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Part II

Federal Reserve System

12 CFR Part 226

Regulation Z; Docket No. R–1353; Truth in Lending; Proposed 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: Proposed rule; request for public comment.

SUMMARY: The Board proposes to amend 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 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. 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 student loans. The proposal 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: Comments must be received on or before May 26, 2009.

ADDRESSES: You may submit comments, identified by Docket No. R–1353, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Brent Lattin, Senior Attorney; Mandie Aubrey, or Lorna Neill, Attorneys; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: For the provisions of the HEOA that would be implemented by this proposal, the Board is required to issue final regulations under Regulation Z by August 14, 2009. The HEOA also requires the Board to issue model forms based on consumer testing and in consultation with the Department of Education.

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 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. Section 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 over $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

[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 proposing to issue 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

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 rescission 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 on those loans, and that additional information about federal loans may be obtained from the school or the Department of Education Web site.

• *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 under 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 proposal 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 proposed 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 rounds, 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 model 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

officials for advisory board service expenses. Prepayment penalties or fees for early repayment are prohibited for private education loans.

Solicitation Disclosure, Approval Disclosure, and Final Disclosure.

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

Application and Solicitation Disclosure. Regarding the Application and Solicitation Disclosure, consumers expected to see a single rate that would apply to them and thus were initially confused by seeing the required disclosure of a range of initial rates that might apply to them. They also commonly mistook the rate disclosed as the high end of the range of initial rates with the maximum possible rate for the loan. For this reason, the proposed model form clarifies that the range of initial rates and the maximum possible rate are separate concepts.

Once consumers understood that the rates disclosed were not necessarily the actual rates that would apply to them, they consistently wanted to know how their actual rate would be determined. Thus, the model form places basic information about how the consumer's actual rate will be determined immediately adjacent to the range of initial rates.

Consumer testing also indicated that consumers want to see specific figures and dollar amounts for fees that may apply to their loan. Thus the proposal 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 effect of a private education loan on their financial future. Improvements to the initial sample form tested included clarifying the loan term and the interest rates used in the sample cost estimates.

Finally, consumers found the presentation of federal loan alternatives, ''Next Steps,'' and general eligibility requirements 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 drafts of the proposed model form, consumers did not understand explanations of the difference between the interest rate and the annual percentage rate (APR).

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.

Again, testing indicated that consumers strongly prefer to have all fees disclosed with specific dollar amounts.

Consumers considered the monthly payment schedule and amounts to be critical information in understanding the financial implications of obtaining a private education loan. For this reason, the Board revised initial drafts of the model disclosure to clarify the monthly payment schedule and amounts under various payment deferral scenarios.

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 Board revised initial versions of the sample Final Disclosure to disclose 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. The proposed form also reflects revisions made to address consumer questions about the procedure for exercising this right.

Results from both rounds of testing were that consumers do 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. For these reasons, as discussed in the section-by-section analysis under § 226.39(b)(3), the Board is proposing to use its exception authority under TILA section 105(a) to omit information about federal loan alternatives from the proposed Final Disclosure form.

Additional testing during and after comment period. During the comment period and after receiving comments from the public on the proposal and model disclosure forms, the Board will work with Rockbridge Associates and EightShapes to revise the model disclosures and conduct additional rounds of cognitive interviews to test the revised disclosures. Final model disclosures will be based on public comments and results of the additional consumer testing.

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 also 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 proposed exemptions are explained below.

III. Section-by-Section Analysis

Introduction

The Board proposes to add the following new disclosure requirements to Regulation Z for private education loans:

(i) Disclosures with applications (or solicitations that require no application) in proposed § 226.38(a);

(ii) Disclosures when notice of loan approval is provided in proposed § 226.38(b); and

(iii) Disclosures before loan disbursement in proposed § 226.38(c).

General rules applicable to the new disclosure requirements are detailed in proposed § 226.37 and associated commentary. Model forms for these disclosures are proposed to be added to Regulation Z's Appendix H.

To implement TILA's new prohibition on co-branding, proposed § 226.39 would amend Regulation Z to prohibit 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 proposal would make an exception to this prohibition under the Board's TILA section 105(a) authority, for creditors in ''preferred lender arrangements'' with covered educational institutions. Proposed § 226.39 would also: provide the consumer with 30 days following receipt of the approval disclosures to accept the loan and prohibit certain changes to a loan's rate or terms during that time; provide the consumer a right to cancel the loan for three business days after receipt of the final disclosures and prohibit disbursement during that time; require creditors to obtain a completed self-certification form signed by the consumer before consummating the transaction; and require creditors with preferred lender arrangements to provide certain information to educational institutions.

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

Section 226.1(b) describes the purposes of Regulation Z. The Board proposes 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) would reference the proposed addition of a new Subpart F containing rules relating to private education loans.

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), 226.23(a), and 226.31(c)(1) and (2). The Board also recently proposed adopting the more precise definition for purposes of the presumption in proposed § 226.19(a)(2) that consumers receive corrected disclosures three business days after they are mailed. (*See* 73 FR 74,989; Dec. 10, 2008). As discussed more fully below in the section-by-section analysis under §§ 226.37, 226.38 and 226.39, the Board is proposing to use the more precise definition of business day in providing presumptions of when consumers receive mailed disclosures, and for measuring the period during which consumers have a right to cancel a private education loan.

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 proposes to revise § 226.3(b) to reflect this change. The Board is not proposing changes to § 226.3(f) because the HEOA does 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 is proposing 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.

Section 226.17—General Disclosure Requirements

Proposed §§ 226.38(b) and (c) would require creditors to provide the current § 226.18 disclosures for private education loans in addition to the new disclosures. Consequently, the Board is proposing 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 is proposing to remove the special rules for student credit plans.

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 is proposing 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 § 226.38, the Board is proposing 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. Consumer testing of student loan disclosures has shown that consumers often do not understand the APR and incorrectly believe that the APR is the consumer's interest rate. When the APR is presented prominently along with a less prominent disclosure of the interest rate, consumers experience added confusion. In consumer testing of the proposed model forms with a prominent APR and less prominent interest rate, some consumers believed that either the APR or the interest rate was a mistake and indicated a concern about trusting the accuracy of the disclosures. In addition,

TILA section 128(e)(1)(A) requires a disclosure of the range of potential interest rates in the application and solicitation disclosure. Some consumers expressed confusion as to why the APR on the approval and final forms was inconsistent with the interest rate disclosed on the application form. Consumers tested have indicated that the interest rate is most relevant to them for private education loan purposes.

The Board proposes 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. For the reasons discussed above, the Board believes that such an exception is necessary and proper to assure a meaningful disclosure of credit terms for consumers. 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 interest rate and APR disclosures differ from each other and the difference impairs consumers' understanding of the rate that applies to the private education loan. Thus, the Board is proposing to give prominence to the interest rate disclosure that is required by the HEOA.

The Board also proposes 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). The Board believes that in the context of private education loan disclosures where both the APR and the interest rate must be disclosed, consumers will be better able to avoid the uniformed use of credit if the interest rate is made more prominent and the APR made less prominent.

The Board requests comment on whether the interest rate should be made more prominent and whether the APR should be made less prominent for private education loan disclosures. Specifically, the Board requests comment on the effect a less prominent APR may have on loan terms. For example, the Board requests comment on whether a less prominent APR may promote the use of low, introductory ''teaser'' interest rates on private education loans, the use of alternative interest calculation methods, or the imposition of higher fees. The Board also requests comment on alternatives ways to disclose both the APR and the interest rate for private education loans in a manner that is clear to consumers.

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 §§ 226.37 and 226.38, creditors would be required 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 proposes to revise § 226.17(b) comment 17(b)–1 to clarify that more specific timing rules would apply for private education loans.

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.''

For student credit plan loans, special disclosure rules apply when interim credit is extended, at the time that the creditor and consumer agree to a repayment schedule, and when a student credit plan loan is consolidated. Specifically, the creditor need not make the following closed-end loan disclosures at the time that interim credit is extended:

- Finance charge
- Payment schedule
- Total of payments

The TILA disclosures provided at the time of execution of the interim note must show two APRs, one for the interim period and one for the repayment period. *See* comment 17(i)–2. Creditors must make complete closed-end TILA disclosures at the time the creditor and consumer agree on a repayment schedule for the total obligation. At that time, a new set of full TILA disclosures must be provided. Finally, new disclosures must be given when interim student credit extensions are consolidated through a renewal note with a set repayment schedule. *See* comment 17(i)–3.

The Board proposes 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 afforded by § 226.17(i). Implementing new TILA section 128(e)(2)(H), proposed § 226.38(b)(3)(vii) requires 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) would require 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 new private education loan disclosure regime applies to consolidation loans, rendering the commentary on consolidation loan disclosures under comment 17(i)–3 unnecessary. Finally, the Board believes that retaining two different disclosure regimes from which creditors may choose, in addition to the significant new disclosure requirements, is unnecessarily complex and may not be useful to consumers and creditors.

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 HEOA does not require, and the Board is not proposing to require, creditors to give a new set of disclosures once the creditor and consumer agree upon a repayment schedule. The proposed rules would 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. The Board will consider whether disclosures should be required for subsequent events as part of its comprehensive review of closed-end credit disclosures under Regulation Z.

Section 226.18—Content of Disclosures

As discussed more fully below, the Board is proposing to require that creditors provide the disclosures required in § 226.18 along with the disclosures required with notice of approval in § 226.38(b) and with the

final disclosures required in § 226.38(c). The proposed model forms in Appendix H–19 and H–20 show the disclosures required under § 226.18 as well as the disclosures required under §§ 226.38(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 proposing to revise 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 proposed §§ 226.38(b) and (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 §§ 226.38(b)(1)(ii), and (c)(1)(i), 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. Proposed comment 38(b)(1)–2, discussed below, would provide guidance on how creditors are to disclose limitations on interest rate adjustments.

The Board is also proposing to revise 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 would be revised to replace the reference to interim student credit extensions with a reference to private education loans. Proposed §§ 226.38(b)(3)(viii) and 226.38(c)(3) would 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 § 226.38, 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. Proposed comment 38(b)(1)–1 would clarify 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 is also proposing 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 would remove the reference to interim interest on a student loan as an example of what is not a penalty. The Board does 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. The Board believes that the description of what constitutes a penalty in the remainder of revised comment 18(k)(1)–1 would provide sufficient clarity that interim interest on a student loan would not be considered a penalty.

Subpart F

The Board proposes to add a new Subpart F to contain the rules relating to private education loans.

Section 226.37—Special Disclosure Requirements for Private Education Loans

Proposed § 226.37 contains general rules about the disclosure and other requirements contained in Subpart F. Section 226.37(a) would specify that Subpart F would apply only to private education loans. Paragraph 37(a)(1) would clarify that, except where specifically provided otherwise, the requirements and limitations of Subpart F would be in addition to the requirements of the other subparts of Regulation Z.

37(b) Definitions

The HEOA amends TILA by adding a number of defined terms in new TILA sections 140 and 128(e). The Board proposes to add these definitions to Regulation Z in proposed § 226.37(b). However, for one new defined term, ''private educational lender,'' the Board proposes 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.[2] The term also includes any other person engaged in the business of soliciting, making, or extending private education loans. The Board believes that the ''creditor'' definition would encompass persons ''engaged in the business of'' extending private education loans.[3] 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 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 is proposing to create an exception for depository institutions and federal credit unions that do not regularly extend consumer credit. 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. However, there may be a few instances where an institution that does not regularly extend consumer credit nevertheless makes an occasional private education loan. For such institutions, the compliance burden would appear to be significant for the small number of student loans that they may extend while still providing consumers with credit disclosures in a manner consist with TILA and the Board's interpretation thereof. The Board believes that this exception is necessary and proper to facilitate compliance with TILA.

The Board also proposes to exercise its authority under TILA section 105(f) by 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

[2] 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.

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

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 requests comment on whether depository institutions and credit unions should be covered even if they do not meet the definition of ''creditor.'' The Board also requests comment on whether there are other persons engaged in the business of extending private education loans who would not be creditors under Regulation Z.

37(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 1002 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, proposed § 226.37(b)(1) would define ''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 § 226.37(b)(2), without regard to the institution's accreditation status. Proposed comment 37(b)(1)–1 would clarify 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 would be a ''covered educational institution.'' It would also clarify 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. A covered educational institution would 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 would clarify that an ''agent'' for the purposes of defining a covered educational institution is an officer or employee of an institution affiliated organization.

The Board requests comment on whether there are postsecondary educational institutions not covered by the definition of institution of higher education, other than unaccredited institutions, that should be included in the definition of covered educational institution.

37(b)(2) Institution of Higher Education

The HEOA defines the term ''institution of higher education'' to have the same meaning as in section 1002 of the Higher Education Act of 1965 (20 U.S.C. 1002). Proposed § 226.37(b)(2) would define ''institution of higher education'' with reference to the Higher Education Act of 1965 and to the implementing regulations promulgated by the Department of Education. The definition would encompass, among other institutions, colleges and universities, proprietary educational institutions and vocational educational institutions.

37(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). Proposed § 226.37(b)(3) would adopt this definition and provide illustrative examples of postsecondary educational expenses. Examples 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. Proposed comment 37(b)(3)–1 would clarify that the examples in the rule are not exhaustive.

37(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). Proposed § 226.37(b)(4) would adopt this definition and proposed comment 37(b)(4)–1 would clarify 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 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.

37(b)(5) Private Education Loan

Proposed § 226.37(b)(5) would implement the HEOA's definition of a ''private education loan.'' A private education loan would be 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 would exclude an open-end credit plan. It would also exclude any closed-end loan secured by real property or a dwelling.

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

Comment 37(b)(5)–2 would address 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. Creditors extending such loans, may, at the creditor's option, provide the disclosures under § 226.38(a) on or with an application or solicitation. However, under proposed § 226.37(d)(2)(C), the Board would exercise its authority under TILA section 105(a) and except multi-purpose loans, from the application disclosure requirements of § 226.38(a). As explained below, the Board believes that this exception is necessary and proper to effectuate the purposes of and facilitate compliance with TILA.

The Board also proposes to exercise its authority under TILA section 105(f) to exempt such loans from the § 226.38(a) disclosure requirements implementing TILA section 128(e)(1). The Board believes 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 be complicated and burdensome to creditors and potentially infeasible to implement. Furthermore, the Board believes that the borrower would receive meaningful information about the loan through the subsequent approval and final disclosures required under § 226.38(b) and (c), respectively. The HEOA also provides borrowers with significant rights, such as the right to cancel the loan. The Board recognizes 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 believes that consumer protection would not be undermined by this exemption.

Proposed comment 37(b)(5)–2 clarifies 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 §§ 226.38(b) (approval disclosures) and (c) (final disclosures) and § 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 would state that the creditor may rely on a check-box or purpose line on a loan application.

Proposed comment 37(b)(5)–2 would also clarify 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 believes 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 would 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 believes that this provision is necessary and appropriate to assure a meaningful disclosure of credit terms for consumers.

The Board requests comment on whether the private educational loan application disclosures should be required for loans that may be used for multiple purposes, or, alternatively, whether such loans should be excepted from any of the other disclosure requirements. The Board also requests 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.

37(c) Form of Disclosures

Similar to the requirements imposed by § 226.17 for the disclosures required by § 226.18, proposed § 226.37(c)(1) would require the disclosures for private student loans be made clearly and conspicuously. Under proposed § 226.37(c)(2), the approval and final disclosures under §§ 226.38(b) and (c) would be required to be in writing in a form that the consumer may keep. The disclosures would have to be grouped together, be segregated from everything else, and not contain any information not directly related to the disclosures required under §§ 226.38(b) and (c), which include the disclosures required under § 226.18. However, the disclosures could include an acknowledgement of receipt, the date of the transaction, and the consumer's name, address, and account number. In addition, the proposal would allow the following disclosures to 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).

The proposal would also require 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 §§ 226.38(b)(1)(i) and (c)(1), to 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 would not be required to be more prominent than other terms.

Proposed 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. The HEOA requires creditors to disclose the principal amount of the loan. *See* proposed §§ 226.38(b)(3)(i) and 226.38(c)(3)(i). The Board proposes to allow creditors to provide the disclosure of the loan's principal amount as part of the itemization of the amount financed, if the creditor opts to provide an itemization. Consumers may be confused about the difference between the required disclosure of the amount financed (§ 226.18(b)) and the principal amount in cases where those two disclosures are different, and the Board

believes that providing an itemization may help clarify the distinction between the two terms.

Proposed § 226.37(c)(2) would permit 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 § 226.38(a) could 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. In addition, the self-certification form required under § 226.39(e) could be obtained in electronic form subject to the requirements in that section. Proposed comment 37(c)(2)–1 would contain guidance on the manner in which disclosures could be provided in electronic form. Electronic disclosures would be 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.

37(d) Timing of Disclosures

Proposed § 226.37(d) would contain the rules governing the timing of the proposed disclosures. Comment 37(d)–1 would clarify that disclosures are considered provided when received by the consumer. The comment contains additional 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 §§ 226.37, 226.38, and 226.39, the term ''business day'' would have 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). For example, if the creditor were to place the disclosures in the mail on Thursday, June 4, the disclosures would be considered received on Monday, June 8.

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)). Proposed § 226.37(d)(1) would implement this requirement. The Board proposes that creditors may provide the disclosures on or with the application or solicitation because the disclosures are likely to be longer than a single page. The proposed regulation would also define 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 proposed definition of ''solicitation'' would be similar to that contained in § 226.5a(a)(1) for credit and charge card application disclosures. Proposed comment 37(d)(1)–1 would provide additional guidance that invitations to apply for a private education loan would not be considered solicitations.

Proposed § 226.38(d)(1)()(ii) would deal with provision of disclosures in a telephone application, or solicitation, initiated by the creditor. The creditor would be allowed, but not required, to orally disclose the information in § 226.38(a). Alternatively, if the creditor does not disclose orally the information in § 226.38(a), the creditor would be required to provide or place in the mail the disclosures no later than three business days after the consumer requests the credit. The Board believes that orally disclosing to consumers all of the information in § 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. However, the Board recognizes 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 would exercise its authority under TILA section 105(a) to create an exception from the requirement to provide the application disclosures under § 226.38(a) if the creditor does not provide oral application disclosures and does provide or place in the mail the approval disclosures in § 226.38(b) no later than three business days after the consumer requests the credit. As explained above, the Board believes that this exception is necessary and proper to assure a meaningful disclosure of credit terms for consumers.

The Board would also exercise its authority under TILA section 105(f) in proposing the exemption, described above, from the requirement to provide the application disclosures under § 226.38(a), as required by TILA section 128(e)(1). The Board believes 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 thinks 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 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 consumer. The Board also notes 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 does not believe that the goal of consumer protection would be undermined by such an exemption.

As discussed above in the section-by-section analysis under § 226.37(b)(5), proposed § 226.37(d)(2)(C) 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.

The Board requests comment on alternatives to providing application disclosures in telephone applications or solicitations initiated by the creditor.

Approval disclosures. Proposed § 226.37(d)(2) would require that the disclosures specified in § 226.38(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 communicates notice of approval to the consumer by mail, the disclosures would have to be mailed at the same time as the notice of approval. If the creditor provides notice of approval by telephone, the creditor would be required to place the disclosures in the mail within three business days of the notice of approval. If the creditor provides notice of approval in electronic form, the creditor would be allowed to 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.*); otherwise, the creditor would be required place the disclosures in the mail within three business days. Comment 37(d)(2)–1 would clarify that for purposes of § 226.37(d), the more precise definition of business day (meaning all calendar days except Sundays and specified federal holidays) applies.

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 proposed 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 requests comment on alternative approaches to the timing of the approval disclosure.

Final disclosures. Proposed § 226.37(d)(3) would require 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. The proposed timing of the final disclosure would differ 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 proposed timing rule would implement 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.[4] 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 effect 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 proposes to interpret the phrase ''contemporaneously with consummation'' to mean the time after the consumer accepts the loan and at least three days before disbursement. 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 proposed rule would accomplish the statute's objectives while ensuring that creditors have reasonable certainty in complying with the rule's timing requirement.

The Board solicits 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.

37(e) Basis of Disclosures and Use of Estimates

Proposed § 226.37(e) would require 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 creditor, the creditor would be required to make the disclosure based on the best information reasonably available at the time the disclosure is provided and to 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 would be permitted to estimate a repayment start date based on, for instance, an estimate of the consumer's graduation date.

37(f) Multiple Creditors; Multiple Consumers

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

37(g) Effect of Subsequent Events

Under proposed § 226.37(g) and comment 37(g)–1, if an event that occurs after consummation renders the final disclosures under § 226.38(c) inaccurate, the inaccuracy would not be a violation of Regulation Z. For example, if the consumer initially chooses to defer payment of principal and interest while enrolled in an educational institution, but later chooses to make payments while enrolled, such a change would not make the original disclosures inaccurate. Creditors would still be prohibited by proposed § 226.39(c), discussed below,

[4] 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.

from changing the rate or terms of the loan before disbursement, except for changes to the rate based on changes in the index used to determine the rate.

Section 226.38—Content of Disclosures

Proposed § 226.38 establishes the content that a creditor would be 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) at least three business days prior to disbursement of the loan funds.

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 required under § 226.38(a) do 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, closed-end loan disclosures are required to be provided only once, before consummation. For private education loans, however, the Board proposes to require the closed-end loan disclosures be provided twice—once when the loan is approved, and again with the final disclosures, in manner shown in the proposed model forms in Appendix H. Specifically, the Board proposes to require creditors to provide consumers the existing § 226.18 disclosures along with the new § 226.38(b) approval disclosures. The Board also proposes 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 application disclosures, the Board believes that combining the existing closed-end credit TILA disclosures with the new private education loan disclosures puts at the consumer's disposal the most relevant transaction-specific information at a point where the consumer is most likely to make the decision as to whether a particular private education loan meets 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 required under § 226.38(b). 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 loan approved 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 consumer would be best served by having the information required under §§ 226.17 and 226.18, as well as § 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) would require that the approval disclosure be provided before consummation. Based on TILA's definition of ''consummation'' in § 226.2(a)(13), this means that the closed-end credit disclosures must be provided before the consumer becomes 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 believes that providing the § 226.18 disclosures a second time along with the final disclosures under § 226.38(c) would enhance consumer understanding by make 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, requiring uniformity would likely enhance consumer understanding by promoting uniformity without unduly burdening creditors. Indeed, it may be easier for creditors to provide two similar forms rather than two different forms, because a similar operational process could be used to produce and check both forms.

In combining the § 226.18 disclosures with the disclosures under §§ 226.38(b) and (c) in a model form, the Board proposes to retain many of the basic elements of the closed-end loan model form in existing Regulation Z Appendix H (*see* Appendix H–2). The proposed 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. This disclosure would be implemented 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 proposes to merge specific § 226.18 disclosures with the disclosures in §§ 226.38(b) and (c) to avoid duplicative disclosures are discussed throughout this section-by-section analysis below.

General Disclosure Requirements

Proposed comment 38–1 would clarify that the disclosures required under § 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. However, for some loans, especially for 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 proposes to allow disclosures for consolidation loans to omit the disclosures required in §§ 226.38(a)(6), and (b)(4).

38(a) Application or Solicitation Disclosures

Proposed § 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 § 226.38(a) is provided in proposed § 226.37, corresponding commentary, and in this section-by-section analysis under § 226.37. The Board requests comment on whether additional guidance on the appropriate delivery of the application and solicitation disclosures is needed.

38(a)(1) Interest Rates

Proposed § 226.38(a)(1) would require creditors to disclose information regarding the interest rates that apply to the private education loan being offered.

Proposed § 226.38(a)(1)(i) would require 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 proposes 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 recognizes 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 offered 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 proposes 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, 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, if applicable. Proposed comment 38(a)(1)(i)–2 would clarify that the disclosure does not require the creditor to list the factors that the creditor will use to determine the interest rate. If, for instance, the creditor will determine the interest rate based on the consumer's credit score and the type of school the consumer attends, the creditor may state, for example, ''Your interest rate will be based on your creditworthiness and other factors.''

Proposed comment 38(a)(1)(i)–1 would clarify that the rates disclosed must be rates that are actually offered by the creditor. For variable rate loans, the comment would provide 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 a consumer's e-mail address; for disclosures made on an Internet Web site, rates would be considered actually offered when viewed by the public; and for disclosures in telephone applications or solicitations, rates 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 is consistent with the rules for variable-rate accuracy in credit and charge card application disclosures under §§ 226.5a(c), (d), and (e).

Fixed or variable rate loans, rate limitations. Proposed § 226.38(a)(1)(ii) would require 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. Proposed comment 38(a)(1)(ii)–1 would clarify that the proposed variable rate disclosures would 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 would be considered fixed.

If the interest rate may increase after consummation, the creditor would be required to disclose any limitations on interest rate adjustments, or, if there are no limitations on interest rate adjustments, that fact. Under proposed comment 38(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 may 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 Board's proposal for disclosures based on the maximum rate in §§ 226.38(b) and (c) discussed below, limitations would include legal limits in the nature of usury or rate ceilings under state or federal statutes or regulations. However, if a rate limitation in the form of a legal limit applies (rather than a numerical rate limitation in the legal obligation between the parties) the creditor would be required to disclose that the maximum rate is determined by law and may change. The creditor would also be required to disclose that the consumer's actual interest rate may be higher or lower than the range of rates disclosed under § 226.38(a)(1)(i), if applicable.

Co-signer or Guarantor Disclosure. Proposed § 226.38(a)(1)(iv) implements 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) would require 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 would be required to disclose that fact. The rule would require only a statement and the creditor would not be required to estimate any potential changes in the applicable interest rates numerically.

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

Proposed § 226.38(a)(2) would require 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 would have to itemize all fees required to obtain the private education loan (§ 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 (§ 226.38(a)(2)(ii)).

Proposed comment 38(a)(2)–1 would explain 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 may 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 proposes 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.[5] 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.[6]

Proposed comment 38(a)(2)–2 would clarify 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 creditor would also be required 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 eliminates the word ''finance'' and requires 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 proposes 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,'' is used in § 226.38(a)(2)(ii) and in the corresponding provisions for other private education loan disclosures (§§ 226.38(b)(2)(ii) and 226.38(c)(2)).

The Board is not proposing 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 educational loan, such as fees for exercising deferment, forbearance, or loan modification options. Creditors would not be 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 requests comment on whether creditors should be required to disclose these or other fees.

38(a)(3) Repayment Terms

Proposed § 226.38(a)(3) requires disclosure of information related to repayment.

Loan term. Proposed § 226.38(a)(3)(i) implements TILA section 128(e)(1)(G), which requires disclosure of the term of the private education loan. Proposed comment 38(a)(3)(i)–1 would clarify that the term of the loan is the period of time during which regular principal and interest payments must be paid 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 longest possible repayment term.

Payment deferral options. Proposed § 226.38(a)(3)(ii) would require 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 105(e)(1)(R) authority, the proposal would also require that if the creditor does not offer any options to defer payments, the creditor would be required to state that fact. Proposed comment 38(a)(3)–2 would clarify 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 be 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 be 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 offers payment deferral options that apply 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

[5] *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.

[6] *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).

deferred and added to the principal balance.

Proposed comment 38(a)(3)–4 would explain 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 is used in the Board's model form contained in Appendix H–18.

38(a)(4) Cost Estimates

Implementing TILA section 128(e)(1)(K), proposed § 226.38(a)(4) would require a creditor to provide an example of the total cost to a consumer of a sample loan at the maximum 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 the Board is interpreting ''total cost'' to mean the total of payments disclosed in accordance with the rules in § 226.18(h). *See* proposed comment 38(a)(4)–1.

Principal amount and fees. Under proposed § 226.38(a)(4) and comment 38(a)(4)–2, creditors would be required to disclose an example of the total cost of the loan calculated using the maximum rate of interest applicable to the loan and the fees applicable to loans at the highest rate of interest that results in a $10,000 amount financed. 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 example.

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)(i) and comment 38(a)(4)–2 would require that the creditor base the total cost example on a $10,000 principal amount plus the finance charges applicable to loans at the maximum rate of interest. For example, if the creditor charges a 3% origination fee on loans with the highest interest rate, and finances the 3% fee, the creditor would calculate the total cost of the loan based on a $10,300 principal amount. However, while the creditor must base the calculation on the principal amount, the creditor must disclose that the example provides the total cost of a $10,000 amount financed, rather than disclosing the principal amount used in calculating the loan.

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 principal amount the consumer will request. Rather than permit each creditor to choose a principal amount upon which to base the disclosure, the Board believes that specifying uniform assumptions about the principal amount will allow consumers more easily to compare different loan products. The proposal would allow consumers to compare the cost of receiving a uniform $10,000 under different loans.

The Board recognizes that finance charges could be added to the total cost of the loan in two different ways. The proposal would require creditors to assume that the consumer borrows more than $10,000 if any finance charges are assessed. Alternatively, the total cost could be calculated assuming that the consumer only borrows $10,000 and pays finance charges separately by cash or check, or deducts them from the $10,000 loan amount. Under the alternative approach, the total cost would be calculated by adding any finance charges to the total of payments. For example, if a $10,000 has a 3% origination fee, the creditor would calculate the total of payments based on a $10,000 loan amount and add the $300 finance charge to the total of payments to calculate the total cost of the loan. By contrast, the proposal would require increasing the assumed principal amount to account for any finance charges, thereby allowing the consumer to compare not only the amount of the finance charges, but the effect on the loan's total cost of repaying those finance charges plus interest over time.

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

The Board requests comment on alternative ways of ensuring that the total cost example reflects the cost of loan fees. Specifically, the Board requests comment on whether an assumed principal amount of $10,000 should be used without adding finance charges to the principal amount, but instead separately adding the finance charges to the total of payments. The Board requests comment on whether private education loan consumers have historically been more likely to add finance charges to the loan amount they request, or to deduct the finance charges from the principal amount requested (or pay them separately by cash or check). The Board also requests comment on practical limitations, if any, for creditors to determine the fees under § 226.38(a)(2)(i) that would be applicable to loans where the maximum rate of interest applies. The Board also requests comment on whether the total cost example should be based on a $10,000 amount financed, as proposed, or on a higher or lower amount. The Board also requests comment on whether the $5,000 amount financed is an appropriate alternative where creditors do not offer loans of $10,000 or more.

Maximum rate. Proposed comment 38(a)(4)–3 would clarify that the maximum rate of interest used to calculate the example of the total cost of the loan must be the maximum initial rate of interest disclosed in the range of rates under § 226.38(a)(1)(i). As discussed above in the section-by-section analysis under § 226.38(a)(1)(i), this would mean the maximum interest rate that the creditor offers at the time that the application or solicitation is provided.

Payment deferral options. Under the proposed rule, the creditor would have to disclose total loan cost examples for each payment deferral option disclosed in § 226.38(a)(3)(iii). If a creditor offers a private education loan where payment options include, for example, (1) immediate repayment of both principal and interest upon consummation, (2) deferment of principal payments while the student is in school, or (3) deferment of both principal and interest payments while the student is in school, the disclosure must reflect a cost example for each option.

Proposed comment 38(a)(4)–4 would clarify that when a creditor calculates an estimate of the total cost of the loan where interest capitalizes, the creditor must calculate the estimate using the same capitalization method that it would use for the loan itself. For example, if a creditor would capitalize interest on the loan on a quarterly basis, then each total cost estimate where interest is capitalized must assume interest capitalizes on a quarterly basis.

Proposed comment 38(a)(4)–5 would provide 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 must 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 must assume that the consumer defers for the lesser of two years plus the maximum applicable grace period, if any, or the maximum time the consumer may defer payments under the loan program. The Board believes that consumers will 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 proposes to require creditors assume a four-year deferral period for consumers applying for undergraduate loans. Most undergraduate programs are four years long, and 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 requires creditors assume a two year enrollment period or to use the maximum deferral period for the loan if the maximum period is less than two years. The Board believes that a two year enrollment period represents 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 requests comment on the proposed deferral period assumptions for calculating the total cost examples under § 226.38(a)(4). Specifically, the Board requests 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, 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 requests 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 requests comments 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.

38(a)(5) Eligibility

Proposed § 226.38(a)(5) would implement TILA section 128(e)(1)(J) which requires disclosure of the general eligibility criteria for a private education loan. The proposal would specify 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 requests comments on whether other types of eligibility requirements should be disclosed.

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

In § 226.38(a)(6), the Board proposes 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, a creditor would be 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. Proposed comment 38(a)(6)(ii)–1 would explain that the disclosure must list the address of an appropriate U.S. Department of Education Web site such as ''*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 is proposing 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 would label the disclosure as ''Federal Loan Alternatives.'' *See* proposed App. H–18, H–19. For these reasons, and those explained further below, the Board believes that this exception is necessary and proper to effectuate meaningful disclosure of credit terms to consumers.

The Board also proposes 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 believes 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 believes that the borrower would receive meaningful information about federal loans through the other disclosures and the model form. The Board also recognizes 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 believes that consumer protection would not be undermined by this exemption.

For each title IV program enumerated in the disclosure (*e.g.*, Perkins, Stafford (both subsidized and unsubsidized), and PLUS loans), the creditor must disclose the interest rate corresponding to each loan program, as well as whether those rates are fixed or variable. The Board proposes to require disclosure of whether the federal loan rates are fixed or variable, under its TILA section 128(e)(1)(R) authority. The Board believes this additional disclosure is 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 have 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 rates on subsidized Stafford loans are currently 6.0% for loans originated or applied for (depending on the loan) before July 1, 2009. For loans after July 1, 2009, the fixed interest rate will be

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 would also require 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 would not be required to state what school-specific education loan benefits and terms might be available because these may vary widely, but rather would be required to alert the consumer to the possibility that school-specific education loan benefits and terms might be available to the consumer.

38(a)(7) Rights of the Consumer

Proposed § 226.38(a)(7) would implement 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) would require the creditor to alert the consumer 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. However, as discussed in the section-by-section analysis under § 226.39(c)(1), because acceptance and consummation may not happen at the same time, the Board is proposing to provide the consumer the full 30-day period in which to accept the loan, even if consummation happens later.

Prohibition on loan term changes. Under proposed § 226.38(a)(7)(ii), the creditor would have 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 § 226.38(a)(7)(i). The proposed rule allows the creditor to give consumers a period of time longer than 30 days in which to accept the loan and during which time the rates and terms offered could not change (except for changes based on adjustments to the applicable index). Creditors choosing to give consumers a period of time in which to accept the loan that is longer than 30 calendar days would be required to disclose this alternate time period.

As discussed in the section-by-section analysis in § 226.39(c), the Board is proposing to allow the creditor to make unequivocally beneficial changes, to make changes based on a request by the consumer, and is requesting comment on whether other changes should be allowed. The Board requests comment on whether the application disclosure should include more detail on possible changes to the rate or terms.

38(a)(8) Self-Certification Information

Proposed § 226.38(a)(8), which implements TILA section 128(e)(1)(P), would require a statement, if applicable, that before the loan may be consummated, the consumer must obtain the self-certification form required under § 226.39(e), and sign and submit the completed form to the creditor.

As discussed in the section-by-section analysis under § 226.39(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.

226.38(b) Approval Disclosures

Proposed § 226.38(b) specifies the information that a creditor must disclose to a consumer on or with any notice of approval provided to the consumer. Guidance on delivery of the disclosures required under § 226.38(b) is provided in proposed § 226.37, corresponding commentary, and in the section-by-section analysis under § 226.37.

As discussed above in the section-by-section analysis under § 226.38(a), the creditor would be required to make the disclosures required under §§ 226.17 and 226.18 as well as the disclosures required under § 226.38(b).

38(b)(1) Interest Rate

Implementing TILA section 128(e)(2)(A), proposed § 226.38(b)(1)(i) would require 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) would require 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 would clarify 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 would also clarify 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 would clarify 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 would clarify 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) would require 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 a rate limitation in the form of a legal limit applies

(rather than a numerical rate limitation in the legal obligation between the parties) the creditor must disclose that the maximum rate is determined by law and may change.

38(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 would require 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 proposed § 226.38(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. Creditors must disclose any charges that are required to be disclosed under § 226.18(l) with the disclosures required under § 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.

38(b)(3) Repayment Terms

Proposed § 226.38(b)(3) requires disclosure of information related to repayment.

Principal amount. Proposed § 226.38(b)(3)(i) implements TILA section 128(e)(2)(D), which requires disclosure of the ''initial approved 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 is not proposing to equate the terms ''principal loan amount'' and ''initial approved principal amount.''

Under current Regulation Z, the amount financed must be calculated by doing the following:

(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 creditors have the option (when the charges are not add-on or discount charges) of either including or excluding the amount of the finance charges. 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 HEOA's ''initial approved principal amount,'' the Board's view is that the most straightforward and easy-to-understand approach is to define ''initial approved principal amount'' as the face amount of the note if the transaction occurred on the terms approved. The ''initial approved principal amount'' under § 226.38(b)(3)(i) should 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 not be included if they would not be included in the amount on the face of the note.

The Board believes that defining ''initial approved principal amount'' in this way will 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 ''initial approved principal amount.'' Defining the ''initial approved principal amount'' in § 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 ''initial approved 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 amount,'' but solely in the discrete context of calculating the ''amount financed.''

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

Loan term. Proposed § 226.38(b)(3)(ii) and comment 38(b)(3)–2 implement TILA section 128(e)(2)(G), which requires disclosure of the maximum term of the private education loan program. The term of the loan is the period of time during which regular principal and interest payments must be paid 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 longest possible repayment term.

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

Payments required during enrollment. Proposed § 226.38(b)(3)(iv) and comment 38(b)(3)–4 would require the creditor to disclose to the consumer whether any payments are required on the loan while the student is enrolled, implementing TILA section 128(e)(2)(I). The creditor also must 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 § 226.38(b)(3)(iv) would be required to correspond to the deferral option chosen by the consumer.

Estimate of interest accruing during enrollment. Also implementing TILA section 128(e)(2)(I), proposed § 226.38(b)(3)(v) would apply only if interest will be 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.

Bankruptcy limitations. Proposed § 226.38(b)(3)(vi) would require disclosure of a statement of limitations on the discharge of a private education loan in bankruptcy. Proposed comment 38(b)(3)–5 would state that a creditor may comply with § 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 proposes 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 disclosure of limitations of discharge of private educational 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 requests comment on whether disclosure of education loan discharge limitations in bankruptcy should be included in the application and solicitation disclosures as implemented by § 226.38(a)(2).

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) would define 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 would clarify 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 would require 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 would include a legal limit in the nature of a usury or rate ceiling under state or federal statutes or regulations, and the creditor would be 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 would 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 believes that such a rule is necessary and appropriate for consumers to make informed borrowing decisions. A rule providing a uniform maximum rate assumption will give creditors more certainty in complying with the regulation. The Board believes that the proposed rate of 21% represents an appropriate midpoint in the range of usury rate ceilings that consumers in the private education loan market are likely to face. Thus, the Board believes that basing the disclosure on an assumed maximum rate of 21% will 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 would add a requirement that, if the legal obligation between the parties does not specify a numeric 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 believes that these additional disclosures are 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 under § 226.38(b)(3)(vii) as an estimate. Proposed § 226.38(b)(3) would also require only an estimated total amount for repayment. The Board recognizes 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 disclosures under § 226.38(b) must be provided to the consumer. However, the creditor would not be permitted to disclose an estimate of the total amount for repayment if the applicable rates and repayment schedule are known at the time of disclosure, such as with a consolidation loan.

The Board requests 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% is the most appropriate rate or whether another rate should be used. The Board also requests comment on whether, if a maximum rate of interest is 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 requests 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.

Maximum monthly payment. Proposed § 226.38(b)(3)(viii) would

implement TILA section 128(e)(2)(O) by requiring the creditor to disclose the maximum monthly payment calculated 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 would add 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 requests comment on other approaches by which creditors may calculate a maximum payment when a maximum rate cannot be determined.

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

Implementing TILA section 128(e)(2)(M), proposed §§ 226.38(b)(4)(i), (ii), and (iii) would require the creditor to provide the information about alternatives to private education loans for financing education that is also required under proposed §§ 226.38(a)(6)(i), (ii), and (iii) and explained in the section-by-section analysis for those sections. The Board again proposes 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 §§ 226.38(a)(6)(i), (ii), and (iii), the Board believes that this exception is necessary and proper to effectuate meaningful disclosure of credit terms to consumers.

38(b)(5) Rights of the Consumer

Implementing TILA section 128(e)(2)(L), proposed § 226.38(b)(5) would require the creditor to disclose that the consumer has the right to accept the loan on the terms approved for up to 30 calendar days. The disclosure would also inform the consumer that the rate and terms of the loan will 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 disclosure would be required to include the specific date on which the 30-day period expires and indicate that the consumer may accept the terms of the loan until that date. For example, if the consumer received the disclosures on June 1, the disclosure would be required to state that the consumer could accept the loan until June 30. The Board believes that this disclosure is necessary to inform consumers of the precise date when the 30-day period expires because the date the consumer is deemed to receive the disclosure may differ slightly from the date the consumer actually receives the disclosure. The creditor would also be required to disclose the method or methods by which the consumer may communicate acceptance. The Board believes that this disclosure is necessary to ensure consumers understand the specific steps required to accept the loan. Proposed comment 39(c)–3, discussed below, would provide guidance to creditors on disclosing methods by which consumers may communicate acceptance.

As discussed in the section-by-section analysis in § 226.39(c), the Board is proposing to allow the creditor to make unequivocally beneficial changes, to make changes based on a request by the consumer, and is requesting comment on whether other changes should be allowed. The Board requests comment on whether the disclosure should include more detail on possible changes to the rate or terms.

38(c) Final Disclosures

Proposed § 226.38(c) requires the creditor to disclose to the consumer a third set of disclosures after the consumer accepts the loan and at least three business days before the loan funds are disbursed. Proposed § 226.38(c) implements TILA section 128(e)(4), which requires the creditor to provide this final set of information 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 § 226.37, 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 proposes to interpret ''contemporaneously with consummation'' to require creditors to provide these final disclosures after acceptance and at least three business days before loan funds are disbursed.

38(c)(1) Interest Rate

Proposed § 226.38(c)(1) would require creditors to disclose the interest rate that applies to the private education loan accepted by the consumer.

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

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

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

38(c)(3) Repayment Terms

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

38(c)(4) Cancellation Right

Proposed § 226.38 and comment 38(c)–1 would 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 § 226.39(d) expires; 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, the proposal would add 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.

Proposed comment 38(c)–2 would clarify that the statement of the right to cancel must be more conspicuous than any other disclosure required under § 226.38(c), except for the finance charge, the interest rate, and the creditor's identity. *See* proposed § 226.37(c)(2)(iii). Under proposed comment 38(c)–2, the Board would deem the right to cancel statement more conspicuous than other disclosures if the creditor segregated the statement from the other disclosures, placed the statement near the top of the disclosure document, and highlighted the statement in relation to other required

disclosures. Examples of appropriate highlighting given in comment 38(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 39(d)–1, and 2, discussed below, would provide additional guidance about how the creditor should 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 is proposing 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 to the consumer with information about federal alternatives to private education loans. Consumers have 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 would also 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 believes 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 recognizes 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 believes that consumer protection would not be undermined by this exemption.

The Board requests comment on whether it should adopt this proposed exception.

Section 226.39—Limitations on Private Education Loans

Section 226.39 contains rules and limitations on private educational loans. It includes a prohibition on co-branding in the marketing of private educational loans, rules governing the 30-day acceptance period and three-day cancellation period for private educational 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.

39(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) would implement 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 recognizes 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 websites might provide links to specific creditors' websites. 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) would provide 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 believes 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.

Comment 39(a)–1 would clarify the term ''marketing'' as used in proposed § 226.39. The term would include all ''advertisements'' as that term is defined in Regulation Z. 12 CFR 226.2(a)(2). The proposal explains 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 believes 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 (such as naming the loan the ''University of ABC Loan,'' rather than ''Creditor's Loan for ABC University Students'').

Proposed comment 39(a)–2 clarifies that referencing a covered educational institution in a way that implies that the educational institution is offering or making the loan rather than the creditor is a form of implying that the educational institution endorses the loan and is therefore not permitted under § 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, a state's or an institution of higher education's use of a state seal, with

appropriate authorization, in the marketing of state education loan products does not imply endorsement.[7]

Proposed comment 39(a)–3.i provides a model clause that creditors may use in complying with the safe harbor in § 226.39(a)(2). The creditor would be considered to have complied with § 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].''

39(b) Preferred Lender Arrangements

The Board recognizes 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 proposes 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) would allow the creditor to refer to the covered educational institution, but would require 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 (emphasis added) (adding Section 152(a)(2) to the Higher Education Act). Thus, proposed § 226.39(b) would reconcile the two co-branding prohibitions contained in the HEOA.

Proposed comment 39(a)–3.ii provides a model clause that creditors may use in complying with § 226.39(b). The creditor would be considered to have complied with § 226.39(b) if the creditor includes 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 requests comment on whether creditors should be offered a safe harbor from the prohibition on co-branding, and, if so, whether an alternative safe harbor should be considered. The Board also requests comment on how the co-branding prohibition should apply to creditors with preferred lender arrangements with covered educational institutions. The Board also requests comment on whether there are other examples of marketing that should be included in the co-branding prohibition.

39(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.

Proposed § 226.39(c) would implement the 30-day acceptance period for private educational loans. The 30-day period would begin following the consumer's receipt of the approval disclosures required in § 226.38(b).

Proposed comment 39(c)–1 would require creditors to provide at least 30 days from the date the consumer receives the disclosures required under § 226.38(b) for the consumer to accept a private education loan. It would also allow creditors to provide a longer period of time at the creditor's option. It would clarify 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. The proposed comment would also clarify that the consumer may accept the loan at any time before the end of the 30 day period.

The HEOA does not specify the method by which the consumer may accept the terms of the loan. Proposed comment 39(c)–2 would allow the creditor to specify a method or methods by which acceptance may occur. The creditor may specify that acceptance be made orally or in writing or may permit either form of acceptance. The creditor may also allow the consumer to accept electronically, but may not make electronic acceptance the sole form of acceptance. The Board believes that not all consumers have access to electronic forms of communication and that a form of acceptance in addition to electronic communication is appropriate.

Proposed § 226.39(c)(2) would prohibit 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 has not accepted the loan during that time.

The proposal differs slightly from the language used in the HEOA in order to provide creditors with certainty about the precise time period during which changes are prohibited. The HEOA prohibits the creditor from changing the terms of the loan prior to 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 literal language of the HEOA assumes that acceptance and consummation happen at the same time. As discussed in the section-by-section analysis under § 226.37, this may not always be the case. To ensure that consumers receive the benefit of the entire 30-day period in which to accept the loan, the Board proposes to prohibit creditors from changing the rate and

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

terms of the loan until the date of disbursement, if the consumer accepts within the 30-day period.

Proposed § 226.39(c)(2) would prohibit only those changes that would affect the rate or terms required to be disclosed under §§ 226.38(b) and (c). The Board interprets the prohibition on changes to the rate or terms of the loan to cover only the disclosed terms. The Board believes that changes to terms that are not required to be disclosed to the consumer are unlikely to affect the consumer's decision whether or not to accept a private education loan.

Proposed § 226.39(c)(2) would not prohibit changes based on adjustments to the index used for a loan, implementing TILA section 128(e)(6)(B). In addition, the Board would exercise 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 will unequivocally benefit the consumer, similar to the rule for home-equity plans in § 226.5b(f)(3)(iv). For example, a creditor would be permitted to reduce the interest rate or lower the amount of a fee, so long as no other change that would not unequivocally benefit the consumer were made. The Board believes that allowing such changes would be in the interest of both the creditor and the consumer. The Board would also 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 Board believes that the prohibition in the HEOA may complicate the credit process and could unnecessarily increase costs for consumers and creditors who, for example, would otherwise have to repeat the application process in order to change the terms. The Board recognizes that financial sophistication among student consumers seeking private education loan may be lacking, and that the size and importance of the loan may be significant to the consumer. The Board believes, however, that consumer protection would not be undermined because the permissible change would have to ''unequivocally benefit the consumer.'' Consumers would not receive a meaningful benefit in the form of protection if the Board were to prevent creditors from altering the loan in a manner that unequivocally benefits the consumer. In addition, consumers would retain their right under HEOA to cancel the loan.

The HEOA prohibits changes to the loan's rate or terms made by the creditor. The proposal would not prohibit changes made in connection with accommodating a request by the consumer. Proposed § 226.39(c)(3) and proposed comment 39(c)–3 would allow creditors to change a loan's rate or terms in response to a request from a consumer. For example, a consumer may learn that his or her financial assistance package has changed and may wish to request a higher or lower principal amount. The creditor would be allowed, at its option, to make changes to the rate and terms of the loan in response to this request. The rule would not limit the changes that could be made. For example, the creditor may provide for a shorter repayment term as a condition of granting the consumer's request to borrow a lesser principal amount.

The Board believes that it is in the consumer's interest to be able to request changes to the rate or terms of the loan. The Board 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. Students whose financial assistance amount decreases after being approved for a private education loan face the problem of having insufficient funds for their education. Those whose financial assistance amount increases after their private education loan has been approved may end up borrowing, and paying interest and fees on, more than they require. Over-borrowing in the private education loan market can adversely affect a student's eligibility for federal student loans. With proposed § 226.39(c)(3) and comment 39(c)–3, 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.

If the creditor chooses to modify the terms of the loan in response to a consumer's request, the creditor would need to provide a new set of approval disclosures under § 226.38(b) and provide the consumer with a new 30-day acceptance period under § 226.39(c). Because the consumer may accept at any time during the 30 day period, the Board does not believe that this will unduly inhibit consumers from proceeding with a loan modified in response a request. However, the Board requests comment on whether consumers should be allowed to accept loans before receiving the updated disclosures. The Board also requests comment on alternative means of ensuring that consumers retain the benefits of the 30-day acceptance period while providing them with flexibility in cases where the amount of private education loan funds a consumer needs changes.

The HEOA provides that the 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 believes that there may be limited instances where it would appropriate for a creditor to withdraw a loan offer prior to disbursement, such as if the creditor learns that the consumer or a co-signer has committed fraud in filling out the application. The Board also requests comment on whether there are other instances where a material condition of the loan offer is not met such that the creditor should be permitted to withdraw the offer or change the terms of the loan. For example, the creditor may approve the loan contingent upon the consumer maintaining full-time enrollment, but the consumer may ultimately only register as a part-time student. The Board also requests comment on whether it is operationally feasible to determine the existence of a change in a material circumstance by comparing the terms for which the consumer was actually approved with the terms for which the creditor would have approved the consumer (or whether the creditor would have denied the consumer's loan application), if the material circumstance was known to the creditor before the loan was approved.

39(d) Consumer's Right To Cancel

Proposed § 226.39(d) would provide 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 § 226.38(c). It would also prohibit the creditor from disbursing any funds until the expiration of the three-business day period. The consumer's right to cancel would apply regardless of whether or not the consumer was legally obligated on the loan at the time that the final disclosures were provided.

Proposed comment 39(d)–1 would provide guidance on calculating the three-business day time period and on when a consumer's request to cancel would be considered timely. It would also clarify that the creditor would be allowed to provide a period of time longer than three business days in which the consumer may cancel, and that the creditor would be allowed to disburse funds after the minimum three-business day period so long as the creditor honored the consumer's later timely cancellation request. Proposed comment 39(d)–2 would provide guidance to creditors on specifying a method or methods by which the consumer may cancel the loan. The creditor would be permitted to require cancellation be communicated orally or in writing. The creditor would also be permitted to allow cancellation to be communicated electronically, but would not be permitted to require only electronic communication because the Board believes that not all consumers have access to electronic communication.

Proposed comment 39(d)–3 would clarify the requirement that the creditor allow cancellation without penalty. The prohibition would extend only to fees charged specifically for canceling the loan. The creditor would not be required to refund fees, such as an application fee, charged to consumers for loans that are not cancelled.

The Board requests 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 requests 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.

39(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) would implement 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, a self-certification form will not be required with respect to every covered educational institution, but only those that meet the definition of an institution of higher education in proposed § 226.37(b)(2). Moreover, proposed comment 39(e)–1 would clarify that 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. At the same time, comment 39(e)–1 would clarify 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 paid 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 would allow 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 does 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 would provide 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.

39(f) Provision of Information by Preferred Lenders

The HEOA requires that a creditor that has a preferred lender arrangement with a covered educational institution 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 to June 30 of the following year). HEOA, Title X, Subtitle B, Section 1021(a)(adding TILA Section 128(e)(11)). The HEOA does not specify which of the model forms that the creditor should use. However, the approval and consummation forms contain transaction-specific data that cannot be known for the next year. Thus, the Board proposes to require that the creditor provide the general loan information required on the application form in § 226.38(a), rather than the transaction-specific information required in the approval and final disclosure forms.

After consultation with the Department of Education, the Board proposes to require that creditors provide information by January 1 of each year. Proposed § 226.39(f) would require that the creditor provide only the information about rates, terms and eligibility that are applicable to the creditor's specific loan products. The Board does not believe that educational institutions need 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 believes that educational institutions can perform their own calculations of the total cost of the creditors' loans and do not need the cost estimate disclosure required under § 226.38(a)(4). Comment 39(f)–1 would provide creditors with the flexibility to comply with this requirement by providing educational institutions with copies of their application disclosure forms if they choose, or to provide only the required information.

The Board requests comment on the appropriate date by which creditors must provide the required information and on what information should be required.

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 proposes to add several model and sample forms to Appendix H to part 226. The Board also proposes 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 would reorder the disclosures as follows: the amount financed, the interest rate, the finance charge and the total of payments.[8] The proposed order reflects a 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 proposed order may enhance consumer understanding in the context of private education loans, the Board recognizes that consumers may be accustomed to the current order from other loan contexts. The Board requests comment on whether it should maintain a uniform order for the disclosures, or whether it should adopt the proposed order for private education loans.

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 proposes 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 would provide a list of acceptable changes to the model forms. Proposed comment app. H–25.ii would provide guidance on the design of the model forms that would not be required but would be encouraged.

The Board is also proposing 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 rearrangments 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.

IV. 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 requests 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.

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 proposing model forms along with this proposed rule. The Board is also proposing to issue 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. The Board requests comment on whether the model forms and the rule implementing TILA section 128(e)(11) should be issued in final form at the same time as the other proposed rules.

V. 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 proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Federal Reserve also proposes to extend for three years the current recordkeeping and disclosure requirements in connection with Regulation Z. The collection of information that is required by this proposed rule is found in 12 CFR part 226. The Federal Reserve 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 Federal Reserve 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

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

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 Federal Reserve accounts for the paperwork burden associated with Regulation Z for the state member banks and other creditors supervised by the Federal Reserve that engage in lending covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Federal Reserve-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. The current total annual burden to comply with the provisions of Regulation Z is estimated to be 688,607 hours for the 1,138 Federal Reserve-regulated institutions [9] that are deemed to be respondents for the purposes of the PRA. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Federal Reserve provides model forms, which are appended to the regulation.

The total estimated burden increase, as well as the estimates of the burden increase associated with each major section of the proposed rule as set forth below, represents averages for all respondents regulated by the Federal Reserve. The Federal Reserve expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size and complexity of the respondent. Furthermore, the burden estimate for this rulemaking does not include the burden addressing changes to implement provisions of the Mortgage Disclosure Improvement Act of 2008 (MDIA), as announced in a separate proposed rulemaking (Docket No. R–1340).

As discussed in the preamble, the Federal Reserve proposes to add three new disclosures for private education loans, which must be given at different times in the loan origination process: (1) Application or Solicitation Disclosures (Section 226.38(a)) would require private educational lenders to provide on or with a solicitation or an application for a private education loan general information about the rate, fees, and loan terms, including an example of the total cost of the 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 on those loans; (2) Approval Disclosures (Section 226.38(b)) would require the private educational lender to provide on or with any notice of approval a set of transaction-specific disclosures containing information about the rate, fees and other terms of the loan. The consumer has at least 30 days in which to accept the terms of the loan offered, and the private educational lender may not change the rate or terms of the loan, except for changes to the rate based on an index, during that time; and (3) Final Disclosures (Section 226.38(c)) would require the private educational lender to provide at least three business days prior to disbursing the loan funds an updated cost disclosure that is substantially similar to the form provided at approval. The consumer has three business days in which to cancel the loan and funds may not be disbursed until the three-day period has expired.

The proposed rule would impose a one-time increase in the total annual burden under Regulation Z for all respondents regulated by the Federal Reserve by 45,440 hours, from 688,607 to 734,047 hours. In addition, the Federal Reserve estimates that, on a continuing basis, the proposed requirements would increase the total annual burden by 231,474 hours from 688,607 to 920,081 hours.

The Federal Reserve estimates that 1,136 respondents [10] regulated by the Federal Reserve would take, on average, 40 hours (one business week) to update their systems to comply with the proposed disclosure requirements in Sections 226.38(a), 226.38(b), and 226.38(c). This one-time revision would increase the burden by 45,440 hours. In addition, the Federal Reserve estimates that, on a continuing basis, these respondents would take on average 1 hour (monthly) to comply with each of the proposed disclosure requirements in Sections 226.38(a) and 8 hours (monthly) to comply with the proposed disclosure requirements in Sections 226.38(b) and 226.38(c). The Federal Reserve estimates the annual burden to be 13,362 hours and 231,474, hours respectively.

To ease the burden and cost of complying with the proposed disclosures the Federal Reserve provided model forms for each of the three new disclosures: Appendix H–17 for the application or solicitation disclosures required in § 226.38(a), Appendix H–18 for the approval disclosures required in § 226.38(b), and Appendix H–19 for the final disclosures required in § 226.38(c).

The other federal agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority.[11] They may, but are not required to, use the Federal Reserve's burden estimation methodology. Using the Federal Reserve's method, the total current estimated annual burden for institutions regulated by the federal financial agencies, including Federal Reserve-supervised institutions, would be approximately 13,568,725 hours. The proposed rule would impose a one-time increase in the estimated annual burden for all institutions subject to Regulation Z by 688,000 hours to 14,256,725 hours. On a continuing basis the estimated total annual burden would increase by 3,508,800 hours from 13,568,725 to 17,077,525 hours. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. All covered institutions, of which there are approximately 17,200, potentially are affected by this collection of information, and thus are respondents for purposes of the PRA.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (2) the accuracy of the Federal Reserve's estimate of the burden

[9] The number of Federal Reserve-supervised respondents was obtained from numbers published in the Board of Governors of the Federal Reserve System 94th Annual Report 2007: 878 State member banks, 258 Branches & agencies of foreign banks, and 2 Commercial lending companies.

[10] 878 State member banks and 258 Branches & agencies of foreign banks.

[11] Appendix I to Part 226—Federal Enforcement Agencies of Regulation Z lists those federal agencies that enforce the regulation for particular classes of business. The federal financial agencies include: the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and National Credit Union Administration. The federal non-financial agencies include: Department of Transportation, Packers and Stockyards Administration, Farm Credit Administration, and Federal Trade Commission.

of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Michelle Shore, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 151–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

VI. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed regulations cover certain banks, other depository institutions, and non-bank entities that extend private education loans to consumers. The Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.[12]

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 proposed regulations. The Board requests public comment in the following areas.

A. Reasons for the Proposed 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 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 disclosure documents 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 proposed 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 proposed 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.

B. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** above contains this information. The legal basis for the proposed regulations is section 1002 of the HEOA and section 105(a) of the TILA.

C. Description of Small Entities to Which the Regulation Applies

The proposed regulations would 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 proposal 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 can, however, identify through data from Call Reports[13] approximate numbers of small depository institutions that could be subject to the proposed rules. Based on an average of data reported at quarter end between October 1, 2007 and September 30, 2008, approximately 4,481 banks, 401 thrifts, and 7,221 credit unions, totaling 12,103 institutions, would be considered small entities that are potentially subject to the proposed rule. The Board cannot identify the percentage of these small institutions that extend private education loans and thus would be subject to a rulemaking. However, because the proposed regulation would cover all private education loans regardless of their size or whether they are for multiple purposes, the Board believes a majority of the 12,103 institutions would be covered by this proposed rulemaking.

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 proposed 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

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

[13] 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).

companies that extend private education loans.

The proposed rule would also apply to covered educational institutions that extend private education loans to their students, including flight training schools. According 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 proposed 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.[14]

The Board is not aware of sources of data on either the number of non-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.[15] Thus, the Board estimates that 7,410 non-accredited postsecondary schools qualify as small entities.[16]

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.

The Board invites comment regarding the number and type of small entities that would be affected by the proposed rule.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The compliance requirements of the proposed regulations are described in detail in the **SUPPLEMENTARY INFORMATION** above.

The proposed 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 would 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 proposed regulations also generally require a creditor 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. It also must provide a three-day right to cancel following consummation and is prohibited from disbursing funds until the three-day period expires. A creditor would 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 given period of time following the consumer's receipt of the approval disclosure documents.

The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small institutions.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Regulations

The Board has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed regulations. Pursuant to section 1021(a)(9) of the HEOA, the proposed disclosures given at the time of approval and before disbursement of the private education loan have been designed to prevent, to the extent possible, duplication with the existing disclosure requirements of the TILA. The Board seeks comment regarding any statutes or regulations, including state or local statutes or regulations that would duplicate, overlap, or conflict with the proposed regulations.

F. Discussion of Significant Alternatives

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 **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.

The Board welcomes comments on any significant alternatives, consistent with section 1002 of the HEOA that would minimize the impact of the proposed regulations on small entities.

List of Subjects in 12 CFR Part 226

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

[14] 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.

[15] 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.

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

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold arrows, and language that would be deleted is set off with bold brackets.

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend 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 § 226.37(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.

[(6)**]**(7)◄

* * * * *

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),◄ **[**and**]** § 226.31, ►and §§ 226.37, 226.38, and 226.39,◄ 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 [not secured by real property or a dwelling].* An extension of credit **[**not secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer,**]** 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 § 226.37(b)(5).◄

* * * * *

Subpart C—Closed-End Credit

4. Section 226.17 is amended by revising paragraphs (a), (b), and (e) and removing paragraph (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 § 226.38◄.[38] The itemization of the amount financed under § 226.18(c)(1) must be separate from the other disclosures under that section ►except for private education loan disclosures under § 226.38◄.

(2) ►Except for private education loans, t◄**[**T**]**he 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 loans, 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 §§ 226.38(b)(1)(i) and (c)(1), and the notice of the right to cancel under § 226.38(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 transactions, special timing requirements are set forth in § 226.37(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.* ►Except for the disclosures required in § 226.38(b), i◄**[**I**]**f a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the

[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).

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, or § 226.20.

* * * * *

[(i) *Interim student credit extensions.* For each transaction involving an interim credit extension under a student credit program, 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).]

* * * * *

5. A new Subpart F consisting of §§ 226.37, 226.38, and 226.39 are added to read as follows:

Subpart F—Special Rules for Private Education Loans

Sec.
226.37 Special Disclosure Requirements for Private Education Loans.
226.38 Content of Disclosures.
226.39 Limitations on Private Educational Loans.

►Subpart F—Special Rules for Private Education Loans

§ 226.37 Special Disclosure Requirements for Private Education Loans

(a) *Coverage.* The requirements of this subpart apply to private education loans as defined in § 226.37(b)(5).

(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.

(2) *Institution of higher education* has the same meaning as in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002) and the implementing regulations published by the 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 a loan 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; and

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

(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 §§ 226.38(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 §§ 226.38(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 §§ 226.38(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 §§ 226.38(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 § 226.38(a) may be provided to the consumer in electronic form on or with an application or solicitation provided in electronic form without regard to the consumer consent or other provisions of the E-Sign Act. The form required to be received under § 226.39(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 § 226.38(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 § 226.38(a) in a telephone application, or solicitation, initiated by the creditor. Alternatively, if the creditor does not disclose orally the information in § 226.38(a), the creditor must provide the disclosures or place them in the mail no later than three business days after the consumer requests the credit, except that, if the creditor provides or places in the mail the disclosures in § 226.38(b) no later than three business days after the consumer requests the credit, the creditor need not also provide the § 226.38(a) disclosures.

(iii) 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, the creditor need not also provide § 226.38(a) disclosures.

(2) *Approval disclosures.* The creditor shall provide the disclosures required by § 226.38(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; otherwise the creditor must mail the disclosures within three business days of communicating the notice of approval.

(3) *Final disclosures.* The disclosures required by § 226.38(c) shall be provided after the consumer accepts the loan and at least three business days

prior to disbursing the private education loan funds.

(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 must 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.* If a disclosure under § 226.38(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).

§ 226.38 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, 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, and 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.

(iv) Whether a co-signer or guarantor is required and 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; and

(ii) Any applicable charges or 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.

(ii) 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.

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

(i) using the maximum rate of interest and a principal amount of $10,000, or $5000 if the creditor only offers the loan for less than $10,000, plus the finance charges applicable to loans at the maximum rate of interest; and

(ii) calculated both for any option that allows for deferral of interest payments and for any option that does not allow for deferral of interest payments.

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

(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 website of the U.S. Department of Education, including an appropriate website address; and

(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.* (i) A statement that if the loan is approved, the consumer will have the right to accept the terms of the loan at any time within 30 calendar days following receipt of the approval disclosures in § 226.38(b).

(ii) A statement that except for changes based on adjustments to the index used to determine the rate for the loan, the rates and terms of the loan may not be changed by the creditor during the 30-day period described in paragraph (a)(7)(i) of this section.

(8) *Self-certification information.* A statement that, before the loan may be consummated, the consumer must obtain from the relevant institution of higher education the self-certification form required under § 226.39(e), and complete, sign and submit the form to the creditor, if applicable.

(b) *Approval disclosures.* On or with any notice of approval provided to the consumer, the creditor shall disclose to the consumer 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; and

(ii) Any applicable charges or 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.

(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 21%.

(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 § 226.38(b)(3)(vii)(A) 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 21%. If a maximum cannot be determined, a statement of 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; and

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

(5) *Rights of the consumer.* (i) A statement that the consumer has the right to accept the terms of the loan at any time within 30 calendar days following notice of loan approval. The disclosure must include the specific date on which the 30-day period expires, based on the date upon which the consumer receives the disclosures required under this subsection for the loan, and indicate that the consumer may accept the terms of the loan until that date. The disclosure must also specify the method or methods by which the consumer may communicate acceptance.

(ii) A statement that, except for changes based on adjustments to the index used for a loan, the rates and terms of the loan may not be changed by the creditor during the period described in paragraph (b)(5)(i).

(c) *Final disclosures.* At least three business days prior to disbursing the loan funds, 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 §§ 226.38(b)(1).

(2) *Fees and default or late payment costs.* Information required to be disclosed under § 226.38(b)(2).

(3) *Repayment terms.* Information required to be disclosed under § 226.38(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 § 226.39(d) expires, and

(ii) loan proceeds will not be disbursed until after the cancellation period under § 226.39(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. 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 § 226.37(c)(2)(iii).

§ 226.39 Limitations on private educational loans.

(a) *Co-branding prohibited.* (1) Except as provided in paragraph (b) of this section, a creditor 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 the covered educational institution does not endorse the creditor's loans and that the creditor is not affiliated with the covered educational institution.

(b) *Preferred lender arrangements.* If a creditor and a covered educational institution have entered into a preferred lender arrangement, as defined by § 226.37(b)(4), paragraph (a)(1) of this section does not apply if the private education loan marketing includes a clear and conspicuous disclosure 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 § 226.38(b).

(2) Except for changes based on adjustments to the index used for a loan, or changes that will unequivocally benefit the consumer, the rate and terms of the private education loan that are required to be disclosed under §§ 226.38(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) Notwithstanding paragraph (c)(2) of this section, nothing in this section prevents the creditor from changing the rate or terms of the loan, at the creditor's option, in connection with accommodating a specific request by the consumer. For example, if the consumer requests a higher or lower principal amount of the loan following a change in the amount of the consumer's other available financial assistance, the creditor may, but need not, provide the requested principal amount and make any other changes to the rate or terms. If the consumer requests a change to the terms of the loan, the creditor shall provide the disclosures required under § 228.38(b)(2) for the new loan terms and shall provide the consumer with an additional 30 days to accept the new rates and terms of the loan, and shall not make changes to the rates and terms except as specified in paragraphs (c)(2) and (3) of this section.

(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 § 226.38(c). No funds may be disbursed with respect to a private education loan until after the expiration of the three-business day period.

(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, a 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 annually by the 1st day of January, the information required under

§§ 226.38(a)(1), (2), (3) and (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 and ending June 30 of the following year.◄

6. 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

* * * * *

►H–18 Private Education Loan Application and Solicitation Model Form
H–19 Private Education Loan Approval Model Form
H–20 Private Education Loan Final Model Form
H–21 Private Education Loan Application and Solicitation Sample
H–22 Private Education Loan Approval Sample
H–23 Private Education Loan Final Sample◄

* * * * *

►H–18 Private Education Loan Application and Solicitation Model Form

BILLING CODE 6210–01–P

H-18 Private Education Loan Application and Solicitation Model Form

[Creditor Name]
[Creditor Address]

Rates & Loan Terms

Current Starting Interest Rates between:

% and %

Term of Loan:

[Applicable loan term or terms]

Your starting rate
[Description of how rate is determined, if applicable]

Maximum Interest Rate
Your interest rate **will vary with the market** based on the [Index] Rate (a publicly available interest rate we use to set the variable rate) but **[description of maximum rate or lack thereof]**. The rate can change [frequency of rate changes] and [description of limit on rate increase at any one time, or lack thereof].

Fees
[Itemization of fees]

Repayment Options & Sample Costs

In-School Repayment options (available while continuously enrolled in School)	**Sample Loan amount**	**Sample Interest Rate** (highest possible starting rate)	**Sample Total Paid** (over [term of loan], including fees)
1. **[REPAYMENT OPTION]** [Description]	$10,000.00	[Rate]	**[Total Cost]**
2. **[ADDITIONAL REPAYMENT OPTION]** [Description]	$10,000.00	[Rate]	**[Total Cost]**
3. **[ADDITIONAL REPAYMENT OPTION]** [Description]	$10,000.00	[Rate]	**[Total Cost]**

Federal Loan Alternatives

Loan program	**Current Interest Rates**	
PERKINS for Students	[Rate] fixed	
STAFFORD for Students	[Rate] fixed	Undergraduate subsidized
	[Rate] fixed	Undergraduate unsubsidized & Graduate
PLUS for Parents	[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:**
federalstudentaid.ed.gov

Next Steps

1. **Find Out More 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 federalstudentaid.ed.gov for more information about other loans.

2. **To Apply for this Loan, Complete the Application and the School 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 the variable interest rate may change based on adjustments to the index).

REFERENCE NOTES

Variable Interest Rate
[Variable interest rate information, if applicable]

Eligibility Criteria
[Description of eligibility criteria]

About the Repayment Example
[Description of repayment example assumptions]

H-19 Private Education Loan Approval Model Form

BORROWER:
[Name]
[Address]

CREDITOR:
[Name]
[Address]

Loan Rates & Estimated Total Costs

Amount Financed	Interest Rate	Finance Charge	Total of Payments
The amount of credit provided to you or on your behalf.	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.

YOUR RATE IS VARIABLE

[Description that rate varies and how it is determined, if applicable] For more information on this variable rate, see notes on next page.

Based on the current interest rate, your **[estimated] annual percentage rate (APR)**, which is the cost of your loan as a yearly rate, is **[APR]%.**

ITEMIZATION OF AMOUNT FINANCED

Total Amount Financed	

OTHER FEES

- [Itemization of fees]

Estimated Repayment Schedule & Terms

PAYMENT SCHEDULE [Loan Term]	[PAYMENT PERIOD, e.g. MONTHLY PAYMENTS] at [Interest Rate]% the current rate of your loan	at [Maximum Rate]% [Maximum rate description]
[Dates of deferment period, if applicable] deferment period	**No payment required** ($[Amount of accrued interest] in 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 [Maximum rate description] would be **$[total payment amount].**

Federal Loan Alternatives

Loan program	Current Interest Rates	
PERKINS for Students	[Rate] fixed	
STAFFORD for Students	[Rate] fixed	Undergraduate subsidized
	[Rate] fixed	Undergraduate unsubsidized & Graduate
PLUS for Parents	[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:** federalstudentaid.ed.gov

Next Steps & Terms of Acceptance

This offer is good until:

[Date of acceptance deadline]

If you have not accepted by [Date of acceptance deadline] we may change the terms of this offer.

1. **Find Out More 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 for more information.

2. **The Terms of this Loan Offer Are Good for 30 days.**
You have 30 days from the approval date to accept this offer. The terms of this offer will not change, except that the interest rate may vary with the market rate listed above. To accept the terms [Description of method of acceptance].

REFERENCE NOTES

[Variable] Interest Rate:

- [Variable rate information, if applicable] The interest rate may be higher or lower than your Annual Percentage Rate (APR) because the APR accounts for the Interest Rate and certain fees you must pay to obtain this loan, and whether you defer (postpone) payments while in school.
- [Description of limitations on rate increases, or lack thereof]
- [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 contract documents for any additional information about non-payment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

H-20 Private Education Loan Final Model Form

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 [Method of cancellation].

BORROWER:
[Name]
[Address]

CREDITOR:
[Name]
[Address]

Loan Rates & Estimated Total Costs

Amount Financed	Interest Rate	Finance Charge	Total of Payments
The amount of credit provided to you or on your behalf.	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.

YOUR RATE IS VARIABLE

[Description that rate varies and how it is determined, if applicable] For more information on this variable rate, see notes on next page.

Based on the current interest rate, your **[estimated] annual percentage rate (APR)**, which is the cost of your loan as a yearly rate, is **[APR]%.**

ITEMIZATION OF AMOUNT FINANCED

Total Amount Financed	

OTHER FEES

- [Itemization of fees]

Estimated Repayment Schedule & Terms

PAYMENT SCHEDULE [Loan Term]	[PAYMENT PERIOD, e.g. MONTHLY PAYMENTS] at [Interest Rate]% the current rate of your loan	at [Maximum Rate]% [Maximum rate description]
[Dates of deferment period, if applicable] deferment period	**No payment required** ($[Amount of accrued interest] in 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 [Maximum rate description] would be **$[total payment amount].**

REFERENCE NOTES

[Variable] Interest Rate:

- [Variable rate information, if applicable] The interest rate may be higher or lower than your Annual Percentage Rate (APR) because the APR accounts for the Interest Rate and certain fees you must pay to obtain this loan, and whether you defer (postpone) payments while in school.
- [Description of limitations on rate increases, or lack thereof]
- [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 contract documents for any additional information about non-payment, 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

Rates & Loan Terms

Current Starting Interest Rates between:

7.375% and **17.375%**

Term of Loan:

amounts up to $20,000:	**20 years**
amounts more than $20,000:	**30 years**

Your starting rate

Your specific rate will be determined based upon your creditworthiness and other factors.

Maximum Interest Rate

Your interest rate **will vary with the market** based on the LIBOR Rate (a publicly available interest rate we use to set the variable rate) but **will never go above 25%.** The rate can change once a month and there is no limit on how much the rate can increase at one time.

Fees

Application Fee: $15. **Origination Fee:** The fees that we charge to make this loan range from 0% to 6%. **Late Charge:** 5% of the amount of the past due payment, or $25, whichever is greater. **Returned check charge:** up to $25.

Repayment Options & Sample Costs

In-School Repayment options (available while continuously enrolled in School)	Sample Loan amount	Sample Interest Rate (highest possible starting rate)	Sample Total Paid (over 20 years, including fees)
1. MAKE NO PAYMENTS Interest will be charged and added to your loan	$10,000.00	17.375%	**$67,780.47**
2. PAY THE INTEREST ONLY Defer payments on the principal amount	$10,000.00	17.375%	**$46,332.56**
3. MAKE FULL PAYMENTS Pay principal and interest	$10,000.00	17.375%	**$38,044.68**

See reference notes on next page for more information about this example.

Federal Loan Alternatives

Loan program	Current Interest Rates	
PERKINS for Students	5% fixed	
STAFFORD for Students	6% fixed	Undergraduate subsidized
	6.8% fixed	Undergraduate unsubsidized & Graduate
PLUS for Parents	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:** federalstudentaid.ed.gov

Next Steps

1. **Find Out More 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 federalstudentaid.ed.gov for more information about other loans.

2. **To Apply for this Loan, Complete the Application and the School 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 the variable interest rate may change based on adjustments to the index).

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 14% to the LIBOR.

Eligibility Criteria

Borrower

- Must be enrolled at an eligible school at least half-time
- Must be 18 years or older at the time of loan application.

Co-signers

- A co-signer is not required, but rates are typically higher without a co-signer
- Must be 18 years or older at the time of loan application.

More information about loan eligibility is available in your loan application and promissory note.

About the Repayment Example

The repayment example above is based on the highest starting rate currently available and associated fees. It assumes that the borrower remains in school for 4 years and has a 6 month grace period before beginning repayment. Repayment will last 20 years.

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

Amount Financed	Interest Rate	Finance Charge	Total of Payments
$10,000.00	7.375%	$15,506.74	$ 25,506.74
The amount of credit provided to you or on your behalf.	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.

YOUR RATE IS VARIABLE

A variable rate means that your actual rate could be higher or lower than the interest rate indicated on this form, but will **never exceed a maximum of 25%**. The variable rate is calculated using a publicly available index. For more information on this variable rate, see notes on next page.

Based on the current interest rate, your **estimated annual percentage rate (APR)**, which is the cost of your loan as a yearly rate, is **7.059%.**

ITEMIZATION OF AMOUNT FINANCED

Loan Amount	$10,000.00
Lender Fee to make the loan (Origination Fee)	$0.00
Total Amount Financed	$10,000.00

OTHER FEES

- **Late Charge:** 5% of the amount of the past due payment, or $25, whichever is greater. **Returned check charge**: up to $25.

Estimated Repayment Schedule & Terms

PAYMENT SCHEDULE 20 Year Loan Term	MONTHLY PAYMENTS at 7.375% the current rate of your loan	MONTHLY PAYMENTS at 25% the maximum rate possible with your loan
Sep 1, 2009 - Feb 28, 2014 deferment period	**No payment required** ($3,318.75 in interest will accrue during this time)	**No payment required** (interest will accrue during this time)
Mar 1, 2014 - Feb 28, 2034 239 monthly payments	$106.28	$445.87
Mar 1, 2034 1 monthly payment	$105.82	$452.76

The estimated **Total of Payments** at the Maximum Rate of Interest would be **$107,015.69**

Federal Loan Alternatives

Loan program	Current Interest Rates	
PERKINS for Students	5% fixed	
STAFFORD for Students	6% fixed	Undergraduate subsidized
	6.8% fixed	Undergraduate unsubsidized & Graduate
PLUS for Parents	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:** federalstudentaid.ed.gov

Next Steps & Terms of Acceptance

This offer is good until:

January 21, 2009

If you have not accepted by January 21, 2009 we may change the terms of this offer.

1. **Find Out More 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 for more information.

2. **The Terms of this Loan Offer Are Good for 30 days.**
You have 30 days from the approval date to accept this offer. The terms of this offer will not change, except that the interest rate may vary with the market rate listed above. To accept the terms, 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 accounts for the Interest Rate and certain fees you must pay to obtain this loan, 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%.
- Any increase will take the form of higher monthly payments.

Bankruptcy Limitations

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

Repayment Options:

- Although you elected to defer (postpone) payments, you can still make payments during this time. You can also choose to change your deferment choice to: Pay Interest Only or Make Full Payments.

Prepayments:

- If you pay 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 contract documents 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

RIGHT TO CANCEL

You have a right to cancel this transaction, without penalty, by midnight on January 20, 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.

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

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

Loan Rates & Estimated Total Costs

Amount Financed	Interest Rate	Finance Charge	Total of Payments
$10,000.00	7.375%	$15,506.74	$ 25,506.74
The amount of credit provided to you or on your behalf.	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.

YOUR RATE IS VARIABLE

A variable rate means that your actual rate could be higher or lower than the interest rate indicated on this form. There is **no maximum rate**. The variable rate is calculated using a publicly available index. For more information on this variable rate, see notes on next page.

Based on the current interest rate, your **estimated annual percentage rate (APR)**, which is the cost of your loan as a yearly rate, is **7.059%.**

ITEMIZATION OF AMOUNT FINANCED

Loan Amount	$10,000.00
Lender Fee to make the loan (Origination Fee)	$0.00
Total Amount Financed	$10,000.00

OTHER FEES

- **Late Charge:** 5% of the amount of the past due payment, or $25, whichever is greater. **Returned check charge**: up to $25.

Estimated Repayment Schedule & Terms

PAYMENT SCHEDULE	MONTHLY PAYMENTS	
20 Year Loan Term	**at 7.375%** the current rate of your loan	**at 21%** Your loan has no maximum rate. Your payments will be higher if the rate increases above 21%.
Sep 1, 2009 - Feb 28, 2014 deferment period	**No payment required** ($3,318.75 in interest will accrue during this time)	**No payment required** (interest will accrue during this time)
Mar 1, 2014 - Feb 28, 2034 239 monthly payments	$106.28	$345.75
Mar 1, 2034 1 monthly payment	$105.82	$353.14

The estimated **Total of Payments** if your rate rises to 21% would be **$82,987.39**. Your Total of Payments will be higher if rate increases above 21%.

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 accounts for the Interest Rate and certain fees you must pay to obtain this loan, 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 loan has no maximum rate.
- Any increase will take the form of higher monthly payments.

Bankruptcy Limitations

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

Repayment Options:

- Although you elected to defer (postpone) payments, you can still make payments during this time. You can also choose to change your deferment choice to: Pay Interest Only or Make Full Payments.

Prepayments:

- If you pay 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 contract documents for any additional information about non-payment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

BILLING CODE 6210–01–C

7. In Supplement I to Part 226:

a. Under *Section 226.2—Definitions and Rules of Construction, 2(a) Definitions, 2(a)(6) Business day,* paragraph 2(a)(6)–2 is revised.

b. Under *Section 226.3—Exempt Transactions,* the heading to *3(b) Credit Over $25,000 Not Secured by Real Property or a Dwelling,* and *3(f) Student Loan Programs,* are revised.

c. Under *Section 226.17—General Disclosure Requirements,* under *17(a) Form of Disclosures,* paragraphs (17)(a)(1)–4, (17)(a)(1)–6, (a)(2) and *17(b) Time of Disclosures,* are revised, and *17(i) Interim Student Credit Extensions, is removed.*

d. Under *Section 226.18—Content of Disclosures, Paragraph 18(f)(1)(ii), Paragraph 18(f)(1)(iv)–2,* and *Paragraph 18(k)(1)* are revised.

e. A new *Subpart F—Special Rules for Private Student Loans* is added, and new *Section 226.37—Requirements for Private Student Loans, Section 226.38—Content of Disclosures,* and *Section 226.39—Limitations on Private Educational Loans* are added.

f. Under the heading, *Appendixes G and H—Open-End and Closed-End Model Forms and Clauses, paragraph 1.* is revised.

g. Under *Appendix H—Closed-End Model Forms and Clauses,* paragraphs 21 through 24 are revised, and paragraphs 25 through 28 are revised.

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart A—General

* * * * *

Section 226.2—Definitions and Rules of Construction

2(a) Definitions

* * * * *

2(a)(6) Business day.

* * * * *

2. [Rescission rule]► 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 [or]►,◄ the receipt of disclosures for certain ►dwelling-secured◄ mortgage transactions under §§ 226.19(a)(1)(ii), ►226.19(a)(2),◄ [or mortgages subject to § 226.32 are] 226.31(c) ►, or the receipt of disclosures and the right to cancel private education loans under §§ 226.37, 226.38, and 226.39 is◄ involved. [(See also comment 31(c)(1)–1.)] 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). [The]►In cases where the more precise rule applies, the◄ observed holiday (in the example, July 3) is a business day [for purposes of rescission or the delivery of disclosures for certain high-cost mortgages covered by § 226.32].

* * * * *

Section 226.3—Exempt Transactions

* * * * *

3(b) Credit Over $25,000 [Not Secured by Real Property or a Dwelling]

* * * * *

3(f) Student Loan Programs

1. *Coverage.* This exemption applies to [the Guaranteed Student Loan program (administered by the Federal government, State, and private non-profit agencies), the Auxiliary Loans to Assist Students (also known as PLUS) program, and the National Direct Student Loan program.] ►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 § 226.37(b)(5).◄

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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 under § 226.38◄. 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 loans)◄ 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 loans)◄ ''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 under §§ 226.37 and 226.38◄. (See the commentary to

§ 226.2(a)(13) regarding the definition of consummation.)

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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).) Creditors in interim student credit extensions need not disclose the terms set forth in this paragraph at the time the credit is actually extended but 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.

2. *Basis of disclosures.* The disclosures given at the time of execution of the interim note should reflect two annual percentage rates, one for the interim period and one for the repayment period. The use of § 226.17(i) in making disclosures does not, by itself, make those disclosures estimates. Any portion of the finance charge, such as statutory interest, that is attributable to the interim period and is paid by the student (either as a prepaid finance charge, periodically during the interim period, in one payment at the end of the interim period, or capitalized at the beginning of the repayment period) must be reflected in the interim annual percentage rate. Interest subsidies, such as payments made by either a state or the Federal government on an interim loan, must be excluded in computing the annual percentage rate on the interim obligation, when the consumer has no contingent liability for payment of those amounts. Any finance charges that are paid separately by the student at the outset or withheld from the proceeds of the loan are prepaid finance charges. An example of this type of charge is the loan guarantee fee. The sum of the prepaid finance charges is deducted from the loan proceeds to determine the amount financed and included in the calculation of the finance charge.

3. *Consolidation.* Consolidation of the interim student credit extensions through a renewal note with a set repayment schedule is treated as a new transaction with disclosures made as they would be for a refinancing. Any unearned portion of the finance charge must be reflected in the new finance charge and annual percentage rate, and is not added to the new amount financed. In itemizing the amount financed under § 226.18(c), the creditor may combine the principal balances remaining on the interim extensions at the time of consolidation and categorize them as the amount paid on the consumer's account.

4. *Approved student credit forms.* See the commentary to appendix H regarding disclosure forms approved for use in certain student credit programs.]

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Section 226.18—Content of Disclosures

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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, ◄[W]►w◄hen there are no limitations, the creditor may, but need not, disclose that fact[. L]►, and l◄imitations 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 limitations with respect to private education loan disclosures, see comment 38(b)(1)–2.◄

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Paragraph 18(f)(1)(iv)

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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.
- [Interim student credit extensions]►Private education loans as defined in § 226.37(b)(5)◄.
- Multiple-advance construction loans disclosed pursuant to appendix D, Part I.

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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[:
- L]►, l◄oan guarantee fees►.◄
- [• Interim interest on a student loan]

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Subpart F—Special Rules for Private Education Loans

Section 226.37—Special Disclosure Requirements for Private Education Loans

37(b) Definitions

37(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 § 226.37(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 § 226.37(b)(1), the term agent means an officer or employee of an institution-affiliated organization as defined by section 151 of the Higher Education Act of 1965 (20 U.S.C 1019). 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.

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

1. *General.* An institution of higher education includes any institution that meets the definitions contained in section 102 of the Higher Education Act of 1965 (20 U.S.C. 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.

37(b)(3) Postsecondary educational expenses.

1. *General.* The examples listed in § 226.37(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).

37(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.

37(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.* 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, the creditor need not provide the disclosures required by § 226.38(a) on or with the application or solicitation. *See* § 226.38(d)(1)(i). However, 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 creditor must comply with §§ 226.38(b) and (c) and § 226.39. The creditor may rely 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. For purposes of the required disclosures, 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.

37(c) Form of Disclosures

1. *Form of disclosures—relation to other sections.* Creditors must make the disclosures required under this subpart in accordance with § 226.37(c)(1). To comply with the requirement under §§ 226.38(b) and (c) that private education lenders disclose the information required under § 226.18, as well as the requirement that the disclosures be grouped together and segregated from everything else, creditors may follow the rules in § 226.17, except where specifically provided otherwise. Although § 226.17(b) requires creditors to provide only one set of disclosures before consummation of the transaction, §§ 226.38(b) and (c) require that the creditor provide the disclosures under § 226.18 both upon approval and prior to disbursing the loan.

Paragraph 37(c)(3)

1. *Application and solicitation disclosures—electronic disclosures.* If the disclosures required under § 226.38(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.

37(d) Timing of Disclosures

1. *Providing disclosures.* Disclosures are considered provided when received by the consumer. 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 §§ 226.37, 226.38, and 226.39, ''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 37(d)(1)

1. *Invitations to apply.* A creditor may contact a consumer who has not been preapproved for a private educational 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 initiated by the creditor; or

iii. An application in an in-person contact initiated by the creditor.

Paragraph 37(d)(2)

1. *Timing.* The creditor must provide the disclosures required by § 226.38(b) at the time the creditor provides to the consumer any notice that the loan has been approved. 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 notice of approval. 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.); otherwise, the creditor must place the disclosures in the mail within three business days of the communication. For purposes of § 226.37(d), the more precise definition of business day (meaning all calendar days except Sundays and specified federal holidays) applies. *See* comment 2(a)(6)–2.

37(g) Effect of Subsequent Events

1. Inaccuracies in the disclosures required under § 226.38(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 226.38—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, the creditor need not disclose the information under §§ 226.38(a)(6), and (b)(4), and any other information otherwise required to be disclosed under this subpart that is not applicable to the loan consolidation transaction.

38(a) Application or Solicitation Disclosures

Paragraph 38(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's e-mail address, or for disclosures made on an Internet Web site, when 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 applicable 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, 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, if applicable. The creditor is not required to list the 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 credit report and the type of school the consumer attends, the creditor may state, ''Your interest rate will be based on your creditworthiness and other factors.''

Paragraph 38(a)(1)(iii)

1. *Coverage.* The requirements of section 226.38(a)(1)(iii) apply to all transactions in which 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.

2. *Limitations.* The creditor must disclose 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. When there are no limitations, the creditor must disclose that fact. Limitations include legal limits in the nature of usury or rate ceilings under state or federal statutes or regulations. However, if a rate limitation in the form of a legal limit applies (rather than a numerical rate limitation in the legal obligation between the parties) the creditor must disclose that the maximum rate is determined by applicable law and may change. The creditor must also disclose that the consumer's actual rate may be higher or lower than the initial rates disclosed under § 226.38(a)(1)(i), if applicable.

Paragraph 38(a)(1)(iv)

1. *Co-signer or guarantor—changes in applicable interest rate.* The creditor must disclose whether a co-signer or guarantor is required to obtain the loan. The creditor must also 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 only 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.''

38(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 the 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 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 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. Fees disclosed do not include those that apply if the consumer exercises an option after consummation under the agreement or promissory note for the private educational loan, such as fees for exercising deferment, forbearance, or loan modification options.

38(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 private education 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. Payment deferral options also include any 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 disclosure must 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 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, the creditor must disclose that the consumer must begin repayment upon consummating the loan and may not defer repayment at any time.

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 additional information. 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 disclosure of payment deferral options applicable while the student is enrolled at a covered educational institution under §§ 226.38(a)(3)(ii) and (iii) may be combined with the disclosure of cost estimates required in § 226.38(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–18.

38(a)(4) Cost Estimates.

1. *Total cost of the loan.* For purposes of § 226.38(a)(4), the creditor must calculate the example of the total cost of the loan in accordance with the rules under § 226.18(h) for calculating the loan's total of payments.

2. *Principal amount and fees.* The creditor must calculate the principal amount by starting with a $10,000 amount and adding all finance charges that would be applicable to loans with that maximum 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 interest rate, the lender must add the 3% origination fee to the starting $10,000 principal amount, resulting in a $10,300 principal amount. Although the creditor must calculate the example using the principal amount described above, the creditor must disclose that the example provides the total cost of a $10,000 amount financed, rather than disclosing the principal amount used in calculating the loan. If the creditor only offers a particular private education loan for less than $10,000, the creditor may assume a principal amount that results in a $5,000 amount financed for that loan.

3. *Maximum interest rate.* For purposes of § 226.38(a)(4), the maximum rate of interest used to calculate the example of the total cost of the loan must be the maximum initial rate of interest disclosed in the range of rates under § 226.38(a)(1)(i).

4. *Calculated for each option to defer interest payments.* The creditor must provide an example of the total cost of the loan for each in-school deferral option disclosed in § 226.38(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, the creditor is required to disclose three estimates of the total cost of the loan, one for each deferral option. In calculating each estimate of the total cost of the loan where interest capitalizes, the creditor must calculate the estimate using the same capitalization method that it would use if that loan were to be made. For instance, if a creditor would capitalize interest on the loan being offered on a quarterly basis, each estimate of the total cost of the loan where interest capitalizes must be calculated assuming interest capitalizes on a quarterly basis.

5. *Deferment period assumptions.* For loan programs intended for educational expenses of undergraduate students, the creditor must 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 must assume that the consumer defers for the lesser of two years plus the maximum applicable grace period, if any, or the maximum time the consumer may defer payments under the loan program.

38(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.

38(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.*''

38(b) Approval Disclosures.

38(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 §§ 226.38(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 § 226.38(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.* 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 § 226.38(b)(1)(iii) (requiring disclosure of any limitations on the interest rate adjustments, or lack thereof), because the rules under § 226.38(b)(1)(iii) differ from the rules under § 226.18(f)(1)(ii) as described in comment 18(f)(1)(ii)–1. Specifically, § 226.38(b)(1)(iii), but not § 226.18(f)(1)(ii), requires that if there are no limitations on interest rate increases, the creditor must disclose that fact. In addition, under § 226.38(b)(1)(iii), but not under § 226.18(f)(1)(ii), 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. Under § 226.38(b)(1)(iii), if a rate limitation in the form of a legal limit applies (rather than a numerical rate limitation in the legal obligation between the parties) the creditor must disclose that the maximum rate is determined by law and may change.

Paragraph 38(b)(2)

1. *Fees and default or late payment costs.* Creditors may follow the commentary for § 226.38(a)(2) in complying with § 226.38(b)(2). Creditors must disclose the late payment fees required to be disclosed under § 226.18(l) as part of the disclosure required under § 226.38(b)(2)(ii). 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.

38(b)(3) Repayment Terms.

1. *Approved principal amount.* The principal amount for which the consumer has been approved should include all charges incorporated in the approved loan amount. 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. Prepaid finance charges should not be included in the initial approved principal amount disclosed if they would not be included in the amount on the face of the note. *See* comment 18(b)(3)–1. If the creditor elects to provide an itemization of the amount financed under § 226.18(c)(1), and the itemization states the approved principal amount, the creditor need not list the approved principal amount 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. If the payment schedule disclosed in accordance with § 226.18(g) reflects the maximum repayment term, then compliance with § 226.18(g) constitutes compliance with § 38(b)(3)(ii).

3. *Payment deferral options applicable to the consumer.* Creditors may follow the commentary for § 226.38(a)(3)(ii) in complying with § 226.38(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 pay during the time that the student is enrolled. If the payment schedule disclosed in accordance with § 226.18(g) reflects payments required while the student is enrolled, then compliance with § 226.18(g) constitutes compliance with § 38(b)(3)(iv).

5. *Bankruptcy limitations.* The creditor may comply with § 226.38(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 private education loan or, if the maximum rate cannot be determined, a rate of 21%. If the legal obligation between the parties specifies a numeric maximum rate of interest beyond which the interest rate on the loan may not increase, the creditor must calculate the total amount for repayment based on that rate. If the legal obligation does not specify a numeric maximum rate, but a limitation on interest rate increases exists in the form of a legal limit in the nature of a usury or rate ceiling under state or federal statutes or regulations, the creditor must calculate the total amount for repayment based on that rate, and the creditor must disclose that the maximum rate is determined by law and may change. If a maximum rate cannot be determined, the creditor must base the disclosure on a rate of 21% and must disclose that there is no maximum rate and that the total amount for repayment disclosed under § 226.38(b)(3)(vii)(A) is an estimate and will be higher if the applicable interest rate increases.

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 private education loan, or if the maximum rate cannot be determined, a rate of 21%. The creditor should follow comment 38(b)(3)–6.ii in determining and disclosing the maximum rate of interest. 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 § 226.38(b)(3)(viii) are estimates and will be higher if the applicable interest rate increases.

38(b)(4) Alternatives to Private Education Loans.

1. *General.* Creditors may follow the commentary for § 226.38(a)(6) in complying with § 226.38(b)(4).

38(b)(5) Rights of the Consumer.

1. *Notice of 30 day acceptance period.* The disclosure must include the specific date on which the 30 day acceptance period expires and state that the consumer may accept the terms of the loan until that date. The disclosure must also specify the method or methods by which the consumer may cancel.

38(c) Final Disclosures

1. *Notice of right to cancel.* The disclosure must include the specific date on which the three-business day cancellation period expires and state that the consumer has a right to cancel by that date. *See* comments 39(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 requires 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* § 226.37(c)(2)(iii). The statement will be deemed to be made more conspicuous if it is segregated from other disclosures, placed near 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 226.39—Limitations on Private Educational Loans

1. *Co-branding—definition of marketing.* The prohibition on co-branding in §§ 226.39(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 to the consumer related to a specific transaction. For example, the term marketing includes an application or solicitation, a promissory note or a contract provided to the consumer.

2. *Implied endorsement.* An implication that a private student 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 educational loan under § 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, 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, a state's or an institution of higher education's use of a state seal, with appropriate authorization, in the marketing of state education loan products does not imply endorsement.

3. *Disclosure.*

i. A creditor is considered to have complied with § 226.39(a)(2) if the creditor's marketing contains a clear and conspicuous statement 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].''

ii. A creditor is considered to have complied with § 226.39(b) if the creditor's marketing contains a clear and conspicuous statement, 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].''

Paragraph 39(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 § 226.38(b) to accept the terms of the loan. The creditor may provide the consumer with a period of time longer than 30 days after the consumer receives the disclosures for the consumer to accept the transaction. 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 § 226.37(c), ''business day'' means all calendar days except Sundays and the legal public holidays referred to in § 226.2(a)(6). *See* comment 37(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. If acceptance by mail is allowed, the consumer's communication of acceptance is considered timely if placed in the mail not later than 30 calendar days following the date the consumer received the disclosure required under § 226.39(b).

3. *Prohibition on changes to rates and terms.* Except as specified in § 226.39(c)(2), the creditor may not change the rates and terms of the loan that are required to be disclosed under § 226.38(b) until the 30-day acceptance period has expired with the consumer having accepted the loan, or until loan funds are disbursed. The creditor is permitted to make changes that do not affect any of the terms disclosed to the consumer under § 226.38(b). Changes to the rate based on adjustments to the index used for the loan and changes that will unequivocally benefit the consumer are not prohibited. For example, a creditor is permitted to reduce the interest rate or lower the amount of a fee.

4. *Changes to rates and terms based on request by consumer.* The prohibition on changes to the rate and terms of the loan in § 226.39(c)(2) applies only to changes made in the absence of a request from the consumer. The creditor may make changes to the rate and terms of the private education loan in connection with accommodating a request from the consumer. For example, the consumer may request a lower principal amount upon receiving additional financial assistance from another source after the consumer applied for the private educational loan. In this situation, the creditor is permitted to provide a lower principal amount, and to make any other changes such as a different repayment term, in response to the consumer's request. However, the creditor would need to provide a new set of approval disclosures under § 226.38(b) and provide the consumer with a new 30-day acceptance period under § 226.39(c).

Paragraph 39(d)

1. *Right to cancel.* If the creditor mails the disclosures including the statement of the right to cancel, the disclosures are considered received by the consumer within three business days from the date on which the creditor mailed the statement. *See* comment 37–2. The consumer has three business days from the date on which the disclosures are 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 and the consumer may cancel any time before midnight Wednesday, June 10. 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. If the creditor allows cancellation by mail, the creditor must specify the address of the creditor's place of business or the name and address of an agent of the creditor to receive notice of cancellation. The creditor must also specify that the consumer's mailed request will be deemed timely if placed in the mail before the expiration of the cancellation period. 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 either waiting a reasonable time after expiration of the cancellation period to allow for delivery of a mailed notice or by obtaining a written statement from the consumer 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 § 226.39(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, charged to consumers for loans that are not cancelled.

Paragraph 39(e)

1. *General.* Section 226.39(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 educational 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 § 226.37(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, § 226.39(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.

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 39(f)

1. *General.* Section 226.39(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 § 226.38(a).◀

* * * * *

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,◄ 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

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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 effective date of the disclosures required under Subpart F◄. The form [may be used] ►was approved ◄ for all Health Education Assistance Loans (HEAL) with a variable interest rate that [are]►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 effective date of the disclosures required under Subpart F◄. The form [may be used] ►was approved◄ for all HEAL loans with a fixed interest rate that [are]►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 effective date of the disclosures required under Subpart F◄. The form [may be used] ►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 effective date of the disclosures required under Subpart F◄. The form [may be used] ►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 § 226.38 on or with an application or solicitation, at approval, and before disbursement 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
- Combining required terms where several numerical disclosures are the same, for instance, if the initial approved principal amount is included in an itemization of the amount financed
- Combining the disclosure of payment deferral options required in § 226.38(a)(3) with the disclosure of cost estimates required in § 226.38(a)(4) in the same chart or table (*See* comment 38(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 §§ 226.38(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. 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.

B. Sufficient spacing between lines of the text.

C. Standard spacing between words and characters. In other words, the text was not compressed to appear smaller than 8-point type.

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 § 226.38(a). The sample assumes a range of interest rates between 7.375 and 17.375 percent. The sample assumes a variable interest rate that will never exceed 25 percent 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 § 226.38(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 § 226.38(b). The sample assumes the consumer financed $10,000 at a 7.059 annual percentage rate. The sample assumes a variable interest rate that will never exceed 25 percent 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 the student is enrolled in school. This includes a sample disclosure of a loan amount of $10,000 and an origination fee of $0, for a total amount financed of $10,000.

28. *Sample H–22*. This sample illustrates a disclosure required under § 226.38(c). The sample assumes the consumer financed $10,000 at a 7.059 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 the student relates is enrolled in school. This includes a sample disclosure of a loan amount of $10,000 and an origination fee of $0, 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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