

## Summary of Key Provisions of the “Higher Education Opportunity Act” Affecting Student Loans<sup>1</sup>

This legislation was signed by the President on August 14, 2008. It is Public Law 110-315. Unless otherwise provided, the legislation takes effect upon its enactment on August 14.

### Amendments to Title I of the Higher Education Act

- The Secretary is directed to continue to improve the usefulness and accessibility of college planning and student financial aid information. Section 110(a).<sup>2</sup>
- The Secretary is directed to work with DOD and the VA to create a website that contains information on federal and state student financial assistance that members of the Armed Services may be eligible for. Section 110(b).
- Nothing in the HEA shall be construed to authorize development of a federal database of personally identifiable information on individuals receiving HEA assistance or attending institutions receiving assistance (e.g. a unit record system). Section 113.
- There is a State commitment to maintain research and development spending for public institutions and student financial aid for private institutions. Section 416.
- The responsibilities of the Performance Based Organization (FSA) are clarified to encompass administration, oversight and ensuring the integrity of the title IV programs. Section 117.
- The 25-person limitation on FSA’s hiring and compensation of technical and professional employees outside of normal civil service provisions is deleted. Section 117.
- FSA is directed to the maximum extent practicable to use procurement systems that streamline operations, improve internal controls and enhance management. FSA is authorized to pay fees equivalent to the fees paid to a contractor by other entities. Section 118.
- Title I contains lender and school “code of conduct” requirements applicable to FFELP and private educational loans. There are related provisions in the amendments to Parts B and G and the new Title X.
  - A school or an institution-affiliated organization that participates in a preferred lender arrangement must disclose on its website and in all informational materials that describe financial aid opportunities:
    - The maximum amount of Federal grant and loan aid available to students in an easy to understand format.
    - A statement that it is required to process the documents required to obtain a loan under part B from any eligible lender.
    - The information required under Title IV, Part G and Title X.
    - Private education loan information must inform the prospective borrower about Title IV loans and assistance, including that such

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<sup>1</sup> This summary of the legislation is limited to key provisions affecting FFELP participants and is not intended to be complete.

<sup>2</sup> All section references are to sections of the Higher Education Opportunity Act.

assistance may be more favorable. Private loan information must be presented in a manner to be distinct from Title IV.

- Use of the school's name, emblem, mascot or logo, or other symbols, in the marketing of private education loans is prohibited. The lender's name must be displayed.
- Lenders must report to the Secretary on reasonable expenses reimbursed to financial aid officials or persons who otherwise have responsibility for financial aid or to any agent of an institution affiliated organization.
- Lenders that participate in one or more preferred lender arrangements are required to annually certify the lender's compliance with the Act. If an audit of a lender is required, the lender's compliance with the requirements of this particular section shall be reported on and attested to annually by the auditor.
- Within 18 months of enactment, the Secretary in coordination with the Federal Reserve shall determine the minimum reporting requirements lenders and schools (and institution affiliated organizations) participating in preferred lender arrangements shall make available regarding education loans, together with a model disclosure form.
- Each lender that has a preferred lender arrangement with respect to education loans shall annually provide information on each type of education loan that the lender plans to offer for the next award year.
- Each school that has a preferred lender arrangement shall prepare and submit to the Secretary an annual report of an explanation why said organization entered into a preferred lender arrangement, including why the terms, conditions, and provisions of each type of education loan provided are beneficial for students at that institution.
- No later than 180 days after the development of the model disclosure form the Secretary shall provide each institution of higher education participating in the FDSL program a completed model disclosure form Direct Loans. Section 119.

#### Amendments to Title IV, Part B of the Higher Education Act

- Effective July 1, 2010, the definition of a student's "estimated financial assistance" is revised to exclude Veterans' education benefits. Section 422(a).
- The authority to make interest subsidized loans is extended by 2 years (from 2012 to 2014 for initial loans). Section 422(b).
- A lender may determine a borrower's eligibility for an in-school deferment based on confirmation of the borrower's half-time enrollment status through the NSLDS, if the confirmation is requested by the school. Section 422(c)(1).
- A lender shall, at the time it grants a deferment on an unsubsidized Stafford loan, provide the borrower with information to understand the impact of interest capitalization. Section 422(c)(1).
- In cases where a loan transfer changes the identity of the party with whom the borrower needs to communicate or send payments, both the transferor and transferee must notify the borrower of the date of the transfer and the dates the

- new and old servicer will begin or stop (as applicable) receiving payments. Section 422(c)(2).
- The prohibited inducement provision applicable to guarantors is revised:
    - To prohibit guarantors from offering stock, prizes, travel, entertainment, tuition to any school or school employee in order to secure loan applications or to any lender, or an agent or employee of the lender, in order to secure the designation of the guarantor as insurer;
    - To prohibit unsolicited mailings of loan applications by electronic means;
    - To prohibit performance of, or payment of another person to perform, any function that a school is required to perform (other than required exit counseling).
    - To clarify that guarantors may provide technical assistance comparable to the kinds of technical assistance provided to schools by the Department. Section 422(e).
  - A lender is required at the time it grants a forbearance to provide information on the impact of capitalization of interest and then to contact the borrower at least every 180 days during the forbearance with information on the amount of principal and interest that has accrued since the last statement, the amount of interest that will be capitalized and the dates of such capitalization, and notice that the borrower can pay interest before it is capitalized and discontinue the forbearance at any time. Section 422(f).
  - Section 207 of the Servicemembers Civil Relief Act applies to FFELP loans. This means that eligible servicemembers may request that the rate on their FFELP loan be reduced to 6%. This provision takes effect upon enactment and presumably applies to existing loans as well as new loans. For FFELP loans made on or after July 1, 2008, the 6% reduced rate shall be used in calculating special allowance payments. Section 411(g).
  - A guaranty agency that receives a default claim is required on at least two occasions to notify the borrower of the options available to remove the loan from default, and the fees and conditions involved. Section 422(i).
  - The Secretary is required to submit an annual report on the program outcomes of those guaranty agencies with voluntary flexible agreements. Section 423.
  - The terms for commencement of repayment of PLUS loans (post-ECASLA) are clarified (i.e. in-school deferments are available to parents and graduate/professional students). The legislation also introduces a deferment for the 6-month period after the student or parent borrower ceases at least half time enrollment (available after each use of the in-school deferment). These provisions are effective for loans first disbursed on or after July 1, 2008. Section 424(a).
  - FFELP borrowers are eligible to consolidate into the Direct Loan Program for the purpose of using the zero interest feature available to certain servicemembers. Section 425(a).
  - A consolidation lender is required to disclose whether consolidation would result in any loss of benefits under FFELP or Direct Loans, the loss of benefits a Perkins borrower would incur by consolidating, the repayment plans available, that by applying a borrower is not obligated to take a consolidation loan and certain other information. Section 425(b).

- An exception to the negative amortization prohibition for consolidation loans is created for loans being paid under an income based repayment plan. Section 425(b).
- The consolidation loan program authority is extended by two years, to September 30, 2014. Section 425(c).
- Upon the sale of a successfully rehabilitated loan, the guaranty agency or other holder shall request that any consumer reporting agency to which it had reported the default remove the record of the default. Section 426.
- A borrower is only eligible for loan rehabilitation once. Section 426.
- Each loan rehabilitation program shall make available financial and economic education materials to borrowers who have rehabilitated a default. Section 426.
- The cohort default rate exceptions to rules that would otherwise require the multiple disbursement of loans where the period of enrollment is a single semester and the delayed disbursement of loans to first year students is raised to 15% (from 10%) beginning October 1, 2011. Section 427.
- There's a post-ECASLA technical correction concerning the unsubsidized Stafford annual loan limits for students pursuing coursework necessary for enrollment in a graduate/professional program and students pursuing a teacher certification, effective for loans first disbursed on or after July 1, 2008. Section 428.
- The current authority for the Secretary to forgive loans to child care providers is replaced with an expanded loan forgiveness program applicable to both FFELP and Direct Loans, subject to appropriations. Under the program, the Secretary is authorized to repay (for FFELP loans) or to cancel (for Direct Loans) the qualified amount of a student loan (other than a parent PLUS loan) for a non-defaulted borrower who is employed full time in an area of national need. The qualified loan amount is \$2000 following each calendar or school year of employment, not to exceed \$10,000 in the aggregate. Double benefits are prohibited. Areas of national need are early childhood educators, nurses, foreign language specialists, librarians, highly qualified teachers serving students with limited English proficiency, low income communities and underrepresented populations, child welfare workers, speech-language pathologists, school counselors, public sector employees, nutrition professionals, medical specialists, mental health professionals, dentists, STEM employees, physical therapists, school administrators, occupational therapists. Section 430.
- The Secretary is authorized to repay FFELP, Perkins and Direct loans (other than parent PLUS loans) for attorneys employed fulltime as civil legal assistance attorneys. Subject to appropriations, the amount of the payment is \$6000 for each calendar of employment, not to exceed \$40,000 in the aggregate. Section 431.
- The information on loans which the Secretary, guaranty agencies and holders must report to consumer reporting agencies is expanded to include an indication that a loan is an education loan and information on the repayment status of the loan. Also see Part G change. Section 432.
- The Secretary may not enter into any settlement of a claim under the Higher Education Act that exceeds \$1 million unless the Secretary has requested a review

- of the proposed settlement by the Attorney General and the Attorney General has responded to the request. Section 435.
- The following items are added to the list of disclosures that lenders must make before disbursement:
    - For unsubsidized Stafford and GradPLUS loans, an explanation that the borrower has the option to pay interest while in school and when such interest, if not paid, will be capitalized;
    - For parent PLUS borrowers, an explanation that (i) the parent may be eligible for a deferment if the parent is enrolled as a student, and (ii) the parent has the option to defer repayment while the student is enrolled and what happens if interest is not paid during such period;
    - A description of the types of repayment plans available;
    - A statement of the circumstances in which a borrower may obtain a forbearance;
    - A description of the options available for forgiveness; and
    - An explanation of the costs the borrower may incur during repayment (e.g. late fees and collection costs). Section 434.
  - The following items are added to the list of disclosures that must be made before repayment:
    - The scheduled date repayment is to begin or a deferment is to end;
    - Information on loan repayment benefits, including any limitation, reasons a borrower may lose eligibility, examples of the impact on length and amount of repayment, and whether and how the borrower can regain eligibility;
    - A description of the repayment plans available and a statement that the borrower can change plans;
    - The amount of interest already paid;
    - The nature of any fees that can be charged during repayment; and
    - A description of the options by which a borrower can avoid or be removed from default.
    - Resources where the borrower can receive advice and assistance. Section 434
  - For loans for which the first payment is due on or after July 1, 2009, a new set of disclosures must be made during repayment with each bill or statement that corresponds to each installment time period, including:
    - The original principal amount of the loan;
    - Current balance;
    - Interest rate;
    - The total amount already paid in interest, fees and against principal;
    - Each fee charged for the most recent installment period;
    - The date the borrower needs to make a payment in order to avoid additional fees and the amount of such payment and fees; and
    - A list of the names of the repayment plans available, a link to the Department's website for descriptions, and a reminder that the borrower can change plans. Section 434.

- For loans for which the first payment is due on or after July 1, 2009, the lender must provide a borrower who has notified the lender that he or she is having difficulty making payments with a description of repayment plans available and how to change plans, a description of how to obtain a forbearance and the expected cost of the forbearance, and a description of the options available to avoid default. Section 434.
- For loans that become delinquent on or after July 1, 2009, a lender shall provide a borrower who is 60 days delinquent with notice of:
  - The date on which the loan will default if no payment is made;
  - The minimum payment the borrower must make to avoid default;
  - Options available to avoid default;
  - Discharge options; and
  - Resources where the borrower can receive advice and assistance. Section 434.
- Each guaranty agency, working with institutions of higher education, shall develop and make available educational programs and materials to provide training in budgeting and financial management. A guaranty agency is not prohibited from providing such program and materials to Direct Loan schools. Section 435.
- The ineligibility threshold for schools based on cohort default rate is raised to 30% beginning in 2012. Section 436(a).
- Schools with high default rates are required to establish a default prevention task force and a plan to improve the school's default rate. The Secretary may direct schools above the threshold rate for two consecutive years to amend the plan as the Secretary determines. Section 436(a).
- Banks and credit unions with assets less than \$1 billion are exempt from the prohibition against having making and holding FFELP loans be their primary consumer credit function. Section 436(a).
- The prohibited inducement provision applicable to lenders is revised:
  - To prohibit lenders from offering schools, or school officials, payments for referrals or finder's fees, stock, prizes, travel, entertainment, tuition, equipment at below market value in order to secure loan applications;
  - To prohibit unsolicited mailings of loan applications by electronic means;
  - To prohibit consulting payments to a financial aid office employee (or other employee who has responsibilities for financial aid);
  - To prohibit compensating an employee to participate on an advisory council (though reasonable expenses may be reimbursed);
  - To prohibit performance of, or payment of another person to perform, any function that a school is required to perform (other than required exit counseling); and
  - To prohibit paying a student to secure applications.
  - To clarify that lenders may provide technical assistance comparable to the kinds of technical assistance provided to schools by the Department. Section 436(c).
- An annual compliance audit for school lenders is required. Section 436(d).

- Effective for cohort default rates calculated by the Secretary for fiscal year 2008, the Secretary shall include defaults occurring through the second year following the year a loan goes into repayment. Also, the Secretary is required to report on the life of the loan default rates for each cohort of loans, by category of institution (which will include defaults on the portion of FFELP consolidation loans used to repay loans in the cohort). Section 436(e).
- The criteria for disability discharge is revised to provide for a discharge when there's a physical or mental impairment that prevents the borrower from engaging in substantial gainful activity, that can be expected to result in death, has lasted for at least 60 months or can be expected to last for 60 months. The Secretary is directed to develop safeguards to prevent fraud. These provisions take effect on July 1, 2010. Further, a borrower who receives a permanent disability rating from the Veterans Administration is considered permanently and totally disabled for the purposes of discharging a loan with no additional documentation required. Section 437.

#### Amendments to Title IV, Part D of the Higher Education Act

- The definition of a "public service job" for the purposes of loan forgiveness in the Direct Loan Program is revised. A borrower is not eligible for double benefits under another HEA provision for public service. Section 451(b).
- No interest is to accrue on a Direct Loan made on or after October 1, 2008 (or on the portion of a Direct Consolidation loan used to repay such a loan) to a military borrower serving in an area of hostilities. The Secretary shall offer a Direct Consolidation loan to a FFELP borrower who chooses to take advantage of this provision. Section 451(d).
- Each Direct Loan school and Direct Loan contractor is required to comply with all the disclosure requirements that apply to a FFELP loan (see above for the changes to the FFELP disclosures). Section 451(e).
- The program authority for the Direct Loan Program is extended three years, to 2014. Section 452.
- After the Secretary of Education has purchased a loan under the authority granted in the ECASLA, guaranty agencies no longer have any obligations, responsibilities or rights in the administration of the purchased loan – including rights to payment. The insurance issued by a guaranty agency shall cease to be in effect should a borrower default on a loan after it is sold to the Department. Section 453.
- The Secretary of Education is required to publish quarterly reports that detail: the number of loans the Secretary has agreed to purchase under the ECASLA, or has purchased; the total amount of outstanding principal and accrued interest of such loans; the number of loans in which the Secretary has purchased a participation interest; and the total amount of outstanding loans. This information will be separated by: lender, institution, and type of loan. Section 453.
- The Secretary is required to provide estimates of purchase program cost in the quarterly report and to be reported in a similar manner as the budget estimates provided in the loan program under part B, except that current and future administrative cost shall also be reported. The report shall include gross and net

outlays that have or will be incurred by the federal government (subsidy and administrative costs too) in purchasing these loans or participation interests in these loans. The report will also include a comparison of the gross and net outlays for each \$100 that was purchased or for which a participation interest was purchased and compare that to the average amount of the gross and net outlays to the federal government for each \$100 of comparable loans made under this part and part B. The report shall also include an annual cost estimate for fiscal years 2008-10, and annual estimate of the costs associated with the programs. Section 453.

- Double benefits under another HEA provision are not permitted for borrowers eligible for teacher loan forgiveness. Section 454.

#### Amendments to Title IV, Part E of the Higher Education Act

- The authority for the Perkins Loan Program is extended, loan limits are increased and public service cancellation provisions are revised. Sections 461-466.

#### Amendments to Title IV, Part G of the Higher Education Act

- The term “consumer reporting agency” for purposes of Title IV is defined to mean national consumer reporting agencies under the Fair Credit Reporting Act. Section 481.
- The content of entrance and exit counseling schools are required to provide is expanded. Sections 488(b) and (g).
- The program participation agreement required of an educational institution for participation in Title IV programs
  - is revised for schools participating in a Title IV loan program to require the school to develop a code of conduct with respect to loans that prohibits conflicts of interest with respect to loans, to publish the code, and to enforce the code by, at a minimum, annually informing staff of the code; for schools that have a preferred lender arrangement, to annual compile a list of recommended lenders that complies with the requirements described below;
  - is revised to require the school to provide, upon the request of a private loan applicant, certification of enrollment, cost of attendance, and the difference between cost of attendance and estimated financial aid, and to disclose the borrower’s ability to choose a lender and to inform students of the impact of a proposed private educational loan on eligibility for other financial assistance. Section 493(a).
- An educational institution’s code of conduct must include a ban on revenue sharing arrangements, a ban on soliciting or accepting gifts, a prohibition on contracting arrangements by an employee in the financial aid office or who has responsibility for loans (though employees who have responsibility for loans but are not employed in financial aid office may perform paid or unpaid service on a lender, guarantor or servicer board of directors as long as the school has a written conflict of interest policy), a prohibition on requesting or accepting private loan funds in exchange for concessions with respect to Title IV loans, and a ban on requesting or accepting call center or financial aid office assistance (certain

- exceptions are provided). The gift ban includes certain exceptions as provided in Title I, with the addition that a gift does not include entrance and exit counseling services (subject to certain limitations). Lenders and guarantors may reimburse financial aid officials for reasonable expenses incurred on an advisory board. Section 492(c).
- The Office of the Inspector General is required to submit to the Congress an annual report on all violations of the gift ban which it has substantiated. Section 493(c).
  - An educational institution's preferred lender list must contain the information required under Title I, disclose why the each lender is on the list, and disclose that students and families do not need to borrow from a lender on the list. There must be at least three unaffiliated FFELP lenders on the list and, if the educational institution recommends private education loans, at least two unaffiliated private education loan lenders. All affiliates must be identified. The educational institution must disclose the criteria used to enter into preferred lender arrangements to ensure that lenders are selected on the basis of the best interests of borrowers, must exercise a duty of care and loyalty in compiling the list and not deny or impede the borrower's choice of lender. Section 493(c).
  - Loans in default are not eligible for income based repayment. Section 494F.

#### Amendments to Title IV, Part I of the Higher Education Act

- Each winning bidder in a parent PLUS loan auction shall enter into an agreement with the Secretary under which the lender agrees to originate loans to each eligible borrower and to accept special allowance payments in the amount of the second lowest winning bid for the applicable state auction. A number of possible sanctions for failure to enter into an agreement or to comply with the agreement are specified.
- Auctioned parent PLUS loans shall be insured by a guaranty agency under part B (i.e. not directly by the Department).
- The Departments of Education and Treasury are directed to conduct an evaluation of the pilot parent PLUS auction. The evaluation shall determine:
  - The extent of savings;
  - Number of lenders participating, and extent to which competition generated;
  - Whether the transition is smooth and efficient for lenders, schools and parents; and
  - The feasibility of using auctions for other FFELP programs.
- A preliminary report is due no later than 9/1/2010, an interim report is due no later than 9/1/2012 and a final report is due no later than 9/1/2013.
- Reports shall include recommendations for improving the auctions and improving the operation and administration of other FFELP programs. Section 499.

#### A new Title X on Private Education Loans

- The Federal Reserve Board is directed to issue final regulations implementing some (but not all) of the changes to the Truth-in-Lending Act contained in Title X not later than 365 days following enactment (most of Title X consists of changes

to the Truth-in-Lending Act). These regulations are to become effective not later than six months after issuance. These changes in Title X become effective on the earlier of the effective date of the regulations or 18 months following enactment. Otherwise, the provisions of Title X become effective upon enactment. Sections 1002 and 1003.

- A private education loan is defined as a loan made by a private education lender expressly for postsecondary educational expenses (but excluding FFELP loans, open end credit and loans secured by real property). Section 1011(a).
- A private educational lender may not directly or indirectly (i) offer or provide a gift to a school (which is defined to include the school's agents, officers or employees) in exchange for any advantage or consideration related to private educational loan activities, or (ii) engage in revenue sharing. Section 1011(a).
- A gift is defined as anything having more than a de minimus monetary value, though there are specified exceptions including (i) standard informational material, (ii) financial literacy counseling and services to the extent not undertaken to secure applications or loan volume for either private education loans or FFELP loans, (iii) philanthropic contributions from private lenders that are unrelated to educational loans, and (iv) state-administered scholarships, grants and other financial aid. Section 1011(a).
- A private educational lender may not use the name, emblem, mascot or logo of a school in the marketing of private educational loans in a way that implies endorsement by the school.
- Any person employed in a financial aid office or who otherwise has responsibilities for private education loans or other financial aid, and who serves on an advisory board established by a private education lender, is prohibited from receiving anything of value from the lender; provided that nothing prohibits reimbursement for reasonable expenses incurred for such service. Section 1011(a).
- Each educational institution participating in a Title IV program shall annually report to the Secretary expenses paid to an employee for advisory board service. Section 1011(c).
- It shall be unlawful to impose a fee for early repayment of a private education loan. Section 1011(a).
- The bill amends the Truth-in-Lending Act to provide for additional disclosures in an application or solicitation for a private educational loan. Section 1021(a).
- The bill amends the Truth-in-Lending Act to provide for additional disclosures at the time of loan approval. Section 1021(a).
- The borrower shall have 30 days to accept a private education loan following receipt of loan approval, and the rates and terms may not change during such period. Section 1021(a).
- Before a lender may consummate a private education loan the lender must receive from the applicant a form (to be developed by the Secretary of Education), signed by the applicant. The form will be provided to the applicant by the school and, among other things, will include information on the applicant's cost of attendance, expected family contribution, and estimated financial assistance, and the difference between such amounts. Section 1021.

- The bill amends the Truth-in-Lending Act to provide for additional disclosures at the time of loan consummation. Section 1021(a).
- The bill amends the Truth-in-Lending Act to provide that no funds may be disbursed until acceptance of the loan by the borrower and the expiration of a 3 business day period following consummation during which the borrower may cancel the loan. Section 1021(a).
- Lenders having a preferred lender arrangement with an educational institution shall annually provide the educational institution with information included on the model form. Section 1021(a).
- The civil liability provision of the Truth-in-Lending Act is expanded to include failure to comply with some of these requirements. In addition, the normal 1-year limitation of action cut-off is revised to allow actions to be brought until one year following the date on which the first regular payment of principal is due. Section 1012.
- The Truth-in-Lending Act applies to all private education loans. Section 1022.
- Low cost education loans shall be taken into account for the purposes of the Community Reinvestment Act. Section 1031.
- The Secretary of the Treasury in coordination with the Secretary of Education and other agencies shall seek to enhance the financial literacy of students. Section 1041.