under this section, but the creditor must honor the consumer's later timely cancellation request.

2. *Method of cancellation.* The creditor must specify a method or methods by which the consumer may cancel. For example, the creditor may require the consumer to communicate cancellation orally or in writing. Cancellation may also be communicated electronically, but electronic communication must not be the only means by which the consumer may cancel unless the creditor provided the final disclosure electronically in compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E–Sign Act) (15 U.S.C. 7001 *et seq.*). If the creditor allows cancellation by mail, the creditor must specify an address or the name and address of an agent of the creditor to receive notice of cancellation. The creditor must wait to disburse funds until it is reasonably satisfied that the consumer has not canceled. For example, the creditor may satisfy itself by waiting a reasonable time after expiration of the cancellation period to allow for delivery of a mailed notice. The creditor may also satisfy itself by obtaining a written statement from the consumer, which must be provided to and signed by the consumer only at the end of the three-day period, that the right has not been exercised.

3. *Cancellation without penalty.* The creditor may not charge the consumer a fee for exercising the right to cancel under § 226.48(d). The prohibition extends only to fees charged specifically for canceling the loan. The creditor is not required to refund fees, such as an application fee, that are charged to all consumers whether or not the consumer cancels the loan.

Paragraph 48(e)

1. *General.* Section 226.48(e) requires that the creditor obtain the self-certification form, signed by the consumer, before consummating the private education loan. The rule applies only to private education loans that will be used for the postsecondary educational expenses of a student while that student is attending an institution of higher education as defined in § 226.46(b)(2). It does not apply to all covered educational institutions. The requirement applies even if the student is not currently attending an institution of higher education, but will use the loan proceeds for postsecondary educational expenses while attending such institution. For example, a creditor is required to obtain the form before consummating a private education loan provided to a high school senior for expenses to be incurred during the consumer's first year of college. This provision does not require that the creditor obtain the self-certification form in instances where the loan is not intended for a student attending an institution of higher education, such as when the consumer is consolidating loans after graduation. Section 155(a)(2) of the Higher Education Act of 1965 provides that the form shall be made available to the consumer by the relevant institution of higher education. However, § 226.48(e) provides flexibility to institutions of higher education and creditors as to how the completed self-certification form is provided to the lender. The creditor may receive the form directly from the consumer, or the creditor may receive the form from the consumer through the institution of higher education. In addition, the creditor may provide the form, and the information the consumer will require to complete the form, directly to the consumer.

2. *Electronic signature.* Under Section 155(a)(2) of the Higher Education Act of 1965, the institution of higher education may provide the self-certification form to the consumer in written or electronic form. Under Section 155(a)(5) of the Higher Education Act of 1965, the form may be signed electronically by the consumer. A creditor may accept the self-certification form from the consumer in electronic form. A consumer's electronic signature is considered valid if it meets the requirements issued by the Department of Education under Section 155(a)(5) of the Higher Education Act of 1965.

Paragraph 48(f)

1. *General.* Section 226.48(f) does not specify the format in which creditors must provide the required information to the covered educational institution. Creditors may choose to provide only the required information or may provide copies of the form or forms the lender uses to comply with § 226.47(a). A creditor is only required to provide the required information if the creditor is aware that it is a party to a preferred lender arrangement. For example, if a creditor is placed on a covered educational institution's preferred lender list without the creditor's knowledge, the creditor is not required to comply with § 226.48(f).

* * * * *

Appendixes G and H—Open-End and Closed-End Model Forms and Clauses

1. *Permissible changes.* Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability, except formatting changes may not be made to model forms and samples in H–18, H–19, H–20, H–21, H–22, H–23, G–2(A), G–3(A), G–4(A), G–10(A)–(E), G–17(A)–(D), G–18(A) (except as permitted pursuant to § 226.7(b)(2)), G–18(B)–(C), G–19,

G–20, and G–21. The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

i. Using the first person, instead of the second person, in referring to the borrower.

ii. Using ''borrower'' and ''creditor'' instead of pronouns.

iii. Rearranging the sequences of the disclosures.

iv. Not using bold type for headings.

v. Incorporating certain state ''plain English'' requirements.

vi. Deleting inapplicable disclosures by whiting out, blocking out, filling in ''N/A'' (not applicable) or ''0,'' crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multipurpose standard forms.)

vii. Using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures.

Appendix H—Closed-End Model Forms and Clauses

21. *HRSA–500–1 9–82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–500–1 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved for use for loans made prior to the mandatory compliance date of the disclosures required under Subpart F. The form was approved for all Health Education Assistance Loans (HEAL) with a variable interest rate that were considered interim student credit extensions as defined in Regulation Z.

22. *HRSA–500–2 9–82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–500–2 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved for use for loans made prior to the mandatory compliance date of the disclosures required under Subpart F. The form was approved for all HEAL loans with a fixed interest rate that were considered interim student credit extensions as defined in Regulation Z.

23. *HRSA–502–1 9–82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–502–1 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved for use for loans made prior to the mandatory compliance date of the disclosures required under Subpart F. The form was approved for all HEAL loans with a variable interest rate in which the borrower has reached repayment status and is making payments of both interest and principal.

24. *HRSA–502–2 9–82.* Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–502–2 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved for use for loans made prior to the mandatory compliance date of the disclosures required under Subpart F. The form was approved for all HEAL loans with a fixed interest rate in which the borrower has reached repayment status and is making payments of both interest and principal.

25. *Models H–18, H–19, H–20.*

i. These model forms illustrate disclosures required under § 226.47 on or with an application or solicitation, at approval, and after acceptance of a private education loan. Although use of the model forms is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to private education loan disclosures. Creditors may make certain types of changes to private education loan model forms H–18 (application and solicitation), H–19 (approval), and H–20 (final) and still be deemed to be in compliance with the regulation, provided that the required disclosures are made clearly and conspicuously. The model forms aggregate disclosures into groups under specific headings. Changes may not include rearranging the sequence of disclosures, for instance, by rearranging which disclosures are provided under each heading or by rearranging the sequence of the headings and grouping of disclosures. Changes to the model forms may not be so extensive as to affect the substance or clarity of the forms. Creditors making revisions with that effect will lose their protection from civil liability.

The creditor may delete inapplicable disclosures, such as:

- The Federal student financial assistance alternatives disclosures
- The self-certification disclosure

Other permissible changes include, for example:

- Adding the creditor's address, telephone number, or Web site
- Adding loan identification information, such as a loan identification number
- Adding the date on which the form was printed or produced
- Placing the notice of the right to cancel in the top left or top right of the disclosure to accommodate a window envelope
- Combining required terms where several numerical disclosures are the same. For instance, if the itemization of the amount financed is provided, the amount financed need not be separately disclosed
- Combining the disclosure of loan term and payment deferral options required in § 226.47(a)(3) with the disclosure of cost estimates required in § 226.47(a)(4) in the same chart or table (*See* comment 47(a)(3)–4.)
- Using the first person, instead of the second person, in referring to the borrower
- Using ''borrower'' and ''creditor'' instead of pronouns
- Incorporating certain state ''plain English'' requirements
- Deleting inapplicable disclosures by whiting out, blocking out, filling in ''N/A'' (not applicable) or ''0,'' crossing out, leaving blanks, checking a box for applicable items, or circling applicable items

ii. Although creditors are not required to use a certain paper size in disclosing the §§ 226.47(a), (b) and (c) disclosures, samples H–21, H–22, and H–23 are designed to be printed on two 8½ x 11 inch sheets of paper. A creditor may use a larger sheet of paper, such as 8½ x 14 inch sheets of paper, or may use multiple pages. If the disclosures are provided on two sides of a single sheet of paper, the creditor must include a reference or references, such as ''SEE BACK OF PAGE'' at the bottom of each page indicating that the disclosures continue onto the back of the page. If the disclosures are on two or more pages, a creditor may not include any intervening information between portions of the disclosure. In addition, the following formatting techniques were used in presenting the information in the sample tables to ensure that the information is readable:

A. A readable font style and font size (10-point Helvetica font style for body text).

B. Sufficient spacing between lines of the text.

C. Standard spacing between words and characters. In other words, the body text was not compressed to appear smaller than the 10-point type size.

D. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text.

E. Sufficient contrast between the text and the background. Generally, black text was used on white paper.

iii. While the Board is not requiring issuers to use the above formatting techniques in presenting information in the disclosure, the Board encourages issuers to consider these techniques when deciding how to disclose information in the disclosure to ensure that the information is presented in a readable format.

iv. Creditors are allowed to use color, shading and similar graphic techniques in the disclosures, so long as the disclosures remain substantially similar to the model and sample forms in appendix H.

26. *Sample H–21.* This sample illustrates a disclosure required under § 226.47(a). The sample assumes a range of interest rates between 7.375% and 17.375%. The sample assumes a variable interest rate that will never exceed 25% over the life of the loan. The term of the sample loan is 20 years for an amount up to $20,000 and 30 years for an amount more than $20,000. The repayment options and sample costs have been combined into a single table, as permitted in the commentary to § 226.47(a)(3). It demonstrates the loan amount, interest rate, and total paid when a consumer makes loan payments while in school, pays only interest while in school, and defers all payments while in school.

27. *Sample H–22.* This sample illustrates a disclosure required under § 226.47(b). The sample assumes the consumer financed $10,000 at an 8.23% annual percentage rate. The sample assumes a variable interest rate that will never exceed 25% over the life of the loan. The payment schedule and terms assumes a 20-year loan term and that the consumer elected to defer payments while enrolled in school. This includes a sample disclosure of a total loan amount of $10,600 and prepaid finance charges totaling $600, for a total amount financed of $10,000.

28. *Sample H–22.* This sample illustrates a disclosure required under § 226.47(c). The sample assumes the consumer financed $10,000 at an 8.23% annual percentage rate. The sample assumes a variable annual percentage rate in an instance where there is no maximum interest rate. The sample

demonstrates disclosure of an assumed maximum rate, and the statement that the consumer's actual maximum rate and payment amount could be higher. The payment schedule and terms assumes a 20-year loan term, the assumed maximum interest rate, and that the consumer elected to defer payments while enrolled in school. This includes a sample disclosure of a total loan amount of $10,600 and prepaid finance charges totaling $600, for a total amount financed of $10,000.

By order of the Board of Governors of the Federal Reserve System.

Jennifer J. Johnson,

Secretary of the Board.

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