

Required Student Loan Disclosures by Lenders

(Section 433 as amended by the Higher Education Opportunity Act)

A new provision introduced by the HEOA requires each Direct Loan school and the Direct Loan Servicer to comply with each requirement listed under Section 433 of the HEA that apply to a FFELP lender (sec. 682.205 of the FFEL Program Regulations).

The HEOA altered and added many of the lender disclosure requirements formally stipulated in law. The following checklist outlines the new disclosure requirements in the HEA as amended by the HEOA.

Required Disclosures Before Disbursement

Eligible lenders must provide thorough and accurate loan information on loans to borrowers in simple and understandable terms. These disclosures may be distributed by written or electronic means, including as part of:

- The application material given to borrowers at the time they receive the promissory note;
- The promissory note
- A separate written form provided to the borrower

Lenders must provide borrowers with a telephone number and an electronic address where borrowers can obtain additional loan information. These disclosure statements must include the following.

- A statement prominently and clearly displayed and in bold print that the borrower is receiving a loan that must be repaid.
- The name of the eligible lender, and the address to which communications and payments should be sent.
- The principal amount of the loan.
- *The amount of any charges, such as the origination fee and federal default fee, and whether those fees will be:
 - Collected by the lender at or prior to the disbursement of the loan;
 - Deducted from the proceeds of the loan;
 - Paid separately by the borrower; or
 - Paid by the lender.
- The stated interest rate on the loan.
- *For loans made under section 428B or 428H unsubsidized Stafford loans or to a student PLUS borrowers:
 - A statement telling borrowers that they have the option to pay the interest that accrues on the loan while the borrower is a student at an institution of higher education; and
 - If the borrower does not pay such interest while attending an institution, when and how often interest on the loan will be capitalized.
- *For loans made to a parent PLUS borrower, an explanation:

* Indicates a requirement that has been added or changed by the HEOA.

- That the parent has the option to defer payment on the loan while the student is enrolled on at least a halftime basis in an institution of higher education;
 - If the parent does not pay the interest on the loan while the student is enrolled in an institution, when and how often interest on the loan will be capitalized; and
 - That the parent may be eligible for a deferment on the loan if the parent is enrolled on at least a half-time basis in an institution of higher education.
- The yearly and cumulative maximum amounts that may be borrowed.
 - A statement of the total cumulative balance, including the loan being disbursed, owed by the borrower to that lender, and an estimate of the projected monthly payment, given such cumulative balance.
 - An explanation of when repayment of the loan will be required and when the borrower will be obligated to pay interest that accrues on the loan.
 - *A description of the types of repayment plans that are available for the loan.
 - A statement as to the minimum and maximum repayment terms which the lender may impose, and the minimum annual payment required by law.
 - An explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan.
 - A statement that the borrower has the right to prepay all or part of the loan, at any time, without penalty.
 - A statement summarizing circumstances in which repayment of the loan or interest that accrues on the loan may be deferred.
 - *A statement summarizing the circumstances in which a borrower may obtain forbearance on the loan.
 - *A description of the options available for forgiveness of the loan, and the requirements to obtain loan forgiveness.
 - A definition of default and the consequences to the borrower if the borrower defaults, including a statement that the default will be reported to a consumer reporting agency.
 - An explanation of any cost the borrower may incur during repayment or in the collection of the loan, *including fees that the borrower may be charged, such as late payment fees and collection costs.

Required Disclosures Before Repayment

*Not less than 30 days nor more than 150 days before borrowers' first payments on their Stafford or PLUS loans come due, eligible lenders must provide the following disclosures to borrowers by written or electronic means.

- The name of the eligible lender or loan servicer, a telephone number, and the address to which communications and payments should be sent.

* Indicates a requirement that has been added or changed by the HEOA.

- The scheduled date upon which the repayment period is to begin or *the deferment period on a PLUS loan is to end.
- The estimated balance owed by the borrower on the loan or loans covered by the disclosure (including, if applicable, the estimated amount of interest to be capitalized) as of the scheduled date on which the repayment period is to begin or *the deferment period on a PLUS loan is to end.
- The stated interest rate on the loan or loans, or the combined interest rate of loans with different stated interest rates.
- *Information on loan repayment benefits offered for the loan or loans, including whether the lender offers any benefits that are contingent on the repayment behavior of the borrower, such as:
 - *A reduction in interest rate if the borrower repays the loan by automatic payroll or checking account deduction.
 - *A reduction in interest rate if the borrower makes a specified number of on-time payments.
 - *Other loan repayment benefits for which the borrower could be eligible that would reduce the amount of repayment or the length of the repayment period.
- *If a lender provides a loan repayment benefit, it must disclose any limitations on the benefit, how a borrower could lose eligibility for the benefit, and examples of how the borrower's loan would be impacted – in terms of the length and amount of repaid – by the benefit. The lender must also include information on how a borrower can regain eligibility after losing a benefit.
- *A description of all the repayment plans that are available to the borrower and a statement that the borrower may change from one plan to another during the period of repayment.
- The repayment schedule for all loans covered by the disclosure, including the date the first payment is due and the number, amount, and frequency of required payments based on a standard repayment plan or *other repayment plan selected by the borrower. (Unsubsidized Stafford loans and PLUS loans are not subject to this requirement. Instead, a lender is required to provide those borrowers with sample monthly repayment amounts that show the differences in cost of allowing interest to capitalize vs. paying the interest as it accrues.)
- An explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan and of the availability and terms of such other options.
- The projected total of interest charges that borrowers will pay on their assuming that the borrowers make payments exactly in accordance with the repayment schedule.
- *If the borrower has already paid interest on the loan or loans, the amount of interest paid.
- The nature of any fees which may accrue or be charged to the borrower during the repayment period.
- A statement that the borrower has the right to prepay all or part of the loan or loans covered by the disclosure at any time without penalty.

* Indicates a requirement that has been added or changed by the HEOA.

- *A description of the options by which the borrower may avoid or be removed from default, including any relevant fees associated with such options.
- *Additional resources, including nonprofit organizations, advocates, and counselors (including the Department of Education's Student Loan Ombudsman) of which the lender is aware, where borrowers may receive advice and assistance on loan repayment.

***Required Disclosures During Repayment (Effective July 1, 2009)**

Lenders are required to provide the following information on a bill or statement that corresponds to each payment installment required of the borrower. *This entire section was added to the HEA by HEOA.

- The original principal amount of the borrower's loan.
- The borrower's current balance, as of the time of the bill or statement, as applicable.
- The interest rate on such loan.
- The total amount the borrower has paid in interest on the loan.
- The aggregate amount the borrower has paid for the loan, including the amount the borrower has paid in interest, the amount the borrower has paid in fees, and the amount the borrower has paid against the balance.
- A description of each fee the borrower has been charged for the most recently preceding installment time period.
- The date by which the borrower needs to make a payment in order to avoid additional fees and the amount of such payment and the amount of such fees.
- The lender's or loan servicer's address and toll-free phone number for payment and billing error purposes.
- A reminder that the borrower has the option to change repayment plans, a list of the names of the repayment plans available to the borrower, a link to the appropriate page of the Department's website to obtain a more detailed description of the repayment plans, and directions for the borrower to request a change in repayment plan.

***Required Disclosures for a Borrower Having Difficulty Making Payments (Effective July 1, 2009)**

Each lender must provide to borrowers who have notified the lender that they are having difficulty making payments on a loan the following information. *This entire section was added to the HEA by HEOA.

- A description of the repayment plans available to the borrower, including how the borrower should request a change in repayment plan.

* Indicates a requirement that has been added or changed by the HEOA.

- A description of the requirements for obtaining forbearance on a loan, including expected costs associated with forbearance.
- A description of the options available to the borrower to avoid defaulting on the loan, and any relevant fees or costs associated with such options.

***Required Disclosures During Delinquency (Effective July 1, 2009)**

Each eligible lender must provide to a borrower who is 60 days delinquent in making payments on a loan made, insured, or guaranteed under this part with a notice, in simple and understandable terms, of the following. *This entire section was added to the HEA by HEOA.

- The date on which the loan will default if no payments are made.
- The minimum payment the borrower must make to avoid default.
- A description of the options available to the borrower to avoid default, and any relevant fees or costs associated with such options, including a description of deferment and forbearance and the requirements to obtain each.
- Discharge options to which the borrower may be entitled.
- Additional resources, including nonprofit organizations, advocates, and counselors (including the Student Loan Ombudsman of the Department), of which the lender is aware, where the borrower can receive advice and assistance on loan repayment.

Cost of Disclosure and Consequences of Nondisclosure

These disclosures must be made available without incurring any costs to borrowers. The Secretary of Education may limit, suspend, or terminate a lender's participation in the federal loan programs if they fail to comply with this section.

* Indicates a requirement that has been added or changed by the HEOA.

Legislative Text of Section 433 from the Higher Education Opportunity Act

SEC. 433. STUDENT LOAN INFORMATION BY ELIGIBLE LENDERS.

(a) **REQUIRED DISCLOSURE BEFORE DISBURSEMENT.**—Each eligible lender, at or prior to the time such lender disburses a loan that is insured or guaranteed under this part (other than a loan made under section 428C), shall provide thorough and accurate loan information on such loan to the borrower in simple and understandable terms. Any disclosure required by this subsection may be made by an eligible lender by written or electronic means, including as part of the application material provided to the borrower, as part of the promissory note evidencing the loan, or on a separate written form provided to the borrower. Each lender shall provide to each borrower a telephone number, and may provide an electronic address, through which additional loan information can be obtained.

The disclosure shall include—

- (1) a statement prominently and clearly displayed and in bold print that the borrower is receiving a loan that must be repaid;
- (2) the name of the eligible lender, and the address to which communications and payments should be sent;
- (3) the principal amount of the loan;
- (4) the amount of any charges, such as the origination fee and Federal default fee, and whether those fees will be—
 - (A) collected by the lender at or prior to the disbursal of the loan;
 - (B) deducted from the proceeds of the loan;
 - (C) paid separately by the borrower; or
 - (D) paid by the lender;
- (5) the stated interest rate on the loan;
- (6) for loans made under section 428H or to a student borrower under section 428B, an explanation—
 - (A) that the borrower has the option to pay the interest that accrues on the loan while the borrower is a student at an institution of higher education; and
 - (B) if the borrower does not pay such interest while attending an institution, when and how often interest on the loan will be capitalized;
- (7) for loans made to a parent borrower on behalf of a student under section 428B, an explanation—
 - (A) that the parent has the option to defer payment on the loan while the student is enrolled on at least a halftime basis in an institution of higher education;
 - (B) if the parent does not pay the interest on the loan while the student is enrolled in an institution, when and how often interest on the loan will be capitalized; and
 - (C) that the parent may be eligible for a deferment on the loan if the parent is enrolled on at least a half-time basis in an institution of higher education;
- (8) the yearly and cumulative maximum amounts that may be borrowed;
- (9) a statement of the total cumulative balance, including the loan being disbursed, owed by the borrower to that lender, and an estimate of the projected monthly payment, given such cumulative balance;
- (10) an explanation of when repayment of the loan will be required and when the borrower will be obligated to pay interest that accrues on the loan;
- (11) a description of the types of repayment plans that are available for the loan;
- (12) a statement as to the minimum and maximum repayment terms which the lender may impose, and the minimum annual payment required by law;
- (13) an explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan;

- (14) a statement that the borrower has the right to prepay all or part of the loan, at any time, without penalty;
- (15) a statement summarizing circumstances in which repayment of the loan or interest that accrues on the loan may be deferred;
- (16) a statement summarizing the circumstances in which a borrower may obtain forbearance on the loan;
- (17) a description of the options available for forgiveness of the loan, and the requirements to obtain loan forgiveness;
- (18) a definition of default and the consequences to the borrower if the borrower defaults, including a statement that the default will be reported to a consumer reporting agency; and
- (19) an explanation of any cost the borrower may incur during repayment or in the collection of the loan, including fees that the borrower may be charged, such as late payment fees and collection costs.

(b) **REQUIRED DISCLOSURE BEFORE REPAYMENT.**—Each eligible lender shall, at or prior to the start of the repayment period on a loan made, insured, or guaranteed under section 428, 428B, or 428H, disclose to the borrower by written or electronic means the information required under this subsection in simple and understandable terms. Each eligible lender shall provide to each borrower a telephone number, and may provide an electronic address, through which additional loan information can be obtained. The disclosure required by this subsection shall be made not less than 30 days nor more than 150 days before the first payment on the loan is due from the borrower. The disclosure shall include—

- (1) the name of the eligible lender or loan servicer, and the address to which communications and payments should be sent;
- (2) the scheduled date upon which the repayment period is to begin or the deferment period under section 428B(d)(1) is to end, as applicable;
- (3) the estimated balance owed by the borrower on the loan or loans covered by the disclosure (including, if applicable, the estimated amount of interest to be capitalized) as of the scheduled date on which the repayment period is to begin or the deferment period under 428B(d)(1) is to end, as applicable;
- (4) the stated interest rate on the loan or loans, or the combined interest rate of loans with different stated interest rates;
- (5) information on loan repayment benefits offered for the loan or loans, including—
 - (A) whether the lender offers any benefits that are contingent on the repayment behavior of the borrower, such as—
 - (i) a reduction in interest rate if the borrower repays the loan by automatic payroll or checking account deduction;
 - (ii) a reduction in interest rate if the borrower makes a specified number of on-time payments; and
 - (iii) other loan repayment benefits for which the borrower could be eligible that would reduce the amount of repayment or the length of the repayment period;
 - (B) if the lender provides a loan repayment benefit—
 - (i) any limitations on such benefit;
 - (ii) explicit information on the reasons a borrower may lose eligibility for such benefit;
 - (iii) for a loan repayment benefit that reduces the borrower's interest rate—
 - (I) examples of the impact the interest rate reduction would have on the length of the borrower's repayment period and the amount of repayment; and
 - (II) upon the request of the borrower, the effect the reduction in interest rate would have with respect to the borrower's payoff amount and time for repayment; and
 - (iv) whether and how the borrower can regain eligibility for a benefit if a borrower loses a benefit;

- (6) a description of all the repayment plans that are available to the borrower and a statement that the borrower may change from one plan to another during the period of repayment;
- (7) the repayment schedule for all loans covered by the disclosure, including—
 - (A) the date the first installment is due; and
 - (B) the number, amount, and frequency of required payments, which shall be based on a standard repayment plan or, in the case of a borrower who has selected another repayment plan, on the repayment plan selected by the borrower;
- (8) an explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan and of the availability and terms of such other options;
- (9) except as provided in subsection (d)—
 - (A) the projected total of interest charges which the borrower will pay on the loan or loans, assuming that the borrower makes payments exactly in accordance with the repayment schedule; and
 - (B) if the borrower has already paid interest on the loan or loans, the amount of interest paid;
- (10) the nature of any fees which may accrue or be charged to the borrower during the repayment period;
- (11) a statement that the borrower has the right to prepay all or part of the loan or loans covered by the disclosure at any time without penalty;
- (12) a description of the options by which the borrower may avoid or be removed from default, including any relevant fees associated with such options; and
- (13) additional resources, including nonprofit organizations, advocates, and counselors (including the Student Loan Ombudsman of the Department) of which the lender is aware, where borrowers may receive advice and assistance on loan repayment.

(c) **SEPARATE NOTIFICATION.**—Each eligible lender shall, at the time such lender notifies a borrower of approval of a loan which is insured or guaranteed under this part, provide the borrower with a separate notification which summarizes, in simple and understandable terms, the rights and responsibilities of the borrower with respect to the loan, including a statement of the consequences of defaulting on the loan and a statement that each borrower who defaults will be reported to a consumer reporting agency. The requirement of this subsection shall be in addition to the information required by subsection (a) of this section.

(d) **SPECIAL DISCLOSURE RULES ON PLUS LOANS, AND UNSUBSIDIZED LOANS.**—Loans made under sections 428B and 428H shall not be subject to the disclosure of projected monthly payment amounts required under subsection (b)(7) if the lender, in lieu of such disclosure, provides the borrower with sample projections of monthly repayment amounts, assuming different levels of borrowing and interest accruals resulting from capitalization of interest while the borrower, or the student on whose behalf the loan is made, is in school, in simple and understandable terms. Such sample projections shall disclose the cost to the borrower of—

- (1) capitalizing the interest; and
- (2) paying the interest as the interest accrues.

(e) **REQUIRED DISCLOSURES DURING REPAYMENT.**—

- (1) **PERTINENT INFORMATION ABOUT A LOAN PROVIDED ON A PERIODIC BASIS.**—Each eligible lender shall provide the borrower of a loan made, insured, or guaranteed under this part with a bill or statement (as applicable) that corresponds to each payment installment time period in which a payment is due and that includes, in simple and understandable terms—
 - (A) the original principal amount of the borrower's loan;
 - (B) the borrower's current balance, as of the time of the bill or statement, as applicable;

- (C) the interest rate on such loan;
- (D) the total amount the borrower has paid in interest on the loan;
- (E) the aggregate amount the borrower has paid for the loan, including the amount the borrower has paid in interest, the amount the borrower has paid in fees, and the amount the borrower has paid against the balance;
- (F) a description of each fee the borrower has been charged for the most recently preceding installment time period;
- (G) the date by which the borrower needs to make a payment in order to avoid additional fees and the amount of such payment and the amount of such fees;
- (H) the lender's or loan servicer's address and toll-free phone number for payment and billing error purposes; and
- (I) a reminder that the borrower has the option to change repayment plans, a list of the names of the repayment plans available to the borrower, a link to the appropriate page of the Department's website to obtain a more detailed description of the repayment plans, and directions for the borrower to request a change in repayment plan.

(2) **INFORMATION PROVIDED TO A BORROWER HAVING DIFFICULTY MAKING PAYMENTS.**—Each eligible lender shall provide to a borrower who has notified the lender that the borrower is having difficulty making payments on a loan made, insured, or guaranteed under this part with the following information in simple and understandable terms:

- (A) A description of the repayment plans available to the borrower, including how the borrower should request a change in repayment plan.
- (B) A description of the requirements for obtaining forbearance on a loan, including expected costs associated with forbearance.
- (C) A description of the options available to the borrower to avoid defaulting on the loan, and any relevant fees or costs associated with such options.

(3) **REQUIRED DISCLOSURES DURING DELINQUENCY.**—Each eligible lender shall provide to a borrower who is 60 days delinquent in making payments on a loan made, insured, or guaranteed under this part with a notice, in simple and understandable terms, of the following:

- (A) The date on which the loan will default if no payment is made.
- (B) The minimum payment the borrower must make to avoid default.
- (C) A description of the options available to the borrower to avoid default, and any relevant fees or costs associated with such options, including a description of deferment and forbearance and the requirements to obtain each.
- (D) Discharge options to which the borrower may be entitled.
- (E) Additional resources, including nonprofit organizations, advocates, and counselors (including the Student Loan Ombudsman of the Department), of which the lender is aware, where the borrower can receive advice and assistance on loan repayment.

(f) **COST OF DISCLOSURE AND CONSEQUENCES OF NONDISCLOSURE.**—

(1) **NO COST TO BORROWERS.**—The information required under this section shall be available without cost to the borrower.

(2) **CONSEQUENCES OF NONDISCLOSURE.**—The failure of an eligible lender to provide information as required by this section shall not—

- (A) relieve a borrower of the obligation to repay a loan in accordance with the loan's terms; or
- (B) provide a basis for a claim for civil damages.

(3) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed as subjecting the lender to the Truth in Lending Act with regard to loans made under this part.

(4) **ACTIONS BY THE SECRETARY.**—The Secretary may limit, suspend, or terminate the continued participation of an eligible lender in making loans under this part for failure by that lender to comply with this section.”