Information Required under Sec. 128(e) of the Truth in Lending Act (15 U.S.C. 1638(e))

e) TERMS AND DISCLOSURE WITH RESPECT TO PRIVATE EDUCATION LOANS.–

(1) DISCLOSURES REQUIRED IN PRIVATE EDUCATION LOAN APPLICATIONS AND SOLICITATIONS.–In any application for a private education loan, or a solicitation for a private education loan without requiring an application, the private educational lender shall disclose to the borrower, clearly and conspicuously–

(A) the potential range of rates of interest applicable to the private education loan;

(B) whether the rate of interest applicable to the private education loan is fixed or variable;

(C) limitations on interest rate adjustments, both in terms of frequency and amount, or the lack thereof, if applicable;

(D) requirements for a co-borrower, including any changes in the applicable interest rates without a co-borrower;

(E) potential finance charges, late fees, penalties, and adjustments to principal, based on defaults or late payments of the borrower;

(F) fees or range of fees applicable to the private education loan;

(G) the term of the private education loan;

(H) whether interest will accrue while the student to whom the private education loan relates is enrolled at a covered educational institution;

(I) payment deferral options;

(J) general eligibility criteria for the private education loan;

(K) an example of the total cost of the private education loan over the life of the loan–

(i) which shall be calculated using the principal amount and the maximum rate of interest actually offered by the private educational lender; and

(ii) calculated both with and without capitalization of interest, if an option exists for postponing interest payments; the private educational lender may provide) following the date on which the application for the private education loan is approved and the borrower receives the disclosure documents required under this subsection for the loan; and

(L) that a covered educational institution may have school-specific education loan benefits and terms not detailed on the disclosure form;

(M) that the borrower 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.), in lieu of, or in addition to, a loan from a non-Federal source;

(N) the interest rates available with respect to such Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.);

(O) that, as provided in paragraph (6)–

(i) the borrower shall have the right to accept the terms of the loan and consummate the transaction at any time within 30 calendar days (or such longer period as

(ii) 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 private educational lender during the period described in clause (i);

(P) that, before a private education loan may be consummated, the borrower must obtain from the relevant institution of higher education the form required under paragraph (3), and complete, sign, and return such form to the private educational lender;

(Q) that the consumer may obtain additional information concerning such Federal student financial assistance from their institution of higher education, or at the website of the Department of Education; and

(R) such other information as the Board shall prescribe, by rule, as necessary or appropriate for consumers to make informed borrowing decisions.

(2) DISCLOSURES AT THE TIME OF PRIVATE EDUCATION LOAN APPROVAL.–Contemporaneously with the approval of a private education loan application, and before the loan transaction is consummated, the private educational lender shall disclose to the borrower, clearly and conspicuously–

(A) the applicable rate of interest in effect on the date of approval;

(B) whether the rate of interest applicable to the private educational loan is fixed or variable;

(C) limitations on interest rate adjustments, both in terms of frequency and amount, or the lack thereof, if applicable;

(D) the initial approved principal amount;

(E) applicable finance charges, late fees, penalties, and adjustments to principal, based on borrower defaults or late payments, including limitations on the discharge of a private education loan in bankruptcy;

(F) fees or range of fees applicable to the private education loan;

(G) the maximum term under the private education loan program;

(H) an estimate of the total amount for repayment, at both the interest rate in effect on the date of approval and at the maximum possible rate of interest offered by the private educational lender and applicable to the borrower, to the extent that such maximum rate may be determined, or if not, a good faith estimate thereof;

(I) any principal and interest payments required while the student for whom the private education loan is intended is enrolled at a covered educational institution and unpaid interest that will accrue during such enrollment;

(J) payment deferral options applicable to the borrower;

(K) whether monthly payments are graduated;

(L) that, as provided in paragraph (6)–

(i) the borrower shall have the right to accept the terms of the loan and consummate the transaction at any time within 30 calendar days (or such longer period as the private educational lender may provide) following the date on which the application for the private education loan is approved and the borrower received the disclosure documents required under this subsection for the loan; and

(ii) 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 private educational lender during the period described in clause (i);

(M) that the borrower–

(i) may qualify for Federal financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), in lieu of, or in addition to, a loan from a non-Federal source; and

(ii) may obtain additional information concerning such assistance from their institution of higher education or the website of the Department of Education;

(N) the interest rates available with respect to such Federal financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.);

(O) the maximum monthly payment, calculated using the maximum rate of interest actually offered by the private educational lender and applicable to the borrower, to the extent that such maximum rate may be determined, or if not, a good faith estimate thereof; and

(P) such other information as the Board shall prescribe, by rule, as necessary or appropriate for consumers to make informed borrowing decisions.

(3) SELF-CERTIFICATION OF INFORMATION.–

(A) IN GENERAL.–Before a private educational lender may consummate a private education loan with respect to a student attending an institution of higher education, the lender shall obtain from the applicant for the private education loan the form developed by the Secretary of Education under section 155 of the Higher Education Act of 1965, signed by the applicant, in written or electronic form.

(B) RULE OF CONSTRUCTION.–No other provision of this subsection shall be construed to require a private educational lender to perform any additional duty under this paragraph, other than collecting the form required under subparagraph (A).

(4) DISCLOSURES AT THE TIME OF PRIVATE EDUCATION LOAN CONSUMMATION.–Contemporaneously with the consummation of a private education loan, a private educational lender shall make to the borrower each of the disclosures described in–

(A) paragraph (2)(A) (adjusted, as necessary, for the rate of interest in effect on the date of consummation, based on the index used for the loan);

(B) subparagraphs (B) through (K) and (M) through (P) of paragraph (2); and

(C) paragraph (7).

(5) FORMAT OF DISCLOSURES.–

(A) MODEL FORM.–Not later than 2 years after the date of enactment of this subsection, the Board shall, based on consumer testing, and in consultation with the Secretary of Education, develop and issue model forms that may be used, at the option of the private educational lender, for the provision of disclosures required under this subsection.

(B) FORMAT.–Model forms developed under this paragraph shall–

(i) be comprehensible to borrowers, with a clear format and design;

(ii) provide for clear and conspicuous disclosures;

(iii) enable borrowers easily to identify material terms of the loan and to compare such terms among private education loans; and

(iv) be succinct, and use an easily readable type font.

(C) SAFE HARBOR.–Any private educational lender that elects to provide a model form developed under this subsection that accurately reflects the practices of the private educational lender shall be deemed to be in compliance with the disclosures required under this subsection.

(6) EFFECTIVE PERIOD OF APPROVED RATE OF INTEREST AND LOAN TERMS.–

(A) IN GENERAL.–With respect to a private education loan, the borrower shall have the right to accept the terms of the loan and consummate the transaction at any time within 30 calendar days (or such longer period as the private educational lender may provide) following the date on which the application for the private education loan is approved and the borrower receives the disclosure documents required under this subsection for the loan, and the rates and terms of the loan may not be changed by the private educational lender during that period.

(B) PROHIBITION ON CHANGES.–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 private educational lender prior to the earlier of–

(i) the date of acceptance of the terms of the loan and consummation of the transaction by the borrower, as described in subparagraph (A); or

(ii) the expiration of the period described in subparagraph (A).

(7) RIGHT TO CANCEL.–With respect to a private education loan, the borrower may cancel the loan, without penalty to the borrower, at any time within 3 business days of the date on which the loan is consummated, and the private educational lender shall disclose such right to the borrower in accordance with paragraph (4).

(8) PROHIBITION ON DISBURSEMENT.–No funds may be disbursed with respect to a private education loan until the expiration of the 3-day period described in paragraph (7).

(9) BOARD REGULATIONS.–In issuing regulations under this subsection, the Board shall prevent, to the extent possible, duplicative disclosure requirements for private educational lenders that are otherwise required to make disclosures under this title, except that in any case in which the disclosure requirements of this subsection differ or conflict with the disclosure requirements of any other provision of this title, the requirements of this subsection shall be controlling.

(10) DEFINITIONS.–For purposes of this subsection, the terms “covered educational institution”, “private education lender”, and “private education loan” have the same meanings as in section 140.

(11) DUTIES OF LENDERS PARTICIPATING IN PREFERRED LENDER ARRANGEMENTS.–Each private educational lender that has a preferred lender arrangement with a covered educational institution shall annually, by a date determined by the Board, in consultation with the Secretary of Education, provide to the covered educational institution such information as the Board determines to include in the model form developed under paragraph (5) for each type of private education loan that the lender plans to offer to students attending the covered educational

institution, or to the families of such students, for the next award year (as that term is defined in section 481 of the Higher Education Act of 1965).

[Codified to 15 U.S.C. 1638]

[Source: Section 128 of title I of the Act of May 29, 1968 (Pub. L. No. 90–321; 82 Stat. 155), effective July 1, 1969, as amended by section 614 of title VI of the Act of March 31, 1980 (Pub. L. No. 96–221; 94 Stat. 178–180), effective October 1, 1982; section 2105 of title II of the Act of September 30, 1996 (Pub. L. No. 104–208; 110 Stat. 3009–402), effective September 30, 1996; section 1302(b)(1) of title XIII of the Act of April 20, 2005 (Pub. L. No. 109–8; 119 Stat. 209), effective April 20, 2005; section 2502(a) of title V of the Act of July 30, 2008 (Pub. L. No. 110–289; 122 Stat. 2855), effective July 30, 2008; section 1021(a) of title X of the Act of August 14, 2008 (Pub. L. No. 110–315, 122 Stat. 3483), effective August 14, 2008; section 130(a)(2) of title I of the Act of October 3, 2008 (Pub. L. No. 110–343; 122 Stat. 3797), effective October 3, 2008]