[MCLARNON:] This is, again, Student Loan Consumerism. I'm Gail McLarnon. I'm with the office of Postsecondary Education at the Department of Education. This is a fairly large presentation. There were 2 of us yesterday; there is one of us today, but that doesn't mean I'm not going to talk as fast as I did yesterday, simply because there's a lot of information to cover. We will spend some time on some points and not a lot of time on others. We will be talking today about the disclosure requirements that are subject to regulation by the Department of Education on which we published final regulations on October 28th. These include Title IV Higher Education Loan Disclosures, certain private education loan disclosures, and some new program participation agreements. We will talk about disclosures and requirements subject to regulation by the Federal Reserve Board, and that includes the Truth-In-Lending Act and some background on that, private education loan disclosures, self-certification forms and their cobranding prohibition. The impetus for all of these new disclosures, of course, was the Higher Education Opportunity Act, HEOA, the "He-Oh-A" as we call it in the department. Just a quick slide on some basic info on the HEOA. Take away from this slide our Dear Colleague Letter which we published back in December 2008, comprehensive Dear Colleague Letter that covers every single provision in the HEOA, including provisions in the Truth-In-Lending Act that were amended by the HEOA, so a very complete picture of what you find in the HEOA in this Dear Colleague Letter.

I want to talk a minute about the statutory framework of the HEOA because it's important in understanding how you should be looking at these new compliance requirements. The HEOA reauthorized the Higher Education Act. That was, in and of itself, a feat because we had not had reauthorization since 1998, so a full 10 years between the authorizations of the Higher Education Act. It also amended, as I just mentioned, the Truth-In-Lending Act, established private education loan disclosures and new private education loan disclosures, and it also amended both the Higher Education Act and the Truth-In-Lending Act to prohibit certain private education lending activities. Why, you may ask. Why was all of this so important? Basically, again considering that 10-year period where we waited and waited for reauthorization, recall 2 or 3 years ago now what we termed at the time to be "student loan scandals." This was while Congress was preparing various versions of its reauthorization and they tended to fold into reauthorization, depending on the version they were working on at the time, anything they thought needed to be addressed. Student loan scandals…what was happening in those days? Andrew Cuomo, the attorney general from New York, was uncovering all manner of alleged inappropriate relationships between financial aid offices and the lenders. The Senate Health Committee did an investigation of the financial aid process, found cause for concern, if you will, and Congress decided that in light of these revelations that we needed to have some statutory changes to address what they deemed to be inappropriate relationships.

So, what have we got here? Why did Congress implement or impose, if you will, all of these new disclosure requirements? Basically, we're looking at a renewed focus on the borrower. Focus is not on the institution or the lender. The focus of the student aid lending process should be on the borrower, and these disclosures return the focus and the emphasis squarely to the borrower. We want to have an informed borrower. Private

education loans carry different terms and conditions than do federal education loans. Private education loans are not, in many people's opinions, as beneficial; they don't have those same good terms and conditions federal loans have. We want to make sure borrowers know what they're getting. We want to make sure borrowers don't borrow too much, especially with a private loan, especially if they're eligible for a federal loan. They should know that up front. So, a lot of these disclosures are aimed at giving borrowers the kinds of information they need to make an informed decision, the best decision for them. Transparency in the process/high ethical standards: There was a lot of talk, if you will, about the exchange of gifts for a place on a preferred lender list – trips, junkets, things like that. That again, that's not where the focus should be and never should have been, and so we see an increased level of standards, codes of conduct, preferred lender list disclosures, all manner of prohibitions and disclosures now in place, both through statute and regulations, to ensure that that process is transparent in that there are higher ethical standards in the student lending process. And finally, that the selection of a preferred lender is based on the best interest of the borrower, not the best interest of the school, not the best interest of the lender, but on the borrower; that the terms and conditions that, if you are endorsing a lender, the terms and conditions are the basis for that endorsement, not something that the lender is providing to you, the institution, as a benefit of the relationship, that it is about the borrower. Okay, that's my "preachy" slide.

The Regulatory Framework: It does to some degree mirror the statutory framework. As you know, the Department of Education regulated the disclosure requirements, school-based disclosure requirements, and some on federal loans, and for the first time on private loans. This was a new area of responsibility for the Department. We have a new section devoted entirely to these disclosures; it is 34 CFR-601. The Federal Reserve Board also regulated disclosures on private education loans. They also define what we call some "key" terms in the regulations that the Department has no control over. We are required by statute to use some of the Federal Reserve Board's terms in our own regulations. Again, this regulatory framework, it sort of sets up a joint relationship between the Department of Education and the Federal Reserve Board. There are activities that we do together as agencies. One of those activities is to determine the minimum disclosures for loans offered through a FFEL preferred lender arrangement and develop a model form. We are in the process of actually doing that right now, that designation of minimum disclosures and a form has a statutory end, effective date of February 14, 2008. We also had joint responsibility to develop a private loan self-certification form. This is a form we have actually completed the development of a draft of that form that is with the Office of Management and Budget for what we call "clearance." You will have, if you are interested, the opportunity to comment on that form. You can go to a web site, it is http://edics.ed.gov and you will click on, there will be a link to the form if you're interested in commenting.

A quick snapshot of the negotiated rule-making process that implemented the HEOA from the Department's standpoint. We, as you know, any time a change is made to Title IV, we are required to implement those changes to develop proposed regulations through the negotiated rule-making process, which we did. We reached consensus. It

was, at times, a very contentious negotiation. I was happy and proud to be the federal negotiator on that team, and also happy to report that we were able to reach consensus, and by that I mean no one on the committee dissented from what we were proposing for rules implementing the HEOA. We published our final regulations on October 28.

That being said, let's get started and talk about some of the "key" terms that we use in these new loan disclosures that are contained in 601. The "key" terms, or the definition section, is 601.2, and I'm going to talk first about a covered institution. A covered institution is an institution of higher education as that term is defined in the Higher Education Act. It's also an institution that receives any federal funding at all. One dollar of federal funding will qualify you as a covered institution, and you will be subject to most of the disclosures in 601. This is also a first for the Department generally, well, not generally. We only regulate institutions that participate in Title IV, not that there's many institutions that don't, but should you be one of those that don't participate and you accept $1 of federal funding, you are subject to these disclosure requirements in 601. An institution-affiliated organization is pretty straightforward. Lender was a definition that was handled by another negotiating team. We had 5 teams implementing the HEA--the HEOA, excuse me. All of these acronyms after awhile…So, they were the team that actually negotiated this term, although they did not make any changes from the statutory language. As you can see, lenders, eligible FFEL lender, the Department or private education lender. The term private education lender is one of these terms that is defined by the Federal Reserve Board, and we had no authority to change that definition. I'm going to go into much more detail on the definition of a private education lender as we get to the Federal Reserve Board section of the presentation. Private education loan, another term defined in the Truth-In-Lending Act and a term that the Department did not have any authority to change. This is a non-Title IV loan provided by a private education lender expressly for postsecondary educational expenses. It does not include extensions of credit under an open-ended consumer credit plan, credit cards, or secured by real estate.

I am going to mention briefly, and I'll mention this again at the end of the presentation, the exceptions the Federal Reserve Board carved out to private education loans. It does not include extensions of credit the term of which is 90 days or less. Basically, these are short-term emergency loans made by an institution. I neglected to tell you these exceptions are private education loans made by an institution of higher education. You are generally considered to be a private education lender under the Truth-In-Lending Act, and as a lender, your loans are considered to be private education loans and you are subject generally to the Truth-In-Lending Act disclosures. The Fed, the Federal Reserve Board, did carve out a couple of exceptions on loans made by institutions of higher education, and these are the 2 exceptions – the only 2 exceptions: Extensions of credit of 90 days or less. Again, generally short-term emergency loans; even if you charge interest on these short-term emergency loans, if they are 90 days or less they are not considered to be a private education loan. Also, billing plans. As long as you don't charge any interest on the credit balance and the term of the billing plan, this is the billing plan for your student, is less than 1 year, even if it is payable in more than 4

payments, and that “more than 4 payments” will become relevant as we go through the presentation.

Preferred Lender Arrangement: This is perhaps where we spent the majority, or a great deal of our time in negotiating rule-making, discussing the definition of preferred lender arrangement. This is the statutory definition that you see on the slide: It’s an arrangement or agreement between the lender and covered institution in which the lender provides educational loans to the students or the families of students at your school and you, the covered institution, recommend, promote or endorse the educational products of the lender. Statute excludes arrangements involving the Direct Loan Program. The statute also excludes loans originated through the PLUS auction pilot program, even though that program never got off the ground. The Department, as a result of our negotiations, was persuaded to not include certain private education loans issued to a student attending a covered institution. These again are loans made by you, the private education lender, the institution, to students attending your school if you make those loans and they are funded by your own funds. If they are funded by donor-directed contributions, if they are made under Title VII or VIII of the Public Service Act, or if they are made under a state-funded financial aid program if the terms and conditions include loan forgiveness. This is how our final regulations look. One of the comments that we received on those final regulations is, “What does the Department consider to be an institution’s own funds?” We had a long chat about this in negotiations. Institution's own funds became the subject of various scenarios run by the Department, and I will give you one, the prime example: I, the institution want to borrow money from a lender, and then I want to take the money I borrowed from the lender, lend it to my student, and then I want to take the loan that results and sell it back to the lender. Do you consider that to be a loan made with my own funds? I see heads shaking. No, we don’t. We clarify this in the preamble. Basically, we had a very lengthy preamble discussion about what we consider an institution’s own funds. We do allow you to use borrowed money or investment income, lines of credit, things of that nature, but only as long as you do not sell or collateralize that private education loan for at least 2 years from the date that it was fully disbursed. So, again, you can borrow money. We had to recognize that as an institution, you have operational concerns. You don’t get all of your institutional funds from revenues and fees. Many schools borrow money. Many schools use a line of credit, but in order, again, it’s all about protecting the borrower here. That’s fine; you can borrow the money, but don’t turn around and sell that loan. Hold onto that loan if you want, but at least for 2 years after it is fully disbursed if you want to be considered to be making that loan using your own funds.

Okay, let’s talk about some of these minimum disclosures that are part of the regulations. Minimum disclosures and these are for entities participating in a Preferred Lender Arrangement (PLA). In consultation with the Federal Reserve Board, again this is a joint activity between the Department and the Federal Reserve Board; we have to develop minimum disclosures for you to provide to your borrowers for each loan that you offer through a preferred lender arrangement. I am going to be making references to the Truth-In-Lending Act, §128(e)(1), as well as TILA §128(e)(11) throughout this presentation. That is basically a list of disclosures required under the Truth-In-Lending

Act. So, the Department is requiring schools in certain cases, to make the disclosures that are required under a completely different piece of legislation, the Truth-In-Lending Act, and I won't go into the long list of these disclosures. Think interest rate. Think terms and conditions of the loan, repayment, default fees, things like that; a long, long list of disclosures. And then we have to turn around and develop a model disclosure form that contains these minimum disclosures so that you can use that form to provide your borrowers with these disclosures. It is a way that the Federal Reserve has done this also with their required private education loan disclosures. It's a way for you to make the disclosures, but at the same time relieve you of some of that burden. Put all of these disclosures in a form; that form is in the works. Covered institutions or institution's affiliates participating in a preferred lender arrangement have to disclose on their web site, informational materials, anything that describes the education loans, the maximum amount of aid available under Title IV, and information on this model disclosure form. You're going to hear me refer to these minimum disclosures again and again, so think back to the side we just went over. Once we determine what those minimum disclosures are and they will be, at the very least, that list that is in the Truth-In-Lending Act – think that list in the Truth-In-Lending Act on a form, hopefully. You have to provide a statement that the entity will process a federal loan for any eligible lender if the entity participates in FFEL. For private education loans, you have to provide the disclosures required by the Truth-In-Lending Act. Here again, the reference to TILA §128(e)(11) pursuant to each loan offered under a preferred lending arrangement, and disclosures required under the Truth-In-Lending Act under (e)(1) for affiliated organizations. What are informational materials? These are publications, mailings, electronic messages, and things of that nature, things that you distribute to perspective or current students and that discuss financial aid opportunities at your school. Disclosures must be provided annually for each type of education loan offered pursuant to an arrangement so that your borrower can see that before they borrow. Again, I want to come back to the goal here. Again, this is all about providing the borrower with information he or she needs before they make the loan, hopefully, so that they can make the best decision for their situation. If you are participating in a preferred lender arrangement, you're going to have to have a preferred lender list. This list has to include no less than 3 unaffiliated FFEL lenders and clearly and fully disclose for each lender, this lender list on disclosures. I want to stop here and talk for a minute about the unaffiliated lenders.

It is the Department of Education's responsibility to determine lender affiliations under the HEOA. It is our responsibility to provide you, the institution, with that list so that you, and when you're compiling your preferred lender list, can be assured that these are indeed, unaffiliated lenders. We are in the process of doing that, and that's a bit of a challenge for us, quite frankly. It's not as easy as it would seem, so I just wanted to let you know that the responsibility to provide those affiliations is the Department of Education's responsibility.

So, here we go with the disclosures about your preferred lender arrangement. Your list has to disclose the minimum disclosures, again as determined by the Department, the reason you're including lenders on your list, especially with respect to the terms and conditions of those loans; are they the best for the borrower; that students don't have to

borrow from any lender on your list, and the method and criteria you use to choose your lenders. This is very much tracking what the Department already has in regulation around the preferred lender list. You recall, we negotiated this, actually at the very same time due to a lot of scandals going on, so it was something that we got in the regulations, something that Congress, I think maybe took a look at and decided they wanted to put it in the statute. You have to compile your preferred lender list without prejudice, again for the sole benefit of the borrower attending your institution. You must disclose that you cannot deny or otherwise impede the choice of lender or unnecessarily delay certification. If you recommend, promote or endorse private education loans, you also have to have a list and that has to have at least 2 unaffiliated lenders on that list. Again, you know, again, not impeding the borrower's choice of lender. The choice of lender is a statutory entitlement to a borrower. One of the things that we were seeing, as well as Congress was, schools steering borrowers to loans, rather to lenders on your list. Again, you want to make sure that the borrower is aware that they can borrow from whatever lender they choose.

Disclosures on private education loans. This is regardless of whether you have a preferred lender arrangement with private education lenders. If you give the borrower information about private education loans, you have to make these disclosures. These again are disclosures under the Truth-In-Lending Act, TILA §128(e)(1), that list of disclosures. Inform borrowers of their eligibility for Title IV and that the terms and conditions may be more favorable. This is very important because what we find many times is that borrowers aren't even aware that they're eligible for a Title IV loan and may go out and borrow a private loan, and that's what we're trying to avoid. Give the borrower enough information about private loans, or rather federal loans, and hopefully they will go to us first or you first. Private education loan disclosures have to be presented in a manner that is distinct from Title IV. Upon the request of an enrolled student who is seeking a private education loan, you the institution, have to provide to the applicant in a written or electronic format, the self-certification form that I just mentioned, the private loan self-certification form that is in clearance at the Office of Management and Budget, and that will be out in February, in time for you to meet your statutory deadline, so you have to provide that form to the borrower and the information required to complete the form to the degree that you have that information. That information is the cost of attendance, estimate of financial assistance, and the difference between the two. Covered institutions that do participate in a preferred lender arrangement with a lender on private education loans cannot agree to the use of a lender's name, emblem, mascot, logo, or anything that would imply that the private education lender is the institution. The goal here is to make sure that the borrower knows that it is the private education, lender making the loan, not the school. You have to ensure that the lender's name is displayed on all information documentation related to the loan. There is one exception to this requirement, and that is for credit unions that have the name of the institution as part of their name. And I am not sure how prevalent this is, but Congress did carve this exception out in one of the reports they wrote in support of HEOA, so that is the only exception here; credit unions that share the institutional name, you are not under any obligation to make sure that they don't use your name.

Okay, Annual Reports. If you're in a preferred lender arrangement you have to submit to the Department an annual report that includes for every lender in that arrangement, again the disclosures provided on your preferred lender list. You recall all of the things that you need to put on the preferred lender list disclosures, the details about why you're participating in an arrangement with each lender, and the terms and conditions of the loans on your list and that they are beneficial to borrowers. You have to make sure of this before it is available to the public and current and perspective students. We aren't descriptive in the regulations about when you make this available; we left that up to the institution in terms of when this report is made available. Also, it should be a snapshot. If you're presenting this report and a lender falls off your list or you add a lender, you're under no obligation to update the report. This is a snapshot that you provide to the Department on an annual basis.

Code of Conduct Requirements. Here again, Congress is concerned about the relationships between lenders and financial aid offices. Our requirement, that if you are a participant in a preferred lender arrangement, you develop a code that prohibits conflicts of interest between your agents and lenders; people who make decisions on the student loans that you offer, people in your financial aid office, people, again who have some say over what you're doing in terms of your lending process. You have to put this code prominently on your web site, and you have to make sure everybody...the appropriate people who are handling loans in your student aid office are aware of it and that they abide by it. Institution affiliates have to do or have to have a code, as well. They have to comply with the code of the institution with which they're affiliated, and also, if they have a web site, put the code on its web site, make sure that their personnel know that the code is there and that they have to abide by it, as well.

Let's talk a little bit about what's in the code of conduct. We can go through this fairly quickly. The code of conduct is fairly lengthy, so we will go through these prohibitions fairly quickly. The first is prohibition against revenue sharing. This is when a lender provides or issues FFEL loans or private loans to the students at your school, the school recommends the lender, and the lender gives you something in return, either pays you a fee or gives some other material benefit to you. Even if it's gifts, and again, we refer back to the days of gift-giving between lenders and institutions. I hate to keep harping on this, but the whole gift issue was a serious issue; junkets, dinners, meals, golf trips, whatever. So, here we have the prohibition against employees of the financial aid office receiving gifts from a lender, GA, or loan servicer. We do have a definition of "gift" – gratuity, favor discount, etc., etc. This includes transportation services, transportation, lodging, meals, reimbursement, and things of that nature. We also have definitions of what a gift is not, and that includes standard materials, activities or programs on issues related to a loan, food and refreshments for training sessions, as long as they are sessions to improve service of your professionals at your school. It does not include favorable terms and conditions to the borrower, obviously. It does not include exit counseling and entrance counseling as long as you are in control of the counseling. What do we mean by "you're in control." That means that you have approved the content of the counseling, that you actually have oversight of the people

who are providing the counseling. The point here is to not give the lender an opportunity to market their products if and when they are providing counseling on your behalf. Gifts do not include philanthropic contributions from a lender/servicer or GA not related or made in exchange for any advantage related to federal private loans. They don't include state education grants, scholarships, and things of that nature. Your code has to prohibit contracting arrangements between institutions, agents, and lenders. We had an interesting situation on our negotiating rule-making team. When we were negotiating these actual preferred lender list requirements. One of the negotiators on our team was a contractor for a lender, and she had to recuse herself at that time. It had never happened before, and it has never happened since then. It was an interesting experience. Here are a few exceptions to the contracting prohibition: An agent not employed in your financial aid office and not responsible for FFEL or private education loans may perform service on a board. An agent not employed in your financial aid office, but who has responsibility, can perform paid or unpaid service as long as you have a policy by which they recuse themselves from decisions regarding FFEL and private loans, an officer, contractor of a lender and GA that serves on your board of directors, same thing; okay, as long as there is a written conflict of interest policy by which they may recuse themselves. Code of conduct must prohibit directing borrowers to a particular lender or delaying loan certifications. You can't direct first-time borrowers to certain lenders, and you can't refuse to certify or delay loans if a borrower selects a lender that's not on your list. Just a minute here to reassure you that we're aware that borrower may choose a lender with whom you don't do business. You may have established relationships and compatible systems, and an unfamiliar lender sort of throws a monkey wrench in that. If there is a delay of a certification or some delay, we're not going to hold you in noncompliance of the code as long as you make your best effort to make sure that lender and that process moves smoothly. It has to prohibit offers of funds for private loans, including opportunity loans in exchange for a promise or specified number of FFEL loans or a spot on the preferred lender arrangement. That's an opportunity loan. These are private education loans and involve the payment directly or indirectly by the institution of points, premiums, additional interest or financial support to the lender for the purpose of the lender extending credit to the student. I want to stop here for a minute, as well. Once we recognize opportunity loans, we want to tell you that recourse loans are the same thing as an opportunity loan and they also would be prohibited under your code of conduct if they are made for the promise of a specified number of FFEL loans, specified loan volume, or preferred lender arrangement. A recourse loan is when a school provides funds to a lender to offset the risk of a high-risk borrower's default. So, a lender makes loans to a high-risk borrower at your school, you pay the lender to make those loans and mitigates their risk by making a payment to the lender. Recourse loans, opportunity loans; we think those are the same things. As long as they aren't done for an exchange of certain loan volume they're okay, but otherwise, no. Covered institution's code has to prohibit assistance with call centers or financial aid staffing. A couple of exceptions to this – professional development training, counseling, financial literacy, things of this nature, and staffing on a short-term nonrecurring basis. Code of conduct must prohibit an employee of a financial aid office who has responsibilities for FFEL or private loans and who services on an advisory board from receiving anything of value, except that they can be reimbursed for reasonable

expenses. Lest you think the Direct Loan Program schools were left out, they were not. They also have to meet disclosures, albeit because they are only after one type of federal loan, those disclosures are far fewer. If the school participates in the Direct Loan Program they have to disclose the information on model disclosure form that we developed. The minimum disclosures that will be on that model disclosure form to their current and perspective students. Obviously, these disclosures would cover direct loans. If a direct loan school provides information about a private education loan to the perspective borrower, it also has to provide information on the model disclosure form.

New Program Participation Agreement Requirements accompany these new disclosure requirements. Institutions have to develop, publish, administer and enforce a code of conduct with respect to loans made under Title IV. This is a condition of participation in the Title IV loan programs. So, not only do covered institutions who participate in a preferred lender arrangement are not only they subject to the code, so are institutions that participate in the Title IV loan program. That means just about everybody is subject to this code of conduct. It is not limited to your participation in a preferred lender arrangement if you are wanting to participate in the Title IV loan programs. For any year you are in a preferred lender arrangement you have to compile, maintain, and make available to students, a list of lenders for loans made, insured, or guaranteed under loan programs. And, we talked about this briefly. Upon request of an enrolled or admitted student, you have to provide that student with the private education loan certification form and the information needed to complete it. These conditions are for participation in Title IV. So, these are the things that if you want to do our loan programs especially, you have to comply with.

Administrative Capability: To begin and continue to participate in Title IV programs you have to report to the Department annually any “reasonable” reimbursements; remember we just mentioned those. Reimbursements were okay as long as they were reasonable, that you have been compensated for by lenders or groups or lenders. Reasonable, what does that mean? It means reasonable in accordance with State or Federal reimbursement policies.

A little bit more about the Self-Certification Form for Private Education Loans**:** This is a joint responsibility, as I mentioned earlier, between the Department and the Federal Reserve Board. This is a form that the private education lender must obtain from the borrower of the private education loan before the private education lender can make that loan. So, the private education loan now is predicated on that lender obtaining this self-certification form. The covered institution at which the applicant is enrolled or admitted must provide the form to the student. Again, this enrolled or admitted is important. You only have to provide the form for those at your school who are enrolled or admitted. We were worried at the negotiating table that anybody could come into your office and say “I need a private education loan certification form.” So, only to folks who are enrolled or admitted at your institution.

[AUDIENCE:] [Inaudible]

[MCLARNON:] A question related to the private…sure.

[AUDIENCE:] [Inaudible]

[MCLARNON:] I'll repeat this. Okay. The question here or comment is that Michelle was under the impression that it was the lender who had to provide the form to the borrower of the private education loan. That, unfortunately, is a mistaken impression. The HEOA specifically requires the institution of higher education to provide the self-certification form to a student at that school upon that student's request, and to buff it up, they made it a condition of participation. So, not only are you required to give the form under statutory provisions under our program participation agreement section of the statute, you're required to give it to the student in order to participate. I'm going to talk a little bit more about that. There is some flexibility offered to private education lenders by the Federal Reserve, so it's not going to be as burdensome as you might think.

Okay, so what does this form contain? Basically, we're looking at disclosures that the applicant may qualify for Federal, State or institutional aid, and is encouraged to discuss this with the financial aid office or the appropriate office. Again, the focus here is to make sure the borrower is aware of their eligibility for Title IV. They're taking out a private education loan. If they're coming to get a form, chances are very good they've done the process to get a private education loan; another opportunity for the borrower to know that they may be eligible for Title IV, that the private education loan may affect their eligibility for Federal, State or institutional aid. And finally, the information the applicant is required to provide. This is the cost of attendance at your institution, estimated financial assistance, and the difference between those 2 numbers. Here, you see, I just told you – COE, EFA, and the difference. This is again to give the borrower an idea of what the appropriate size of a private education might be for this particular borrower. The form has to include also a place for the applicant's signature. Now, that ends my part of the presentation. We are going to move forward in to the Federal Reserve part of the presentation, but before I do, we have a question here.

[AUDIENCE:] So, what are you supposed to do with the self-certification?

[MCLARNON:] The question is what are you, the institution, supposed to do with a self-certification form? Your responsibility ends once you have given the form to the borrower, and you will be able to give the form to the lender, as well. I'll get into that going forward, but you don't have any responsibility to track the borrower going forward of your submission on the form from the borrower. Your responsibility is to give the form to the borrower upon the borrower's request, to fill out the form with the COA and EFA to the degree that you have that information, and that's it.

[AUDIENCE:] [Inaudible]

[MCLARNON:] Individualized student? Yes, the individualized student's information, does it have to be on paper? No. You can provide it on paper, or you can put it on your

web site for the student to download. The student can download it and bring it in to you and say, “Here, financial aid office; I need you to give me the information. I need to fill out this form,” but it does not have to be on paper. You can post it or provide it electronically.

Okay, I’m going to move through the presentation. It’s already 4:00. Yesterday we were here until after 5:00, so I will take a random question now and then, but let’s get through the material if we can.

I’m going to do Brent’s part of the presentation, and I’m going to start with some background on the final rule published by the Federal Reserve. Again, the Federal Reserve Board’s final rule implements the Higher Education Opportunity Act. The Higher Education Opportunity Act, as I mentioned earlier, amended the Truth-In-Lending Act, as it did the Higher Education Act. The board published their final regulations on August 14, and here they are. They are very interesting regulations. Your compliance with them, if they are applicable to you as an institution, is February 14, 2010, and this will be placed as Special Rules for Student Credit Extensions in Regulation Z. The purpose of the Truth-In-Lending Act has always been to provide the consumers with meaningful disclosures around consumer credit. The Truth-In-Lending Act is implemented by the Federal Reserve Board in what they call their “Regulation Z.” They name all of their regulations after letters, and otherwise known as “Code of Federal Regulations 226.” For instance, their Reg. Q has to do with interest rates. Reg. Z has to do with consumer credit, so all of their regulations are named after letters. They have official staff commentary which gives examples and additional guidance. I personally, as a writer of regulations, found this extremely helpful. They also have a preamble much like the Department does, otherwise their regulations very much mirror the way that we regulate, but the staff guidance is the reason for the next bullet. Anybody who follows the regulations and their staff guidance and commentary are insulated from liability.

Okay, before HEOA, the TILA required closed-end credit disclosures be made on any of those closed-end credit instruments before consummation. This was a one-size-fits-all kind of form. It covered every kind of extension of consumer credit out there, student loans included. You might wonder, “Oh gosh, I never made any TILA loan disclosures on my student loans.” That’s because the disclosures that are included in the Higher Education Act already comply with TILA, so you are actually in compliance with TILA based on the disclosures that you make already, prior to HEOA, under the Higher Education Act. Here’s an overview of their Final Rule. We’ve got new disclosures and timing requirements. We have disclosures at 3 separate points during the application or the process by which a private loan is made. There are disclosures required upon application, after the loan is approved. There is a 30-day acceptance window after approval whereby the borrower can make up their mind whether they want the loan or not, and during that time the lender cannot change the terms and conditions of the loan. And finally, disclosures at consummation, also a consummation of a 3-day period they call a right of recision. They can cancel, the borrower can decide to cancel that loan 3 days after having received the approval. During those 3 days, the private education

lender cannot disburse any funds. We have requirements that the lender again, just sort of touched on this, the private education lender obtained a self-certification form before consummation of the loan, model disclosures developed through consumer testing. The Federal Reserve Board also developed model forms that contain all of these disclosures that I just mentioned; all of the disclosures required and all of these points in the process, they have developed a model form that has these disclosures on them for you to use; very thoughtful of them. They do consumer testing focus groups and things like that. The forms themselves are included in the Federal Reserve Board's final regulations. There is a prohibition on cobranding and marketing included in their regulations, and finally, requirements for the provision of information by creditors to educational institutions in a preferred lender arrangement. Let's talk a little about who is covered and what's covered by the Federal Reserve Board's regulations. These disclosure requirements are, certain creditors or lenders, are subject to these disclosure requirements. A creditor is actually a private education lender. So, when you see the word "creditor" in the Federal Reserve Board's regulations, that is actually their reference to a private education lender. Instead of using the definition as it is written in the statute, they decided to use an existing regulation in Reg. Z. The definition of creditor is longstanding in Regulation Z. They simply believe that the term encompassed the definition of a private education loan. So, private education lenders are creditors under the Federal Reserve Board's final regulations. Creditors include institutions of higher education, long have included institutions of higher education. One of the interesting things to me was during negotiations, schools didn't seem to realize that they were considered a creditor under TILA, and they have, in fact, been considered creditors for many, many years. So, it includes institutional educations that meet the definition of creditor, however, there are types of credit provided by you, the educational institution that are not covered by private education loan rules; we'll talk about those. A creditor means a person. What is a creditor then? A creditor is a person who regularly extends consumer credit. What does regularly extend mean? It means that you have extended any type of consumer credit more than 25 times in the preceding calendar year, so you are a creditor if you have regularly extended 25 times in the preceding year, consumer credit that is subject to a finance charge, that means it is subject to an interest rate, and is payable by written agreement in more than 4 installments, rather, OR is payable in a written agreement in more than 4 installments and is the person to whom the obligation is initially payable, okay? So, you are a creditor, again if you regularly extend credit that is subject to a finance charge or is payable by written agreement in more than four (4) installments, and is payable to the person and is a person to whom the obligation is payable.

Okay, Loans. Private education loans are also covered by these Final Regulations. Covered loans made whole or in part for postsecondary educational expenses; well, we know what that means – that's tuition and fees, books and supplies, miscellaneous expenses, room and board, things of that nature at covered institutions. For the Feds purposes, that means institutions of higher education. It also included unaccredited institutions. They threw a wider net around the definition of "institution of higher education." Education loans that are excluded: Federal Student Loans. They are not covered under these requirements. Open-ended credit; think credit cards, things of that

nature, real estate-secured loans, not covered. The Fed also carved out two types of credit extensions made by you the institution of higher education which are not considered to be private education loans, and here they are: They are the term, and I think that I mentioned this earlier in the first part of the presentation, the term of the credit extension is 90 days or less. Again, these are emergency bridge loans. You can charge interest, you can charge a fee, but as long as that extension of credit is 90 days or less, it is not considered a private education loan, not subject to the TILA requirements. And also, institutional billing plans. As long as there is not an interest rate applied to the credit balance and the term of that billing plan is a year or less, even if the credit is payable in more than four (4) installments. The bad news is the exclusions, while not subject to the very burdensome requirements of the TILA disclosures, may nonetheless be subject to some TILA disclosure requirements. These are generally the disclosure requirements; remember the one-size-fits-all that I mentioned? Those are retained in the Federal Reserve's Regs. They have a new subpart that applies solely to private education loans. These extensions and credit may nonetheless be required, may require you to make some disclosures under different parts of Regulation Z, and that is subpart C, "closed-end credit disclosures" § 226.17 and 18.

Let's talk about the disclosures that have to be made at each point in the process. First, I want to make some general comments about these disclosures. They have to be clear and conspicuous, they have to be grouped together, and they can't be segregated from everything else. They have to be grouped together, clear, conspicuous, and they can't contain information that's not directly related to the disclosures. So it is to focus the borrower in, not include any extraneous information, be very clear and be very conspicuous. Also, if you're providing these disclosures as part of the approval or the final acceptance disclosures on a private education loan and you're providing them electronically, which is your option, you have to obtain consumer consent under the E-Sign provisions. You have to obtain consent from the consumer to communicate with that borrower electronically, okay?

Okay, let's go over some of the specifics about the various points of disclosure. "Application" – This is at the application or solicitation. They would not necessarily require the actual application in a solicitation, so at application or solicitation you need somebody to be on the phone with the borrower and be soliciting loan. Vice versa, the borrower could call the private education lender, so these are at application or the solicitation. It generally contains information about rates, fees, and other terms that apply. These, again, are the laundry list of disclosures that I keep mentioning under 128 (e) and 128 (1) of the TILA, interest rates, fees, default fees, late cost fees, repayment plans, borrower eligibility, rights of the consumer, self-certification form information; a long list of disclosures associated with each point in the process. Also provide information about federal student loan alternatives. Another point where we are providing borrowers with information about federal student aid – that they may be eligible, that the terms and conditions may be better, and that they should talk to their school regarding their eligibility for federal aid. Approval disclosures – This is provided after approval on or with any notice for approval to the consumer. This is a disclosure moving through the process now; we're passed application and solicitation to approval,

the borrower has been approved, you have to provide borrower-specific transaction-type disclosures to that borrower, including the information currently required by the TILA. Again, during the acceptance period, I mentioned this earlier, there is a 30-day period that the consumer has to accept the loan, and the consumer can accept any time during the 30-day period. The consumer can accept on the day that you tell them they're approved, but they have that complete 30-day period in order to mull it over, if you will. So, again, they can accept earlier, the day of, but again 30 days is the rule. The disclosure has to state the exact date when that acceptance period expires so that they know how long they have to think about it; you can't give them forever, obviously. There are limitations on changes to the terms and conditions during this period. There are some permissible changes where you do not have to redisclose, make redisclosures under the TILA. You can change the rate if it is based on an index. If it is a variable rate, which we see in federal loans, as well. The lender in this case, doesn't have control over the interest rate – it can go up and down. So, if that's the case, then that's a permissible change. Interest rate changes are fine as long as they are based on an index. Unequivocally beneficial changes – This means that the private education lender offers the borrower a better deal; they lower the interest rate or they provide something by way of repayment or lower fees. No redisclosure required here. Permissible changes moving through this: No redisclosure. If the offer is withdrawn. If the private education lender finds out that the loan is…has reason to believe there's fraud involved or the loan is prohibited by law for some reason, withdraw the offer. No redisclosure is necessary. More permissible changes – Reducing the loan amount based on a school certification or information from the consumer indicating decrease in financial need. If they are going through you to certify the loan and they receive information that indicates to them, the private education lender, that need is not as great as might have been communicated from the borrower and they lower the loan amount, for instance – that's okay. No redisclosure is required. Again, this is a reflection of the concern. Over-borrowing of student loans; this is the reason this is here. Other changes permitted only to the extent that the consumer would have received them if the consumer had applied for the reduced loan amount. Permissible changes with redisclosure required. This is a change that you can make, but you have to redisclose. Changes made to accommodate a request by the consumer: Consumer decides, "I don't want to borrow $10,000; I want to borrow $15,000." There may me some changes to the terms and conditions of that loan as a result of the higher amount being borrowed. If that's the case, you have to redisclose, but you have to make the TILA disclosures again. Again, new disclosure and 30-day acceptance period required for new terms. Again, new disclosure holding 30-day acceptance period, if that's the case. An interesting provision here: The creditor has to leave the original offer on the table in case the borrower decides, "Well, I thought I wanted $15,000, but the terms you are offering me for the extra $5,000; hey, I don't like those terms, so I'm going to revert back to my original offer." The creditor has to leave that offer on the table. Final disclosures, very similar to the approval disclosures, these are made after the borrower accepts the loan. The borrower says, "Okay, I'm ready to go. I accept your terms" and then they have a 3-day period where there is this right of recision. Final disclosures also include TILA disclosures. Again, here's the right to cancel. Borrower has 3 business days from receipt of the final disclosure form to change their mind and to cancel and say "I don't want it," and you cannot disburse the

loan as a private education lender, you cannot disburse the loan until the end of that 3-day period. You cannot waive it, neither can the borrower. That 3-day period is statutorily set and cannot be waived.

Let's return to the Self-Certification form. This is a form for private loans. The lenders have to obtain the signed, completed form before consummation of the loan. Here are the slides that I mentioned earlier: The Federal Reserve gives lenders some flexibility here. The lender can receive the form from the consumer, or the lender can receive the form from the school. So, the lender can come to you, the school, and say "I've got a borrower of a private education loan. I would like the form and the information I need to fill out the form." You would provide that information. You, in all cases – institutions in all cases, provide the information needed to complete that form. You do not have to give that form to the lender. In our regulations, you are required only to give the form to the borrower and our regulations – we regulate the institutions of higher education. The Federal reserve Board regulates private education lenders. You may give it to the lender – it's your option. And we made that clear in the preamble of our Final Regulation. So, a lender may receive the form from a consumer, who would have received it from you or the school, and the lender may provide the form to the consumer and the lender may fill in the data. This is most likely to occur with lenders who have a relationship with schools already; schools are already certifying loans for private education lenders. If the Federal Reserve was cognizant of this, the comments that they received, and allow this to be a scenario, that was okay with them. Again, though, the institution, and we have confirmed this with the Federal Reserve, must be the entity that provides the information; I'm almost done. Cobranding. This is a similar provision to the Department about the use of an institution's name. The Federal Reserve did carve-out some exceptions. This is for the private education lender. Remember, our regulations provide rules for institutions of higher education, and you must ensure that the creditor's name does not appear on the application unless that is a credit union. These guys regulate the creditor. They have carved out a couple of exceptions. In your case, you're following the Department of Education Regulations. And lastly, this is the slide on the provision of information from creditors who are in a lending arrangement with covered institutions; have to provide them with a variety of information on each loan that the borrowers receive under that arrangement. Again, mandatory compliance on the Federal Reserve Board Regulations as of February 14th. That's it.

I know you've got questions. Let's start here. We've got a microphone here in the middle of the room. This session is being recorded, I believe, so I would appreciate it if you have a question, if you would line up behind the microphone and ask me a question. To the degree that I can answer your TILA-related questions, I will. I have to be totally honest. If there's a question I can't answer, I'm just going to have to refer you. Okay, first question.

[AUDIENCE:] Hi. Lenders have indicated to me that they do plan to give the form to the borrowers on our behalf. Are we required to just provide the information on cost of attendance and estimated financial assistance, or are we actually required to give a form to the lender to provide to the student?

[MCLARNON:] They can download the form. You don't actually have to provide it to them personally. If they come to you, and I doubt this will happen, come to your office and say "Can I have the form," yes, but most people take advantage of the electronic conveniences that we have available to us. I assume the lender would download it, but the lender would still have to get the information from you. And I want to emphasize that point. The information is the only information that the school has, and so, for that reason, I want to again emphasize, the school provides the information on the form, regardless of who you give it to. Okay, question?

[AUDIENCE:] But you said that the form had to be specific to the student, so you can't just put generic cost of attendance data on a form on the web and have them download it.

[MCLARNON:] No, I'm not saying that. The lender would take the form from the web.

[AUDIENCE:] So, you have some capability of doing that on the web. You can do it otherwise, it's a paper form.

[MCLARNON:] Yes, it is borrower-specific. It's useless unless it is borrower-specific.

[AUDIENCE:] Okay, my question is – You said that all of the schools are considered lenders. Why? If you don't count federal loans, and you don't count our payment plans if we don't charge interest, why are we considered a lender?

[MCLARNON:] Well, you are considered a creditor under Federal Reserve Board regulations if you make an extension of consumer credit more than 25 times in a year, and unless everything that you do meets the 2 exceptions that the Federal Reserve carved out. Is that the case?

[AUDIENCE:] If we don't give any institutional loans and we don't charge interest on our payment plans…

[MCLARNON:] Then you wouldn't be a creditor. I mean, I find that very few institutions, most of the institutions do make institutional loans, and do make extensions in credit. Review carefully, the definition of creditor to make sure that you're falling into that category, and back up…Let's back up. A creditor regularly extends credit. Remember, if you extended any type of consumer credit within the preceding years, at least 25 times, any kind of consumer credit that is subject to a finance charge (interest rate), or is payable by a written agreement in more than 4 installments, and you, the entity, are the entity to whom the obligation is payable. If your institution doesn't fall into that category, then you're not a creditor.

[AUDIENCE:] Okay, but if you have a payment plan that takes more than 4 payments, then you're a creditor.

[MCLARNON:] These are the instruments that are not subject to TILA requirements. They are nonetheless, extensions of credit and they are subject to TILA, rather, Reg. Z requirements in subpart C. Again, you need to think carefully about the definition of creditor. Any kind of consumer credit. The Fed carved out 2 exceptions for private education loan disclosure purposes. These two extensions of credit: The short-term emergency loan and the billing plan where there is not interest applied to the balance and the term is one year or less are still extensions of credit and they are still subject to Federal Reserve Truth-In-Lending Act disclosure requirements, albeit not the involved disclosures we went through. Am I making sense? Am I helping you?

[AUDIENCE:] Not a bit.

[MCLARNON:] I'm sorry. Let's go back…Oh dear. What have I done? Okay, next question.

[AUDIENCE:] Okay, I just want to clarify that if you do not have a preferred lender list that you can refer students to prior lenders that your particular students have used in the past?

[MCLARNON:] Yes, and I appreciate your bringing that up. We had a lot of discussion about that in negotiated rule-making, and there was consternation about the definition of a preferred lender arrangement. If you don't want to be considered to be participating in a preferred lending arrangement, but nonetheless want to be of some assistance to your borrowers, what you can do, and this is the current guidance out there in the Dear Colleague Letter, you can provide your borrowers a list of lenders who have made loans to your students for the past 3 to 5 years, a comprehensive list of all lenders. Don't leave anybody off, otherwise we assume, otherwise we believe you're making a preference, you're endorsing, and you provide that borrower with the disclosure that he or she does not have to borrow from a lender on that list and that you don't recommend or endorse anybody on that list. Thank you for bringing that up.

[AUDIENCE:] Okay. And, could you go into a little bit more of if a school has a loan repayment assistance program. Your slide said something about if it is state-funded, but what if it's operational or institutional-funded loan repayment plan for your graduates.

[MCLARNON:] A loan repayment plan? I'm not sure what you're referring to.

[AUDIENCE:] Well, like if a student goes in to nonprofit work, we give them – say $5,000 after a year, if they're still in…

[MCLARNON:] Oh, like something that has loan cancellation attached to it?

[AUDIENCE:] Exactly, yes.

[MCLARNON:] Right. Any sort of a plan like that, whether it be state or institutional, and this was Federal Reserve carved out, as well. We adopted that in to our final regulations

as a result of what the Federal Reserve did. If that is the type of plan, that there's a loan forgiveness component to it, then it is not subject to TILA disclosure requirements.

[AUDIENCE:] Okay. What if the emergency loan happens to go over 90 days; the student some how or another doesn't accept it, then it reverts?

[MCLARNON:] If it reverts it becomes subject to TILA requirements. Next question?

[AUDIENCE:] Just a little more clarification if you don't want to have a preferred lender list, so you compile a list of 3 to 5 years, are you allowed to remove lenders who are no longer in business?

[MCLARNON:] Yes, that's a good question. The question is can you remove lenders from your comprehensive list of lenders who have made loans for the past 3 to 5 years if they are no longer making loans. They may have gone out of business, they may not make student loans anymore – Yes, you may. You also, I should add, and this is not included in the "Dear Colleague," you can also provide a comparison of the terms and conditions that the lenders who have made loans to the students at your school provide. We agreed to this at the negotiated rule-making table - to make this comprehensive list a little more meaningful for borrowers, because again, this is all about providing borrowers the kind of information they need to make an informed decision. Yes.

[AUDIENCE:] At our institution we offer a loan forgiveness program for law students, and you mentioned earlier that something like that is not subject to the TILA disclosures? That's correct? And my second question is, regarding providing information for the self-certification; at our institution we put the award letters on-line. So, would it be enough for us to instruct them to look at their award on-line to see the cost of attendance and all of that other?

[MCLARNON:] No. The school provides the information on the self-certification form to the degree that you have that information, yes. This is again; this is about the private loan. We are focusing in on the borrowers taking out a private loan. If you have an award letter out there, that's fine, but the private loan can't be consummated until the private lender receives this, and you're the only entity that has borrower-specific information that can fill out this form. Not the borrower, the borrower doesn't go to my award letter and fill it out. You, as the institution, fill out the form.

[AUDIENCE:] So, we are essentially certifying the loan twice then really?

[MCLARNON:] Correct, yes. And by the way, an institution that makes loans to its own students must also provide the self-certification form to the borrower. You as an institutional private education lender are not excluded from this requirement; I know. More questions?

[AUDIENCE:] Does this also apply to a bar loan?

[MCLARNON:] What loan? A bar loan. What's a bar loan?

[AUDIENCE:] A bar loan is a loan a law student takes out. It's a private loan they take out when they are studying for the bar. They are not in school.

[MCLARNON:] Is this a loan that's associated with the costs and expenses incurred at the law school?

[AUDIENCE:] Yes.

[MCLARNON:] No, I'm glad that you brought that up.

[AUDIENCE:] They can get it during law school, but it's for…

[MCLARNON:] You can give them a loan, but they are not subject to the TILA disclosure requirements. They are subject to the subpart C general disclosure requirements associated with TILA, but these aren't the expenses incurred while the student was attending for educational expenses?

[AUDIENCE:] Correct.

[MCLARNON:] Thank you for asking. Next?

[AUDIENCE:] If we direct students to organize lists, like simple tuition or overture student loan marketplace, does that constitute a preferred lender arrangement?

[MCLARNON:] As long as these groups, the third party entities, are providing a fairly comprehensive list, they are not recommending anybody on that list. They are not being paid by a lender to be put on that list. The lender is not paying the third party entity any fee for volume-generated or loans generated as a result of being paid, or rather, being included on that list – Yes. Think about the list provided by some of these entities. I have already had discussions with several of these folks. They are given a star rating; that's an endorsement in our minds, and we are having discussions, so I have to be totally honest with you, we are having discussions, but right now, if you're referring a borrower to a third party list that has a star rating then that's an endorsement in our mind, and they can include these stars, but no comparisons of the terms and conditions. One more? Yes, we have time for more.

[AUDIENCE:] What's the star rating?

[MCLARNON:] The star rating says 5 stars is the best lender, 2 stars is the not-so-great lender, things of that nature.

[AUDIENCE:] Where do you get that?

[MCLARNON:] I'm not going to…I can't name names; I'm sorry. There are third party providers of lists of lenders. These are third parties that provide, usually on a web site, and I don't want to go into any specifics about discussions or who is doing what. All I can tell you is that the list of lenders has to be neutral. It cannot be an endorsement of a particular lender over another.

[AUDIENCE:] If I can just seek one more bit of clarification on self-certification?

[MCLARNON:] Sure.

[AUDIENCE:] Many times we do not know that our students are interested in a private loan until we go online to certify a loan with the lender and at that point when we are providing all of this information, the student's actual cost of attendance, their other aid, the amount that they have left, if we have the self-certification form on our website, are we at that point required to send a form to that student?

[MCLARNON:] No. Here is how it is going to play out. Before that private education lender can make the loan, they have to obtain the self-certification form from the borrower. The lender has to have the form. The lender can come to you and get it, and a lot of the lenders have relationships with schools already where the school certifies the loan. They will ask you for the form because they cannot make the loan unless they have the form. Or the borrower will ask you for the form. One of those two parties will ask you for the form.

[AUDIENCE:] So if we provide it directly to the lender, one of the things is that we had to have a place on there where the student could sign it, is that something that we have to provide to the student and get a signature before we can provide to the lender, or can we just provide that information to the lender?

[MCLARNON:] No, you do not need to get the student's signature. You need to provide the form and the information on the form to the degree you possess that information, that is the sum total of your responsibility. Any more questions? You have been very patient. I had to do a crash course in Federal Reserve Board regulations, so I appreciate your attention and thanks for coming. Have a great night.