

# **Regulation Z**

## **Student Loans**

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**Indiana Bankers Association**

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# **Special Disclosure Requirements for Private Education Loans**

# Section 1: Coverage

## 12 C.F.R. § 1026.46(a)

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### *Coverage - 12 CFR § 1026.46(a)*

#### **Regulatory Discussion**

The requirements of this document *only apply to “private education loans”* (see Section 2, below, for the definition).

NOTE: a creditor may, at its option, comply with these requirements for an extension of credit subject to §§1026.17 (Closed-end Credit – general disclosure requirements) and 1026.18 (Closed-end Credit – content of disclosures) that is:

- Extended to a consumer;
- For expenses incurred after graduation from a law, medical, dental, veterinary, or other graduate school; and
- Related to relocation, study for a bar or other examination, participation in an internship or residency program, or similar purpose.

#### **Regulatory Text**

(a) **Coverage.** The requirements of this subpart apply to private education loans as defined in §1026.46(b)(5). A creditor may, at its option, comply with the requirements of this subpart for an extension of credit subject to §§1026.17 and 1026.18 that is extended to a consumer for expenses incurred after graduation from a law, medical, dental, veterinary, or other graduate school and related to relocation, study for a bar or other examination, participation in an internship or residency program, or similar purposes.

(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.

(2) [Reserved]

#### **Regulatory Commentary**

##### **46(a) Coverage**

1. **Coverage.** *This subpart applies to all private education loans as defined in §1026.46(b)(5). Coverage under this subpart is optional for certain extensions of credit that do not meet the definition of “private education loan” because the credit is not extended, in whole or in part, for “postsecondary educational expenses” defined in §1026.46(b)(3). If a transaction*

*is not covered and a creditor opts to comply with any section of this subpart, the creditor must comply with all applicable sections of this subpart. If a transaction is not covered and a creditor opts not to comply with this subpart, the creditor must comply with all applicable requirements under §§1026.17 and 1026.18. Compliance with this subpart is optional for an extension of credit for expenses incurred after graduation from a law, medical, dental, veterinary, or other graduate school and related to relocation, study for a bar or other examination, participation in an internship or residency program, or similar purposes. However, if any part of such loan is used for postsecondary educational expenses as defined in §1026.46(b)(3), then compliance with Subpart F is mandatory not optional.*

## Section 2: Definitions

### 12 C.F.R. § 1026.46(b)

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#### *Definitions - 12 CFR § 1026.46(b)*

#### **Regulatory Discussion**

This section **defines** five terms which must be properly applied to satisfy the requirements.

The commentary provides additional information on each of the five terms.

#### **Regulatory Text**

(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. An agent means an institution-affiliated organization as defined by section 151 of the Higher Education Act of 1965 (20 U.S.C. 1019) or an officer or employee of an institution-affiliated organization.

(2) **Institution of higher education** has the same meaning as in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001-1002) and the implementing regulations published by the U.S. 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 an extension of credit 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;
- (iii) Does not include open-end credit or any loan that is secured by real property or a dwelling; and
- (iv) Does not include an extension of credit in which the covered educational institution is the creditor if:
  - (A) The term of the extension of credit is 90 days or less; or
  - (B) an interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

## Regulatory Commentary

### **46(b) Definitions**

#### **46(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 §1026.46(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 §1026.46(b)(1), the term agent means an institution-affiliated organization as defined by Section 151 of the Higher Education Act of 1965 (20 U.S.C 1019) or an officer or employee of an institution-affiliated organization. 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.*

#### **46(b)(2) Institution of Higher Education**

1. **General.** *An institution of higher education includes any institution that meets the definitions contained in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001-1002) 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.*

#### **46(b)(3) Postsecondary Educational Expenses**

1. **General.** *The examples listed in §1026.46(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).*

#### **46(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.*

#### **46(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.**

- i. **Definition.** *A private education loan may include an extension of credit not excluded under §1026.46(b)(5) that the consumer may use for multiple purposes including, but not limited to, postsecondary educational expenses. 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 loan is a private education loan.*
- ii. **Coverage.** *A creditor generally will not know before an application is received whether the consumer intends to use the loan for postsecondary educational expenses. For this reason, the creditor need not provide the disclosures required by §1026.47(a) on or with the application or solicitation for a loan that may be used for multiple purposes. See §1026.47(d)(1)(i). However, if the consumer expressly indicates that the proceeds of the loan will be used to pay for postsecondary educational expenses, the creditor must comply with §§1026.47(b) and (c) and §1026.48. For purposes of the required disclosures, the creditor must calculate the disclosures based on the entire amount of the loan, even if only a part of the proceeds is intended for postsecondary educational expenses. The creditor may rely solely 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.*



iii. **Examples.** *The creditor must comply only if the extension of credit also meets the other parts of the definition of private education loan. For example, if the creditor uses a single application form for both open-end and closed-end credit, and the consumer applies for open-end credit to be used for postsecondary educational expenses, the extension of credit is not covered. Similarly, if the consumer indicates the extension of credit will be used for educational expenses that are not postsecondary educational expenses, such as elementary or secondary educational expenses, the extension of credit is not covered. These examples are only illustrative, not exhaustive.*

3. **Short-term loans.** *Some covered educational institutions offer loans to students with terms of 90 days or less to assist the student in paying for educational expenses, usually while the student waits for other funds to be disbursed. Under §1026.46(b)(5)(iv)(A) such loans are not considered private education loans, even if interest is charged on the credit balance. (Because these loans charge interest, they are not covered by the exception under §1026.46(b)(5)(iv)(B).) However, these loans are extensions of credit subject to the requirements of §§1026.17 and 18. The legal agreement may provide that repayment is required when the consumer or the educational institution receives certain funds. If, under the terms of the legal obligation, repayment of the loan is required when the certain funds are received by the consumer or the educational institution (such as by deposit into the consumer's or educational institution's account), the disclosures should be based on the creditor's estimate of the time the funds will be delivered.*

4. **Billing plans.** *Some covered educational institutions offer billing plans that permit a consumer to make payments in installments. Such plans are not considered private education loans, if an interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the plan is payable in more than four installments. However, such plans may be extensions of credit subject to the requirements of §§1026.17 and 1026.18.*

## Section 3: Form of Disclosures

### 12 C.F.R. § 1026.46(c)

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#### *Form of Disclosures - 12 CFR § 1026.46(c)*

##### **Regulatory Discussion**

The required disclosures:

- Must be clear and conspicuous;
- Must satisfy specific requirements; and
- May be provided electronic, subject to certain requirements.

##### **Regulatory Text**

###### **(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 §§1026.47(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 §§1026.47(b) and (c), which include the disclosures required under §1026.18.
  - (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 §1026.18(a), insurance or debt cancellation under §1026.18(n), and certain security interest charges under §1026.18(o).
  - (iii) The term “finance charge” and corresponding amount, when required to be disclosed under §1026.18(d), and the interest rate required to be disclosed under §§1026.47(b)(1)(i) and (c)(1), shall be more conspicuous than any other disclosure, except the creditor's identity under §1026.18(a).
- (3) **Electronic disclosures.** The disclosures required under §§1026.47(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 §1026.47(a) may be provided to the consumer in electronic form on or with an application or solicitation that is accessed by the consumer in electronic form without

regard to the consumer consent or other provisions of the E-Sign Act. The form required to be received under §1026.48(e) may be accepted by the creditor in electronic form as provided for in that section.

## **Regulatory Commentary**

### **46(c) Form of Disclosures**

1. **Form of disclosures - relation to other sections.** *Creditors must make the disclosures required under this subpart in accordance with §1026.46(c). Section 1026.46(c)(2) requires that the disclosures be grouped together and segregated from everything else. In complying with this requirement, creditors may follow the rules in §1026.17, except where specifically provided otherwise. For example, although §1026.17(b) requires creditors to provide only one set of disclosures before consummation of the transaction, §§1026.47(b) and (c) require that the creditor provide the disclosures under §1026.18 both upon approval and after the consumer accepts the loan.*

### **46(c)(3) Electronic Disclosures**

1. **Application and solicitation disclosures - electronic disclosures.** *If the disclosures required under §1026.47(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.*

## **Section 4: Timing of Disclosures**

### **12 C.F.R. § 1026.46(d)**

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#### ***Timing of Disclosures - 12 CFR § 1026.46(d)***

##### **Regulatory Discussion**

There are four considerations with the timing of disclosures:

- 1) Applications or solicitations – generally, the disclosures required by §1026.47(a) shall be provided on or with any application or solicitation.

NOTE the exceptions listed in (1)(ii) and (iii), below.

- 2) Approval disclosures – generally, the disclosures required by §1026.47(b) shall be provided before consummation on or with any notice of approval provided to the consumer.

NOTE the requirements for: mail notice of approval; telephone notice of approval; electronic notice of approval; and in person notice of approval.

- 3) Final disclosures – shall be provided after the consumer accepts the loan.
- 4) Receipt of mailed disclosures required by (d)(1), (d)(2) or (d)(3) – the consumer is considered to have received them three business days after they are mailed.

##### **Regulatory Text**

###### **(d) Timing of disclosures**

###### **(1) Application or solicitation disclosures.**

(i) The disclosures required by §1026.47(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 §1026.47(a) in a telephone application or solicitation. Alternatively, if the creditor does not disclose orally the information in §1026.47(a), the creditor must provide the disclosures or place them in the mail no later than three business days after the consumer has applied for the credit, except that, if the creditor either denies the consumer's application or provides or places in the mail the disclosures in §1026.47(b) no later than three business days after the consumer requests the credit, the creditor need not also provide the §1026.47(a) disclosures.

- (iii) Notwithstanding paragraph (d)(1)(i) of this section, for a loan 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 §1026.47(a).
- (2) **Approval disclosures.** The creditor shall provide the disclosures required by §1026.47(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 in accordance with §1026.46(d)(3); otherwise the creditor must mail the disclosures within three business days of communicating the notice of approval. If the creditor communicates approval in person, the creditor must provide the disclosures to the consumer at that time.
- (3) **Final disclosures.** The disclosures required by §1026.47(c) shall be provided after the consumer accepts the loan in accordance with §1026.48(c)(1).
- (4) **Receipt of mailed disclosures.** If the disclosures under paragraphs (d)(1), (d)(2) or (d)(3) of this section are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

## Regulatory Commentary

### ***46(d) Timing of Disclosures***

1. ***Receipt of disclosures.*** Under §1026.46(d)(4), 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 §1026.46(d)(4), “business day” means all calendar days except Sundays and the legal public holidays referred to in §1026.2(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.

### ***46(d)(1) Application or Solicitation Disclosures***

1. ***Invitations to apply.*** A creditor may contact a consumer who has not been pre-selected for a private education 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; or*
  - iii. An application in an in-person contact.*

**46(d)(2) Approval Disclosures**

1. **Timing.** *The creditor must provide the disclosures required by §1026.47(b) at the time the creditor provides to the consumer any notice that the loan has been approved. However, nothing in this section prevents the creditor from communicating to the consumer that additional information is required from the consumer before approval may be granted. In such a case, a creditor is not required to provide the disclosures at that time. 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 telephone call. 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.) the creditor may provide the disclosures solely in electronic form; otherwise, the creditor must place the disclosures in the mail within three business days of the communication.*

## Section 5: Other Disclosure Issues

### 12 C.F.R. § 1026.46(e) through 12 C.F.R. § 1026.46(g)

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#### ***Basis of Disclosures/Estimates - 12 CFR § 1026.46(e)***

##### **Regulatory Discussion**

This section simply states:

- the disclosures shall reflect the terms of the legal obligation; and
- if any information necessary for an accurate disclosure is unknown to the creditor, the disclosure shall clearly state it is an estimate

##### **Regulatory Text**

###### **(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.

##### **Regulatory Commentary**

*None.*

#### ***Multiple Creditors/Consumers - 12 CFR § 1026.46(f)***

##### **Regulatory Discussion**

This section simply states only one set of disclosures shall be given in the event of either multiple creditors or multiple consumers.

## Regulatory Text

- (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 will 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.

## Regulatory Commentary

*None.*

## ***Effect of Subsequent Events - 12 CFR § 1026.46(g)***

### Regulatory Discussion

Finally, if a disclosure required under either §1026.47(b) or (c) becomes inaccurate because of subsequent event, the inaccuracy is not considered a violation of Regulation Z. Note: with respect to the Approval Disclosures, new disclosures, however, may be required.

## Regulatory Text

### (g) **Effect of subsequent events**

- (1) **Approval disclosures.** If a disclosure under §1026.47(b) 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 1026), although new disclosures may be required under §1026.48(c).
- (2) **Final disclosures.** If a disclosure under §1026.47(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 1026).

## Regulatory Commentary

### ***46(g) Effect of Subsequent Events***

1. **Approval disclosures.** *Inaccuracies in the disclosures required under §1026.47(b) are not violations if attributable to events occurring after disclosures are made, although creditors are restricted under §1026.48(c)(2) from making certain changes to the loan's rate or terms after the creditor provides an approval disclosure to a consumer. Since creditors are required provide the final disclosures under §1026.47(c), they need not make new approval disclosures in response to an event that occurs after the creditor delivers the required approval*



*disclosures, except as specified under §1026.48(c)(4). For example, at the time the approval disclosures are provided, the creditor may not know the precise disbursement date of the loan funds and must provide estimated disclosures based on the best information reasonably available and labeled as an estimate. If, after the approval disclosures are provided, the creditor learns from the educational institution the precise disbursement date, new approval disclosures would not be required, unless specifically required under §1026.48(c)(4) if other changes are made. Similarly, the creditor may not know the precise amounts of each loan to be consolidated in a consolidation loan transaction and information about the precise amounts would not require new approval disclosures, unless specifically required under §1026.48(c)(4) if other changes are made.*

- 2. Final disclosures.** *Inaccuracies in the disclosures required under §1026.47(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.*

# **Student Loans - Content of Disclosures**

# Section 1: Application/Solicitation Disclosures

## 12 C.F.R. § 1026.47(a)

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### *Initial Commentary - 12 CFR § 1026.47*

#### **Regulatory Discussion**

This introductory initial commentary simply states disclosures only need to be made if applicable to a particular transaction.

#### **Regulatory Text**

None.

#### **Regulatory Commentary**

##### ***Section 1026.47—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, or in transactions under §1026.46(a) for which compliance with this subpart is optional, the creditor need not disclose the information under §§1026.47(a)(6), and (b)(4), and any other information otherwise required to be disclosed under this subpart that is not applicable to the transaction. Similarly, creditors making loans to consumers where the student is not attending an institution of higher education, as defined in §1026.46(b)(2), need not provide the disclosures regarding the self-certification form in §1026.47(a)(8).*

### ***Application/Solicitation Disclosures - 12 CFR § 1026.47(a)***

#### **Regulatory Discussion**

This section discusses the following eight items that, *if applicable*, will need to be disclosed on or with a solicitation or an application for a private education loan:

1. Interest rates - Commentary provides additional information on the following:
  - Rates actually offered; Creditworthiness and other factors; Rates applicable to the loan

- Coverage; Limitations
  - Cosigner or guarantor - changes in applicable interest rate
2. Fees and default or late payment costs - Commentary provides additional information on the following:
    - Fees or range of fees
    - Fees required to obtain the private education loan
  3. Repayment terms - Commentary provides additional information on the following:
    - Loan term
    - Payment deferral options – general
    - Payment deferral options - in school deferment
    - Combination with cost estimate disclosure
    - Bankruptcy limitations
  4. Cost estimates - Commentary provides additional information on the following:
    - Total cost of the loan
    - Basis for estimates
    - Calculated for each option to defer interest payments
    - Deferment period assumptions
  5. Eligibility - There is no commentary on eligibility.
  6. Alternatives to private education loans - Commentary provides additional information on the following:
    - Terms of Federal student loans
    - Web site address
  7. Rights of the consumer - There is no commentary on rights of the consumer.
  8. Self-certification information - There is no commentary on self-certification information.

## Regulatory Text

(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 or other factors, 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; 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; and, if the limitation is determined by applicable law, that fact.
- (iv) 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.
- (ii) Any 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, which is the period during which regularly scheduled payments of principal and interest will be due.
- (ii) A description of 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.
- (iv) A statement that if the consumer files for bankruptcy, the consumer may still be required to pay back the loan.

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

- (i) Using the highest rate of interest disclosed under paragraph (a)(1) of this section and including all finance charges applicable to loans at that rate;
- (ii) Using an amount financed of \$10,000, or \$5000 if the creditor only offers loans of this type for less than \$10,000; and
- (iii) Calculated for each payment option.

**(5) Eligibility.** Any age or school enrollment eligibility requirements relating to the consumer or cosigner.

**(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 Web site of the U.S. Department of Education, including an appropriate Web site address.
  - (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.** A statement that if the loan is approved, the terms of the loan will be available and will not change for 30 days except as a result of adjustments to the interest rate and other changes permitted by law.
- (8) **Self-certification information.** A statement that, before the loan may be consummated, the consumer must complete the self-certification form and that the form may be obtained from the institution of higher education that the student attends.

## Regulatory Commentary

### **47(a) Application or Solicitation Disclosures**

#### **Paragraph 47(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, or for disclosures made on an Internet Web site, within 30 days before being 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 available 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 or other factors, 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. The creditor may, but is not*

required to, specify any additional 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 or cosigner's credit report and the type of school the consumer attends, the creditor may state, "Your interest rate will be based on your credit history and other factors (cosigner credit and school type)."

3. **Rates applicable to the loan.** For a variable-rate private education loan, the disclosure of the interest rate or range of rates must reflect the rate or rates calculated based on the index and margin that will be used to make interest rate adjustments for the loan. The creditor may provide a description of the index and margin or range of margins used to make interest rate adjustments, including a reference to a source, such as a newspaper, where the consumer may look up the index.

#### **Paragraph 47(a)(1)(iii)**

1. **Coverage.** 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 and the requirements of §1026.47(a)(1)(iii) apply to all such transactions. The provisions do not apply to increases resulting from delinquency (including late payment), default, assumption, or acceleration.
2. **Limitations.** The creditor must disclose how often the rate may change and any limit on the amount that the rate may increase at any one time. The creditor must also disclose any maximum rate over the life of the transaction. If the legal obligation between the parties does specify a maximum rate, the creditor must disclose any legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations. However, if the applicable maximum rate is in the form of a legal limit, such as a state's usury cap (rather than a maximum rate specified in the legal obligation between the parties), the creditor must disclose that the maximum rate is determined by applicable law. The creditor must also disclose that the consumer's actual rate may be higher or lower than the initial rates disclosed under §1026.47(a)(1)(i), if applicable.

#### **Paragraph 47(a)(1)(iv)**

1. **Cosigner or guarantor - changes in applicable interest rate.** The creditor must 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 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 cosigner."

#### **47(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 a 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 all finance charges under §1026.4, such as loan origination fees, credit report fees, and fees charged upon entering repayment, 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. Creditors are not required to disclose fees that apply if the consumer exercises an option under the loan agreement after consummation, such as fees for deferment, forbearance, or loan modification.*

### **47(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 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. The description may include of the length of the maximum initial in-school 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 while the student is enrolled in school, the creditor may disclose that the consumer must begin repayment upon disbursement of the loan and that the consumer may not defer repayment while enrolled in school. If the creditor offers payment deferral 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 creditor must include a statement referring the consumer to the contract document or promissory note for more information.*
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 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 disclosures of the loan term under §1026.47(a)(3)(i) and of the payment deferral options applicable while the student is enrolled at a covered educational institution under §§1026.47(a)(3)(ii) and (iii) may be combined with the disclosure of cost estimates required in §1026.47(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-21.*
5. **Bankruptcy limitations.** *The creditor may comply with §1026.47(a)(3)(iv) by disclosing the following statement: "If you file for bankruptcy you may still be required to pay back this loan."*



**47(a)(4) Cost Estimates**

**1. Total cost of the loan.** For purposes of §1026.47(a)(4), the creditor must calculate the example of the total cost of the loan in accordance with the rules in §1026.18(h) for calculating the loan's total of payments.

**2. Basis for estimates.**

*i.* The creditor must calculate the total cost estimate by determining all finance charges that would be applicable to loans with the highest rate of interest required to be disclosed under §1026.47(a)(1)(i). 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 initial rate, the lender must assume the 3% origination fee is charged. The creditor must base the total cost estimate on a total loan amount that includes all prepaid finance charges and results in a \$10,000 amount financed. For example, if the prepaid finance charges are \$600, the creditor must base the estimate on a \$10,600 total loan amount and an amount financed of \$10,000. The example must reflect an amount provided of \$10,000. If the creditor only offers a particular private education loan for less than \$10,000, the creditor may assume a loan amount that results in a \$5,000 amount financed for that loan.

*ii.* If a prepaid finance charge is determined as a percentage of the amount financed, for purposes of the example, the creditor should assume that the fee is determined as a percentage of the total loan amount, even if this is not the creditor's usual practice. For example, suppose the consumer requires a disbursement of \$10,000 and the creditor charges a 3% origination fee. In order to calculate the total cost example, the creditor must determine the loan amount that will result in a \$10,000 amount financed after the 3% fee is assessed. In this example, the resulting loan amount would be \$10,309.28. Assessing the 3% origination fee on the loan amount of \$10,309.28 results in an origination fee of \$309.28, which is withheld from the loan funds disbursed to the consumer. The principal loan amount of \$10,309.28 minus the prepaid finance charge of \$309.28 results in an amount financed of \$10,000.

**3. Calculated for each option to defer interest payments.** The example must include an estimate of the total cost of the loan for each in-school deferral option disclosed in §1026.47(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 while in school, the creditor is required to disclose three estimates of the total cost of the loan, one for each deferral option. If the creditor adds accrued interest to the loan balance (i.e., interest is capitalized), the estimate of the total loan cost should be based on the capitalization method that the creditor actually uses for the loan. For instance, for each deferred payment option where the creditor would capitalize interest on a quarterly basis, the total loan cost must be calculated assuming interest capitalizes on a quarterly basis.

**4. Deferment period assumptions.** Creditors may use either of the following two methods for estimating the duration of in-school deferment periods:

*i.* For loan programs intended for educational expenses of undergraduate students, the creditor may assume that the consumer defers payments for a four-year matriculation

*period, plus the loan's maximum applicable grace period, if any. For all other loans, the creditor may assume that the consumer defers for a two-year matriculation period, plus the maximum applicable grace period, if any, or the maximum time the consumer may defer payments under the loan program, whichever is shorter.*

- ii. Alternatively, if the creditor knows that the student will be enrolled in a program with a standard duration, the creditor may assume that the consumer defers payments for the full duration of the program (plus any grace period). For example, if a creditor makes loans intended for students enrolled in a four-year medical school degree program, the creditor may assume that the consumer defers payments for four years plus the loan's maximum applicable grace period, if any. However, the creditor may not modify the disclosure to correspond to a particular student's situation. For example, even if the creditor knows that a student will be a second-year medical school student, the creditor must assume a four-year deferral period.*

**Paragraph 47(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.*

**Paragraph 47(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.”*

## Section 2: Approval Disclosures

### 12 C.F.R. § 1026.47(b)

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#### *Approval Disclosures - 12 CFR § 1026.47(b)*

##### **Regulatory Discussion**

This section discusses the following five items that, *if applicable*, will need to be disclosed on or with any notice of approval provided to the consumer for a private education loan:

1. Interest Rate - Commentary provides additional information on the following:
  - Variable rate disclosures
  - Limitations on rate adjustments
  - Rates applicable to the loan
2. Fees and default or late payment costs - Commentary provides additional information on the following:
  - Fees and default or late payment costs
3. Repayment terms - Commentary provides additional information on the following:
  - Principal amount
  - Loan term
  - Payment deferral options applicable to the consumer
  - Payments required during enrollment
  - Bankruptcy limitations
  - An estimate of the total amount for repayment
  - The maximum monthly payment
4. Alternatives to private education loans - Commentary provides additional information on the following:
  - General information
5. Rights of the consumer - Commentary provides additional information on the following:
  - Notice of acceptance period

##### **Regulatory Text**

(b) **Approval disclosures.** On or with any notice of approval provided to the consumer, the creditor shall disclose the information required under §1026.18 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.
- (ii) Any 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, which is the period during which regularly scheduled payments of principal and interest will be due.
- (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 §1026.18(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 25%.
  - (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 paragraph (b)(3)(vii)(B) of this section 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 25%. If a maximum cannot be determined, a statement 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.
- (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 Web site of the U.S. Department of Education, including an appropriate Web site address.

**(5) Rights of the consumer.**

- (i) A statement that the consumer may accept the terms of the loan until the acceptance period under §1026.48(c)(1) has expired. The statement must include the specific date on which the acceptance period expires, based on the date upon which the consumer receives the disclosures required under this subsection for the loan. The disclosure must also specify the method or methods by which the consumer may communicate acceptance.
- (ii) A statement that, except for changes to the interest rate and other changes permitted by law, the rates and terms of the loan may not be changed by the creditor during the period described in paragraph (b)(5)(i) of this section.

**Regulatory Commentary**

**47(b) Approval Disclosures**

**47(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 §§1026.47(b)(ii) and (iii), the creditor must disclose the information required under §§1026.18(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 §1026.47(b)(3)(viii), and the creditor need not disclose a separate example of the payment terms that would result from an increase under §1026.18(f)(1)(iv).*
2. **Limitations on rate adjustments.** *The creditor must disclose how often the rate may change and any limit on the amount that the rate may increase at any one time. The creditor must also disclose any maximum rate over the life of the transaction. If the legal obligation between the parties does provide a maximum rate, the creditor must disclose*

any legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations. However, if the applicable maximum rate is in the form of a legal limit, such as a state's usury cap (rather than a maximum rate specified in the legal obligation between the parties), the creditor must disclose that the maximum rate is determined by applicable law. Compliance with §1026.18(f)(1)(ii) (requiring disclosure of any limitations on the increase of the interest rate) does not necessarily constitute compliance with this section. Specifically, this section requires that if there are no limitations on interest rate increases, the creditor must disclose that fact. By contrast, comment 18(f)(1)(ii)-1 states that if there are no limitations the creditor need not disclose that fact. In addition, under this section, 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.

3. **Rates applicable to the loan.** For a variable-rate loan, the disclosure of the interest rate must reflect the index and margin that will be used to make interest rate adjustments for the loan. The creditor may provide a description of the index and margin or range of margins used to make interest rate adjustments, including a reference to a source, such as a newspaper, where the consumer may look up the index.

#### **47(b)(2) Fees and Default or Late Payment Costs**

1. **Fees and default or late payment costs.** Creditors may follow the commentary for §1026.47(a)(2) in complying with §1026.47(b)(2). Creditors must disclose the late payment fees required to be disclosed under §1026.18(l) as part of the disclosure required under §1026.47(b)(2)(ii). If the creditor includes the itemization of the amount financed under §1026.18(c)(1), any fees disclosed as part of the itemization need not be separately disclosed elsewhere.

#### **47(b)(3) Repayment Terms**

1. **Principal amount.** The principal amount must equal what the face amount of the note would be as of the time of approval, and it must be labeled "Total Loan Amount." See appendix H-18. This amount may be different from the "principal loan amount" used to calculate the amount financed under comment 18(b)(3)-1, because the creditor has the option under that comment of using a "principal loan amount" that is different from the face amount of the note. If the creditor elects to provide an itemization of the amount financed under §1026.18(c)(1) the creditor need not disclose the amount financed 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.
3. **Payment deferral options applicable to the consumer.** Creditors may follow the commentary for §1026.47(a)(3)(ii) in complying with §1026.47(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 make during the time that the student is enrolled. Compliance with §1026.18(g) constitutes compliance with §1026.47(b)(3)(iv).
5. **Bankruptcy limitations.** The creditor may comply with §1026.47(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 §1026.18(h) constitutes compliance with this requirement.*

*ii. The maximum possible rate of interest applicable to the loan or, if the maximum rate cannot be determined, a rate of 25%. If the legal obligation between the parties specifies a maximum rate of interest, the creditor must calculate the total amount for repayment based on that rate. If the legal obligation does not specify a maximum rate but a usury or rate ceiling under state or Federal statutes or regulations applies, the creditor must use that rate. If there is no maximum rate in the legal obligation or under a usury or rate ceiling, the creditor must base the disclosure on a rate of 25% and must disclose that there is no maximum rate and that the total amount for repayment disclosed under §1026.47(b)(3)(vii)(B) is an estimate and will be higher if the applicable interest rate increases.*

*iii. If terms of the legal obligation provide a limitation on the amount that the interest rate may increase at any one time, the creditor may reflect the effect of the interest rate limitation in calculating the total cost example. For example, if the legal obligation provides that the interest rate may not increase by more than three percentage points each year, the creditor may assume that the rate increases by three percentage points each year until it reaches that maximum possible rate, or if a maximum rate cannot be determined, an interest rate of 25%.*

**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 loan, or if the maximum rate cannot be determined, a rate of 25%. The creditor must determine and disclose the maximum rate of interest in accordance with comments 47(b)(3)-6.ii and 47(b)(3)-6.iii. 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 §1026.47(b)(3)(viii) are estimates and will be higher if the applicable interest rate increases.*

#### **47(b)(4) Alternatives to Private Education Loans**

**1. General.** *Creditors may use the guidance provided in the commentary for §1026.47(a)(6) in complying with §1026.47(b)(4).*

#### **47(b)(5) Rights of the Consumer**

**1. Notice of acceptance period.** *The disclosure that the consumer may accept the terms of the loan until the acceptance period under §1026.48(c)(1) has expired must include the specific date on which the acceptance period expires and state that the consumer may accept the terms of the loan until that date. Under §1026.48(c)(1), the date on which the acceptance period expires is based on when the consumer receives the disclosures. If the creditor mails the disclosures, the consumer is considered to have received them three business days after the*

*creditor places the disclosures in the mail See §1026.46(d)(4). If the creditor provides an acceptance period longer than the minimum 30 calendar days, the disclosure must reflect the later date. The disclosure must also specify the method or methods by which the consumer may communicate acceptance.*



## Section 3: Final Disclosures

### 12 C.F.R. § 1026.47(c)

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#### *Final Disclosures - 12 CFR § 1026.47(c)*

##### **Regulatory Discussion**

This section discusses the following four items that, if applicable, will need to be disclosed after the consumer has accepted a private education loan:

1. Interest Rate - There is no commentary on interest rate.
2. Fees and default or late payment costs - There is no commentary on fees and default or late payment costs.
3. Repayment terms - There is no commentary on repayment terms.
4. Cancellation right - Commentary provides additional information on the following:
  - Notice of right to cancel
  - More conspicuous

##### **Regulatory Text**

(c) **Final disclosures.** After the consumer has accepted the loan in accordance with §1026.48(c)(1), the creditor shall disclose to the consumer the information required by §1026.18 and the following information:

- (1) **Interest rate.** Information required to be disclosed under §1026.47(b)(1).
- (2) **Fees and default or late payment costs.** Information required to be disclosed under §1026.47(b)(2).
- (3) **Repayment terms.** Information required to be disclosed under §1026.47(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 §1026.48(d) expires, and
  - (ii) Loan proceeds will not be disbursed until after the cancellation period under §1026.48(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. If the creditor permits 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 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 §1026.46(c)(2)(iii).

## Regulatory Commentary

### **47(c) Final Disclosures**

- 1. Notice of right to cancel.** *The disclosure of the right to cancel must include the specific date on which the three-day cancellation period expires and state that the consumer has a right to cancel by that date. See comments 48(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 permits 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 §1026.46(c)(2)(iii). The statement will be deemed to be made more conspicuous if it is segregated from other disclosures, placed near or at 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 typeface; underlined; or set off with asterisks.*

# **Student Loans - Limitations on Private Education Loans**

# Section 1: Co-Branding Prohibited

## 12 C.F.R. § 1026.48(a)

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### *Co-Branding Prohibited - 12 CFR § 1026.48(a)*

#### **Regulatory Discussion**

This section simply prohibits a creditor from using the name, emblem, mascot, or logo of a covered educational institution that, in any way, implies the covered institution endorses the creditor's loans.

An exception, of sorts, exists if the marketing includes a disclosure (equally prominent and closely proximate to the reference) that the covered educational institution does not endorse the creditor's loans and the creditor is not affiliated with the covered educational institution.

#### **Regulatory Text**

##### **(a) Co-branding prohibited.**

- (1) Except as provided in paragraph (b) of this section, a creditor, other than the covered educational institution itself, 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 is equally prominent and closely proximate to the reference to 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.

#### **Regulatory Commentary**

1. **Co-branding—definition of marketing.** *The prohibition on co-branding in §§1026.48(a) and (b) applies to the marketing of private education loans. The term marketing includes any advertisement under §1026.2(a)(2). In addition, the term marketing includes any document provided by the creditor to the consumer related to a specific transaction, such as an application or solicitation, a promissory note or a contract provided to the consumer. For example, prominently displaying the name of the educational institution at the top of the application form or promissory note without mentioning the name of the creditor, such as by naming the loan product the “University of ABC Loan,” would be prohibited.*

**2. Implied endorsement.** *A suggestion that a private education 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 education loan under §1026.48(a)(1). For example, naming the loan the “University of ABC Loan,” suggests that the loan is offered by the educational institution. However, the use of a creditor’s full 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, the authorized use of a state seal by a state or an institution of higher education in the marketing of state education loan products does not imply endorsement.*

**3. Disclosure.**

*i. A creditor is considered to have complied with §1026.48(a)(2) if the creditor’s marketing contains a clear and conspicuous statement, equally prominent and closely proximate to the reference to the covered educational institution, 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].” The statement is considered to be equally prominent and closely proximate if it is the same type size and is located immediately next to or directly above or below the reference to the educational institution, without any intervening text or graphical displays.*

*ii. A creditor is considered to have complied with §1026.48(b) if the creditor’s marketing contains a clear and conspicuous statement, equally prominent and closely proximate to the reference to the covered educational institution, 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].” The statement is considered to be equally prominent and closely proximate if it is the same type size and is located immediately next to or directly above or below the reference to the educational institution, without any intervening text or graphical displays.*

## Section 2: Endorsed Lender Arrangements

### 12 C.F.R. § 1026.48(b)

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#### *Endorsed Lender Arrangements - 12 CFR § 1026.48(b)*

##### **Regulatory Discussion**

In certain instances, the previous section (a)(1) does not apply; that is:

- In the event a creditor and covered educational institution have entered into an arrangement and such arrangement is not prohibited by other applicable law or regulation; and
- The marketing includes disclosure that the loans are not offered or made by the institution.

##### **Regulatory Text**

(b) **Endorsed lender arrangements.** If a creditor and a covered educational institution have entered into an arrangement where the covered educational institution agrees to endorse the creditor's private education loans, and such arrangement is not prohibited by other applicable law or regulation, paragraph (a)(1) of this section does not apply if the private education loan marketing includes a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the covered educational institution that the creditor's loans are not offered or made by the covered educational institution, but are made by the creditor.

##### **Regulatory Commentary**

*None.*

## Section 3: Consumer's Right to Accept

### 12 C.F.R. § 1026.48(c)

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#### *Consumer's Right to Accept - 12 CFR § 1026.48(c)*

##### **Regulatory Discussion**

This section discusses four actions that may occur with the consumer's acceptance of a private education loan:

1. Timing – the consumer can accept the terms of the loan any time within 30 calendar days following the date of receipt of the disclosures provided under §1026.47(b). Commentary provides additional information on the following:
  - a. 30 day acceptance period
  - b. Method of acceptance
2. Restrictions on changes made to the rate and terms of the loan that were disclosed under §§1026.47(b) and (c). Commentary provides additional information on the following:
  - a. Prohibition on changes to rates and terms
3. Exceptions *not requiring re-disclosure*. Commentary provides additional information on the following:
  - a. Permissible changes to rates and terms - re-disclosure not required
  - b. Permissible changes to rates and terms - school certification
4. Exceptions *requiring re-disclosure*. Commentary provides additional information on the following:
  - a. Permissible changes to rates and terms - re-disclosure required

##### **Regulatory Text**

###### **(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 §1026.47(b).
- (2) Except for changes permitted under paragraphs (c)(3) and (c)(4), the rate and terms of the private education loan that are required to be disclosed under §§1026.47(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) Exceptions not requiring re-disclosure.**

- (i) Notwithstanding paragraph (c)(2) of this section, nothing in this section prevents the creditor from:
  - (A) Withdrawing an offer before consummation of the transaction if the extension of credit would be prohibited by law or if the creditor has reason to believe that the consumer has committed fraud in connection with the loan application;
  - (B) Changing the interest rate based on adjustments to the index used for a loan;
  - (C) Changing the interest rate and terms if the change will unequivocally benefit the consumer; or
  - (D) Reducing the loan amount based upon a certification or other information received from the covered educational institution, or from the consumer, indicating that the student's cost of attendance has decreased or the consumer's other financial aid has increased. A creditor may make corresponding changes to the rate and other terms only to the extent that the consumer would have received the terms if the consumer had applied for the reduced loan amount.
- (ii) If the creditor changes the rate or terms of the loan under this paragraph (c)(3), the creditor need not provide the disclosures required under §1026.47(b) for the new loan terms, nor need the creditor provide an additional 30-day period to the consumer to accept the new terms of the loan under paragraph (c)(1) of this section.

**(4) Exceptions requiring re-disclosure.**

- (i) Notwithstanding paragraphs (c)(2) or (c)(3) of this section, nothing in this section prevents the creditor, at its option, from changing the rate or terms of the loan to accommodate a specific request by the consumer. For example, if the consumer requests a different repayment option, the creditor may, but need not, offer to provide the requested repayment option and make any other changes to the rate and terms.
- (ii) If the creditor changes the rate or terms of the loan under this paragraph (c)(4), the creditor shall provide the disclosures required under §1026.47(b) and shall provide the consumer the 30-day period to accept the loan under paragraph (c)(1) of this section. The creditor shall not make further changes to the rates and terms of the loan, except as specified in paragraphs (c)(3) and (4) of this section. Except as permitted under §1026.48(c)(3), unless the consumer accepts the loan offered by the creditor in response to the consumer's request, the creditor may not withdraw or change the rates or terms of the loan for which the consumer was approved prior to the consumer's request for a change in loan terms.



## Regulatory Commentary

### **48(c) Consumer's Right to Accept**

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 §1026.47(b) to accept the terms of the loan. The creditor may provide the consumer with a longer period of time. If the creditor places the disclosures in the mail, the consumer is considered to have received them three business days after they are mailed under §1026.46(d)(4). For purposes of determining when a consumer receives mailed disclosures, "business day" means all calendar days except Sundays and the legal public holidays referred to in §1026.2(a)(6). See comment 46(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 unless the creditor has provided the approval disclosure electronically in 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.). If acceptance by mail is allowed, the consumer's communication of acceptance is considered timely if placed in the mail within the 30-day period.*
3. **Prohibition on changes to rates and terms.** *The prohibition on changes to the rates and terms of the loan applies to changes that affect those terms that are required to be disclosed under §§1026.47(b) and (c). The creditor is permitted to make changes that do not affect any of the terms disclosed to the consumer under those sections.*
4. **Permissible changes to rates and terms - re-disclosure not required.** *Creditors are not required to consummate a loan where the extension of credit would be prohibited by law or where the creditor has reason to believe that the consumer has committed fraud. A creditor may make changes to the rate based on adjustments to the index used for the loan and changes that will unequivocally benefit the consumer. For example, a creditor is permitted to reduce the interest rate or lower the amount of a fee. A creditor may also reduce the loan amount based on a certification or other information received from a covered educational institution or from the consumer indicating that the student's cost of attendance has decreased or the amount of other financial aid has increased. A creditor may also withdraw the loan approval based on a certification or other information received from a covered educational institution or from the consumer indicating that the student is not enrolled in the institution. For these changes permitted by §1026.48(c)(3), the creditor is not required to provide a new set of approval disclosures required under §1026.47(b) or provide the consumer with a new 30-day acceptance period under §1026.48(c)(1). The creditor must provide the final disclosures under §1026.47(c).*
5. **Permissible changes to rates and terms - school certification.** *If the creditor reduces the loan amount based on information that the student's cost of attendance has decreased or the amount of other financial aid has increased, the creditor may make certain corresponding changes to the rate and terms. The creditor may change the rate or terms to those that the consumer would have received if the consumer had applied for the reduced*

loan amount. For example, assume a consumer applies for, and is approved for, a \$10,000 loan at a 7% interest rate. However, after the consumer receives the approval disclosures, the consumer's school certifies that the consumer's financial need is only \$8,000. The creditor may reduce the loan amount for which the consumer is approved to \$8,000. The creditor may also, for example, increase the interest rate on the loan to 7.125%, but only if the consumer would have received a rate of 7.125% if the consumer had originally applied for an \$8,000 loan.

6. **Permissible changes to rates and terms - re-disclosure required.** A creditor may make changes to the interest rate or terms to accommodate a request from a consumer. For example, assume a consumer applies for a \$10,000 loan and is approved for the \$10,000 amount at an interest rate of 6%. After the creditor has provided the approval disclosures, the consumer's financial need increases, and the consumer requests to a loan amount of \$15,000. In this situation, the creditor is permitted to offer a \$15,000 loan, and to make any other changes such as raising the interest rate to 7%, in response to the consumer's request. The creditor must provide a new set of disclosures under §1026.47(b) and provide the consumer with 30 days to accept the offer under §1026.48(c) for the \$15,000 loan offered in response to the consumer's request. However, because the consumer may choose not to accept the offer for the \$15,000 loan at the higher interest rate, the creditor may not withdraw or change the rate or terms of the offer for the \$10,000 loan, except as permitted under §1026.48(c)(3), unless the consumer accepts the \$15,000 loan.

## Section 4: Consumer's Right to Cancel

### 12 C.F.R. § 1026.48(d)

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#### *Consumer's Right to Cancel - 12 CFR § 1026.48(d)*

##### **Regulatory Discussion**

This section simply gives the consumer right to cancel the loan, without penalty, within a prescribed time period:

- Until midnight of the third business day following receipt of the disclosures
- No funds may be disbursed until this time period has expired.

The commentary provides additional information on: the right to cancel; method of cancellation; and cancellation without penalty.

##### **Regulatory Text**

- (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 §1026.47(c). No funds may be disbursed for a private education loan until the three-business day period has expired.

##### **Regulatory Commentary**

###### ***48(d) Consumer's Right to Cancel***

1. ***Right to cancel.*** *If the creditor mails the disclosures, the disclosures are considered received by the consumer three business days after the disclosures were mailed. For purposes of determining when the consumer receives the disclosures, the term "business day" is defined as all calendar days except Sunday and the legal public holidays referred to in §1026.2(a)(6). See §1026.46(d)(4). The consumer has three business days from the date on which the disclosures are deemed 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. The consumer may cancel any time before midnight Thursday, June 11. 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 unless the creditor provided the final disclosure electronically in 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.). If the creditor allows cancellation by mail, the creditor must specify an address or the name and address of an agent of the creditor to receive notice of cancellation. 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 waiting a reasonable time after expiration of the cancellation period to allow for delivery of a mailed notice. The creditor may also satisfy itself by obtaining a written statement from the consumer, which must be provided to and signed by the consumer only at the end of the three-day period, 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 §1026.48(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, that are charged to all consumers whether or not the consumer cancels the loan.*

# Section 5: Self-Certification Form

## 12 C.F.R. § 1026.48(e)

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### *Self-Certification Form - 12 CFR § 1026.48(e)*

#### **Regulatory Discussion**

This section simply describes the self-certification form required to document that the purpose of the private education loan is intended to be used for postsecondary educational expenses.

#### **Regulatory Text**

- (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, the 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.

#### **Regulatory Commentary**

##### ***48(e) Self-Certification Form***

- General.** *Section 1026.48(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 education 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 §1026.46(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, §1026.48(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. In addition, the*

*creditor may provide the form, and the information the consumer will require to complete the form, directly to the consumer.*

- 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.*

## Section 6: Information – Preferred Lenders

### 12 C.F.R. § 1026.48(f)

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#### *Information – Preferred Lenders - 12 CFR § 1026.48(f)*

##### **Regulatory Discussion**

In the event a creditor has a preferred lender arrangement with a covered educational institution, the information required under §§1026.47(a)(1) through (5) (discussed in section 1), shall be delivered annually (within prescribed timeframes) for each type of private education loan the creditor plans to offer to students attending that institution.

##### **Regulatory Text**

**(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 the information required under §§1026.47(a)(1) through (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 of the current year and ending June 30 of the following year. The creditor shall provide the information annually by the later of the 1st day of April, or within 30 days after entering into, or learning the creditor is a party to, a preferred lender arrangement.

##### **Regulatory Commentary**

#### ***48(f) Provision of Information by Preferred Lenders***

**1. General.** *Section 1026.48(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 §1026.47(a). A creditor is only required to provide the required information if the creditor is aware that it is a party to a preferred lender arrangement. For example, if a creditor is placed on a covered educational institution's preferred lender list without the creditor's knowledge, the creditor is not required to comply with §1026.48(f).*