The congressional focus on greater student loan disclosures was spurred by the highly publicized investigations by New York Attorney General Andrew Cuomo regarding relationships between institutions of higher education and financial institutions. As a result, several new “sunshine” provisions have been dispersed throughout the Higher Education Act—requiring additional loan disclosures and related compliance activities by colleges with respect to federal student loans. In addition, amendments to the Truth in Lending Act (TILA) developed by the congressional committees with jurisdiction over banking issues were added as Title X of the HEAO. These provisions address private student lending.

II. COMPLIANCE AREA

Student Loan “Sunshine” Requirements

III. COMPLIANCE OBJECTIVES

The HEOA imposes new restrictions on colleges, guaranty agencies and both federal and private lenders, in order to prevent conflicts between their interests and their responsibilities to borrowers. Issues addressed include “prohibited inducements” by lenders, new disclosures to borrowers, and requirements for institutional codes of conduct. The law also defines the requirements for preferred lender lists developed by colleges.

Under HEOA, colleges can be held liable for the actions of certain “institution-affiliated organizations,” such as alumni associations and athletic booster clubs.

IV. PRIMARY SOURCE(S) OF COMPLIANCE OBLIGATION(S)

Statute:

Link to statutory language cited below may be found at:
http://www.naicu.edu/special_initiatives/heaguide/news_room/student-loan-sunshine-provisions

Higher Education Act: Title I, Part E - LENDER AND INSTITUTION REQUIREMENTS RELATING TO EDUCATION LOANS - Sections 151 - 154 [20 USC 1019, 1019a, 1019b, 1019c]
Higher Education Act: Title IV

Section 428(b)(3) [20 USC 1078]; Section 433 [20 USC 1083]; Section 435(d)(5)[20 USC 1087]; Section 455(p) [20 USC 1092]; Section 485(m) [20 USC 1093]; Section 487(a)(25) [20 USC 1094]; Section 487(a)(27), (28) [20 USC 1094]; Section 487(e) [20 USC 1094]; Section 487(g), (h), (i)(20 USC 1094)

Regulations:

Federal Register - November 1, 2007, Final Rule, pages 61959 - 62001 (HTML / PDF)
34 CFR 674, 682 and 685. (Federal Loan Programs). These rules remain in effect unless superseded by HEOA.

Federal Register. Vol. 74, No. 140

Federal Register, October 29, 2009. Final Rules. Department of Education; Office of Postsecondary Education; Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program; 34 CFR Parts 673, 674, 682, and 685; Final regulations. [OPE]

This proposed regulation spells out the sunshine provisions and disclosure requirements.
Federal Register Vol. 74. No. 143, pp. 37432-37494


This final rule was issued by the Board of Governors of the Federal Reserve System. It amends Regulation Z, which implements the Truth in Lending Act (TILA)--following enactment of the Higher Education Opportunity Act (HEOA) on August 14, 2008. The rule revises the disclosure requirement for private education loans which include certain institutional loans. Interest-free tuition billing plans of less than a year and emergency loans with terms of 90 days or less are excluded from the disclosures in TILA. Certain loans to students who have completed graduate or professional schools would not be excluded. Loan co-branding restrictions will not be applicable to institutional loans or loans of preferred providers.
V. RESPONSIBLE FEDERAL AGENCIES

Department of Education
Federal Reserve System

VI. ENFORCEMENT AND RISK EXPOSURE/SANCTIONS

Failure to comply can result in fines of up to $27,500 for each violation, (see 34 CFR § 668.84) or limitation or loss of Title IV eligibility.

VII. COMPLIANCE CHECKLIST

✓ Review loan activities of the institution and institution-affiliated organizations and identify those for which reports and disclosures are required.
✓ Assure that required reports and disclosures are made.
✓ Develop (or revise) and publish a Code of Conduct with respect to the federal loan programs in which the institution participates.
✓ In addition, review and revise any Codes of Conduct that were written as a result of state Attorneys General Enforcement Actions or state or local codes.

VIII. POSSIBLE RESPONSIBLE CAMPUS UNITS

President; financial aid; legal counsel; business/finance office; development office.

IX. COMPLIANCE CALENDAR

These provisions went into effect when the bill was signed into law on August 14, 2008. Regulations issued prior to enactment of HEOA (on November 1, 2007) also continue to apply unless they were superseded by the new law.

X. SAMPLE POLICIES AND PROCEDURES

XI. ADDITIONAL RESOURCES

NAICU HEA 101 Quick Guide
http://www.naicu.edu/special_initiatives/heaguide/news_room/student-loan-sunshine-provisions

Department of Education – Information for Financial Aid Professionals
http://www.ifap.ed.gov/ifap/index.jsp
**Department of Education Training Session**
The Department of Education has posted on its website a 90-minute training session, intended for all schools that participate in the FFEL and Direct Loan programs. The training was offered on April 30, 2009, May 13, 2009, June 2, 2009, and June 8, 2009.

**Department of Education Guidance on Use of a Preferred Lender List**
This letter provides guidance to schools that provide students, prospective students, and their families with a list of preferred lenders to assist with the selection of a FFEL Lender.

**NACUANOTES** authored by NACUA member Kate Tromble. September 16, 2008. This note covers general new reporting and disclosure requirements specifically related to student lending practices.

**The Catholic University of America – The Office of General Counsel**
Truth in Lending Act (Regulation Z)
http://counsel.cua.edu/FEDLAW/Tila.cfm

**The Catholic University of America – The Office of General Counsel**
Financial Aid Programs
The “Resources” section of this page contains a number of useful links—including to the NACUA Resource Page on Preferred Lender Program Investigations and Practices, the Department of Education’s Federal Student Financial Aid Handbook.

**Fed Proposes Rules to Boost Disclosure of Student-Loan Terms** (Bloomberg.com, 3/11/09)