

Private Education Loan Requirements Under the Truth-in-Lending Act – A Checklist for Business Officers

| Key Process Requirements | Summary of Rules | Regulatory Citation All citations are to 12 CFR Part 226 , also known as Regulation Z, as published in the Aug. 14, 2009, <i>Federal Register</i> , * except where noted. |
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| Compliance Date | | |
| Plan to comply by February 14, 2010. | The regulations take effect, as required by statute, on February 14, 2010. You need to comply with the disclosure requirements for loans for which you receive an application on or after that date. You also need to be ready to provide the self-certification form to students upon request at that time. | See staff Interpretation for §226.1(d)(6) p. 41248 |
| Provide Self-Certification Form to Student | | |
| <p>For loans from private lenders:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Set up process to provide form to students – paper, web, e-mail? <input type="checkbox"/> Determine how student will be given financial aid data required to complete the form <input type="checkbox"/> Decide whether institution will attempt to capture information about students requesting self-certification form and what actions might result, such as <ul style="list-style-type: none"> o Counsel student re borrowing o Track loan amounts to cost-of-attendance <input type="checkbox"/> Draft necessary communications from institution to students about new processes for private loans <input type="checkbox"/> Determine the impact on existing or future voluntary direct certification agreements between the institution and private lenders | <p>The student borrower must submit to the lender a signed self-certification form before a private education loan can be consummated. This form serves two purposes: (1) again informing the borrower about other options for financing their education; and (2) providing information to the lender about the student’s educational expenses and other aid. ED was charged with developing a model form, in consultation with the Federal Reserve Board and other interested parties.</p> <p>In general, student borrowers are supposed to get the form, and the information needed to complete it, from their institution, sign it, and submit it to their lender. Under ED rules, institutions are required to provide the self-certification form and information to admitted or enrolled students upon request.</p> <p>The self-certification form must include certain required disclosures about other financial aid and loan availability, and places for the student to fill in their cost of attendance, expected financial assistance, and the difference between the two. The self-certification form may be provided electronically, and may be signed and submitted electronically to the lender.</p> | <p>ED Rules: 34 CFR §668.14(b)(29)</p> <p>§226.48(e) p. 41236</p> |

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| | <p>Instead of receiving the form directly from the consumer, the lender may receive the form through the institution. Or, instead of the borrower getting the form from the institution, the lender may provide the self-certification form—and the personal financial aid information required to complete it—presumably because the lender has the information through a direct certification arrangement with the institution.</p> | |
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Collect Self-Certification Form From Student

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| <p>For non-Title IV loans processed by institution:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Determine whether to use electronic or paper forms <input type="checkbox"/> Set up process to ensure receipt of signed form prior to loan disbursement <input type="checkbox"/> Draft necessary communications to students about new processes for these loans | <p>Institutions that provide private education loans to their students must both give the student the self-certification form to sign and collect the signed form prior to consummating a loan.</p> | |
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Identify Regulated Private Education Loans Processed by the Institution

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| <ul style="list-style-type: none"> <input type="checkbox"/> Prepare inventory of non-Title IV loans offered to students by institution, or processed by institution <ul style="list-style-type: none"> o HHS Health Professions and Nursing loans o Other federal loans o State loan programs o Institutional loans <ul style="list-style-type: none"> ▪ Need-based ▪ Endowment funded ▪ Special programs (e.g. law) ▪ Stop gap alternative loans o Others? | <p>A private education loan is defined as any loan made expressly, in whole or in part, for postsecondary education expenses that is not:</p> <ol style="list-style-type: none"> a. made or guaranteed under Title IV of the HEA; b. an open-ended credit plan; c. secured by real property or a dwelling. <p>Two additional exclusions were provided by the regulations:</p> <ul style="list-style-type: none"> • extensions of credit made by an institution of higher education to students if the term is less than 90 days, or • a tuition billing plan that does not charge interest on the balance and the term is not greater than a year | <p>§226.46(b)(5) p. 41233 See staff interpretation p. 41250</p> |
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| <ul style="list-style-type: none"> <input type="checkbox"/> Examine all tuition payment plans offered to determine if any fall outside the regulatory exception for plans that do not charge interest and have a term no longer than one year <input type="checkbox"/> Determine if any emergency loans offered fall outside of the regulatory exception if term is less than three months <input type="checkbox"/> Gather information for each identified loan program on responsible parties, terms, awarding practices, time frames, etc. | | |
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Provide Disclosure Forms to Borrowers

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| <p>For each identified loan program, or group of similar programs:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Determine how and when students will be given <ul style="list-style-type: none"> o Application or solicitation disclosure o Approval disclosure o Final disclosure <input type="checkbox"/> Prepare disclosure forms for each program <ul style="list-style-type: none"> o Set up spreadsheet or formulas for calculating necessary data elements <input type="checkbox"/> Set up system and safeguards to ensure disclosure forms are provided to students in a timely manner <ul style="list-style-type: none"> o Allow students 30 days to accept loan | <p>Lenders must provide specific disclosures at three points in the lending process. The disclosures must be in writing, in a form that the consumer may keep, and may be provided electronically in compliance with E-Sign Act requirements. The specific information and data elements that must be included in each disclosure are detailed in the regulations, which also provide model forms and filled-out samples for each.</p> <p>Application or Solicitation Disclosures. The first disclosures must be provided on or with any application or solicitation (defined as an offer of credit that does not require the consumer to complete an application). However, if you provide the required approval disclosures within three days of the application, you need not provide the application disclosures. The application disclosure must include information on:</p> <ul style="list-style-type: none"> • Interest rate • Fees and default or late payment costs • Repayment terms • Estimates of the total cost of the loan • Eligibility • Alternatives to private education loans • Rights of the consumer, including that, if approved, the terms of the loan will remain available for 30 days • Self-certification form | <p>Manner: §226.46(c) p. 41233</p> <p>Timing: §226.46(d) p.41233</p> <p>Content: §226.47 p. 41234-5</p> <p>See staff interpretation p.41251-55 ----</p> <p>Model form: p. 41237-8</p> <p>Sample form: p. 41243-4</p> |
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| | <p>Approval Disclosures. These disclosures must be provided before consummation or with any notice of approval provided to the student. If approval is mailed or provided electronically, the approval disclosure must be included in the same manner. If approval is provided by telephone, it must be mailed within three business days, and if approval is provided in person, it should be provided at the same time. The information that must be provided on the approval disclosure is very similar to that required on the application disclosure but more specific. It also must state that the student has thirty days to accept the loan and that the terms of the loan will not be changed during that time except for certain permissible changes in the interest rate or other terms. The means by which the student may communicate acceptance of the loan must also be included.</p> <p>Final Disclosures. The final disclosure must be provided after the student accepts the loan. In addition to information previously disclosed on interest rate, fees and default or late payment costs, and repayment terms, this disclosure must state conspicuously that the student has the right to cancel the loan within three business days and specify how to do so. It must also state that loan proceeds will not be disbursed until the cancellation period expires. Information on other alternatives, including federal loans, does not need to be repeated on this disclosure.</p> | <p>Model form: p. 41239-40 Sample form: p. 41245-6</p> <p>Model form: p. 41241-2 Sample form: p. 41247-8</p> |
| <p>Disburse Private Education Loans</p> | | |
| <p>For each identified loan program, or group of similar programs:</p> <ul style="list-style-type: none"> • Ensure that system and safeguards are in place to delay disbursement of loans until <ul style="list-style-type: none"> ○ Signed self-certification form is received ○ Three days after final disclosure form is provided | <p>In general, “days” means business days when your office is open to the public for carrying on substantially all of your business functions. Mailed notices may be assumed to be received three business days after they are sent, in which case all days are counted except Sundays and certain federal holidays.</p> | <p>§226.48(c) – (e) p. 41235-6</p> <p>Business day: §226.2(a)(6) p.41232 See staff interpretation p. 41248</p> |

* The link provided leads to a shortened version of the *Federal Register* notice containing only the final regulations on private education loans and the official staff interpretations. The [entire notice](#) also includes preamble discussion of comments submitted in response to the [proposed rules](#) which may be useful in understanding the regulations.