

Private Education Loan Disclosure Information

Title 1, Part E of the Higher Education Act of 1965, as amended (HEA), requires lenders that make private education loans and institutions involved in certain arrangements regarding those loans to make specific disclosures to borrowers of those loans, report related information to the Department, and comply with critical protections and prohibitions against conflicts of interest. The Department's regulations governing these requirements on institutions and lenders relating to private education loans are in 34 C.F.R. Part 601.

These additional disclosures and requirements are intended to ensure:

- an informed student loan borrower;
- the borrower's choice of lender;
- transparency and high ethical standards in the student lending process, including the maintenance of a code of conduct for employees of institutions;
- institutions' selection of preferred lenders based on the best interest of borrowers; and,
- a prohibition on institutions' revenue-sharing arrangements with lenders.

INCOME SHARE AGREEMENTS

Traditionally, private education loans have been loans made by lenders to help students pay the costs of higher education. These loans typically have a fixed or variable interest rate and borrowers repay the loans in regular installments over a period of time. ISAs have these features too, though they are often marketed as an alternative to conventional student loans to help students pay postsecondary education expenses. Borrowers may use private education loans to assist with costs not covered by Federal student financial aid or to attend non-accredited institutions that do not want to participate or are ineligible to participate in the Direct Loan Program. Certain banks, other financial institutions, and institutions may also offer other financial products to help students finance their postsecondary education.

The CFPB is responsible for enforcing TILA and its regulations. Since the Department's authorizing statute and regulations expressly incorporate the TILA definitions, it follows that any product, including an ISA, that meets the TILA and Regulation Z definitions of a private education loan also meets the definition of that term under the HEA and the Department's regulations.

The CFPB's findings and conclusions under the consent order provide guidance to institutions about the applicability of the regulations under 34 C.F.R. Part 601 when recommending, promoting, or endorsing ISAs. For example, the CFPB found that ISAs marketed by a certain student loan originator are:

- "private education loans" under Regulation Z because they are, among other things, "extended to a consumer expressly, in whole or in part, for postsecondary educational expenses." 12 C.F.R. § 1026.46(b)(5).

- “private education loans” under TILA because they are “an extension of credit that... [i]s 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 are “not made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. § 1070 et seq.).” 12 C.F.R. § 1026.46(b)(5).

REGULATORY AUTHORITY

With some exceptions, 34 C.F.R. 601.2(b) defines private education loan as:

Private education loan: As the term is defined in 12 C.F.R. 226.46(b)(5), a loan provided by a private educational lender that is not a title IV loan and that is issued expressly for postsecondary education expenses to a borrower, regardless of whether the loan is provided through the educational institution that the student attends or directly to the borrower from the private educational lender.

Responsibility of All Entities in the Making of Private Education Loans. Institutions and institution-affiliated organizations are reminded that they must comply with the private education loan requirements in 34 C.F.R. Part 601, including critical disclosure, consumer protection, and reporting requirements. These regulations are applicable to all institutions that participate in the Title IV programs, including for students enrolled in programs that don’t qualify for Title IV aid.