

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1026**

**Truth in Lending (Regulation Z); Private Education Loans**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Advisory opinion.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is issuing this advisory opinion to clarify that loan products that refinance or consolidate a consumer's pre-existing Federal, or Federal and private, education loans meet the definition of "private education loan" in the Truth in Lending Act and Regulation Z and are subject to the disclosure and consumer protection requirements in subpart F of Regulation Z. This advisory opinion is an interpretive rule under the Administrative Procedure Act.

**DATES:** This Advisory Opinion is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Shelley Thompson, Counsel, Office of Regulations, at 202-435-7700 or <https://reginquiries.consumerfinance.gov/>. If you require this document in an alternative electronic format, please contact [CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov).

**SUPPLEMENTARY INFORMATION:** The Bureau is issuing this advisory opinion through the procedures for its Advisory Opinions Policy.<sup>1</sup> Refer to those procedures for more

---

<sup>1</sup> Bureau of Consumer Fin. Prot., *Advisory Opinions Policy* (Nov. 2020), [https://files.consumerfinance.gov/f/documents/cfpb\\_advisory-opinion\\_policy\\_2020-11.pdf](https://files.consumerfinance.gov/f/documents/cfpb_advisory-opinion_policy_2020-11.pdf).

information.

## I. Advisory Opinion

### A. Background

#### 1. Growth of the postsecondary education loan market

The postsecondary education loan market has swelled in the past decade and education debt has become an increasingly large share of total household debt, from 5 percent in 2008 to 11 percent in 2020.<sup>2</sup> Education loans issued or guaranteed by the Federal government, through title IV of the Higher Education Act of 1965,<sup>3</sup> which are administered by the U.S. Department of Education,<sup>4</sup> currently comprise over 92 percent of the education loan market.<sup>5</sup> Between 2006 and 2012, the share of non-Federal education loans issued by private lenders ranged from

---

<sup>2</sup> According to data compiled by the Federal Reserve Bank of New York (FRBNY), the nation's education indebtedness now ranks as the second largest source of consumer credit at the end of June 2020. Fed. Reserve Bank of New York Consumer Credit Panel/Equifax, *Total Debt Balance and its Composition*, <https://www.newyorkfed.org/microeconomics/data.html> (last visited Oct. 30, 2020).

<sup>3</sup> Pub. L. 89-392, tit. IV, 79 stat. 1219, 1232 (1965).

<sup>4</sup> The Direct Loan program was created by the Higher Education Amendments of 1992, Pub. L. 102-325, 106 Stat. 448 (1992), as a pilot program and expanded by the Student Loan Reform Act of 1993, Pub. L. 103-66, tit. IV, subtit. A, 107 stat. 341 (1993). It was authorized by Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, 107 stat. 312 (1993) and amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152, 124 stat. 1029 (2010). Under this program, loan capital is provided by the Federal government while loan origination and servicing is handled by postsecondary institutions and private sector companies under contract with the Department of Education, see *STUDENT LOANS OVERVIEW: Fiscal Year 2011 Budget Request*, <https://www2.ed.gov/about/overview/budget/budget11/justifications/t-loansoverview.pdf> (last visited Oct. 30, 2020). title IV loan programs include, among others, Direct Federal Loans and federally guaranteed loans issued by private education creditors under the Federal Family Education Loan Program (FFELPP). No new FFELPP loans have been issued since mid-2010. U.S. Dep't of Educ., *Dear Colleague Letter GEN-10-05* (Apr. 2, 2010), <https://ifap.ed.gov/sites/default/files/attachments/dpcletters/GEN1005.pdf> (Dear Colleague Letter).

<sup>5</sup> According to the Federal Reserve Board (Board), outstanding student loans totaled \$1.7 trillion as of September 30, 2020. *Consumer Credit G.19* (Nov. 6, 2020), <https://www.federalreserve.gov/releases/g19/current/>. According to the Department of Education, the outstanding portfolio of title IV education loans totaled \$1.566 trillion as of September 30, 2020, see <https://www2.ed.gov/about/reports/annual/2020report/fsa-report.pdf> (*Federal Student Aid Annual Report 2020*, p. 7) (last visited Oct. 30, 2020).

9 percent to 13 percent, and since then, the share of total outstanding education loans held by private lenders has been about 8 percent.<sup>6</sup>

Prior to 2010, education loans were primarily issued through the Federal Family Education Loan Program (FFELP).<sup>7</sup> Under the FFELP, banks and other private creditors issued education loans that were subsidized and guaranteed by the Federal government.<sup>8</sup> The Health Care and Education Reconciliation Act of 2010 prohibited the origination of new FFELP loans after June 30, 2010, at which point Direct Loans issued under the William D. Ford Direct Loan Program became the predominant type of Federal education loan.<sup>9</sup> Direct Loans are issued and owned by the U.S. Department of Education.<sup>10</sup> FFELP loans, Direct Loans, and other title IV loans are administered by the Department of Education and include borrower protections such as

---

<sup>6</sup> Private loan market share data are based on analysis of data provided by the Federal Reserve Board and the Department of Education. Fed. Reserve Sys., *G.19 Consumer Credit Series*, <http://www.federalreserve.gov/releases/g19/current/default.htm> (last visited Nov. 2, 2020); Portfolio Summary, *supra* note 5; U.S. Dep’t of Educ., *STUDENT LOANS OVERVIEW: Fiscal Year 2010 Budget Request*, at T-14, <https://www2.ed.gov/about/overview/budget/budget10/justifications/t-loansoverview.pdf> (last visited Nov. 12, 2020) (STUDENT LOANS OVERVIEW 2010). The G.19 series does not provide data prior to 2006. The market share data are based on the outstanding dollar balance of education loans as of the end of the Federal fiscal year (September 30). The Federal loan data include Subsidized Stafford, Unsubsidized Stafford, Parent PLUS, Graduate PLUS, and Consolidation loans issued under the Federal Family Education Loan and Direct Loan programs, as well as Federal Perkins Loans. The private loan market share includes private consolidation and refinancing loans, but there are no published data for private lenders issuing education loans that show the mix of in-school loans versus consolidation and refinancing loans.

<sup>7</sup> The Department of Education publishes annual origination volume for both FFELP and Direct Loans. See generally *Title IV Program Volume Reports, Loan Volume*, <https://studentaid.gov/data-center/student/title-iv> (last visited Oct. 30, 2020). See also College Bd., *Trends in Student Aid—Resource Library*, <https://research.collegeboard.org/trends/student-aid/resource-library> (last visited Oct. 30, 2020).

<sup>8</sup> Cong. Research Serv., *Federal Student Loans Made Under the Federal Family Education Loan Program and the William D. Ford Federal Direct Loan Program: Terms and Conditions for Borrowers*, at 1 (June 22, 2015), [https://www.everycrsreport.com/files/20150622\\_R40122\\_706aeb5efb5ea2ec87fbd5818f32a43987639676.pdf](https://www.everycrsreport.com/files/20150622_R40122_706aeb5efb5ea2ec87fbd5818f32a43987639676.pdf) (Federal Student Loans).

<sup>9</sup> Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152, tit. II, section 2201, 124 stat. 1029, 1074 (2010); Dear Colleague Letter, *supra* note 3.

<sup>10</sup> See Fed. Student Aid, U.S. Dep’t of Educ., <https://studentaid.gov/sites/default/files/fsawg/datacenter/library/PortfolioSummary.xls> (last visited Oct. 30, 2020) (Portfolio Summary).

postponement options, income-driven repayment options, in-school deferrals, no prepayment penalties, and loan forgiveness.<sup>11</sup>

Most FFELP and Direct loans have fixed interest rates that are determined by Federal statute.<sup>12</sup> Between 2006 and 2013, these statutes set fixed interest rates for most loans issued to undergraduate students at 6.8 percent; Federal PLUS loan<sup>13</sup> rates were set at 8.5 percent for FFELP loans and 7.9 percent for Direct Loans at 7.9 percent.<sup>14</sup> In contrast, by late 2011, private education creditors were offering interest rates of 2.98 percent to 3.55 percent for borrowers with prime or super prime credit scores.<sup>15</sup> This interest rate differential created incentives for prime

---

<sup>11</sup> Cong. Research Serv., *Federal Student Loans Made Under the Federal Family Education Loan Program and the William D. Ford Federal Direct Loan Program: Terms and Conditions for Borrowers* (June 7, 2013), <https://fas.org/sgp/crs/misc/R40122.pdf>.

<sup>12</sup> Currently, the interest rate for Direct Loans is determined annually for all loans first disbursed during any 12-month period beginning on July 1 and ending on June 30, and is equal to the high yield of the 10-year Treasury notes auctioned at the final auction held before June 1 of that 12-month period, plus a statutory add-on percentage that varies depending on the loan type and, for Direct Unsubsidized Loans, whether the loan was made to an undergraduate or graduate student. Loans first disbursed during different 12-month periods may have different interest rates, but the rate determined for any loan is a fixed interest rate for the life of the loan. For each loan type, the calculated interest rate may not exceed a maximum rate specified in the Higher Education Act of 1965. The maximum interest rates are 8.25 percent for Direct Subsidized Loans and Direct Unsubsidized Loans made to undergraduate students, 9.50 percent for Direct Unsubsidized Loans made to graduate and professional students, and 10.50 percent for Direct PLUS Loans made to parents of dependent undergraduate students or to graduate or professional students. U.S. Dep’t of Educ., *Federal Student Aid; Interest Rates for Direct Loans First Disbursed Between July 1, 2020 and June 30, 2021* (May 15, 2020), <https://ifap.ed.gov/electronic-announcements/051520InterRatesforDLFirstDisbBetw070120and063021> (last visited Oct. 30, 2020). Most Stafford and PLUS loans issued prior to July 2006 carry variable rates, *Annual Notice of Interest Rates for Variable-Rate Federal Student Loans Made Under the William D. Ford Federal Direct Loan Program* (Jan. 15, 2020), <https://www.federalregister.gov/documents/2020/01/15/2020-00572/annual-notice-of-interest-rates-for-variable-rate-federal-student-loans-made-under-the-william-d>. Interest rate formulas for FFELP loans can be found here: <https://ifap.ed.gov/ffel-variable-interest-rates/061220FFELVarIntRatePeriodJuly1June30>.

<sup>13</sup> Direct PLUS Loans are Federal loans that graduate or professional students and parents of dependent undergraduate students use to help pay for education expenses. See <https://studentaid.gov/help-center/answers/topic/glossary/article/direct-plus-loan> (last visited Nov. 12, 2020).

<sup>14</sup> U.S. Dep’t of Educ., *Federal Student Aid; Understand how interest is calculated and what fees are associated with your Federal student loan*, <https://studentaid.gov/understand-aid/types/loans/interest-rates> (last visited Oct. 30, 2020).

<sup>15</sup> “[R]ates for PSL borrowers vary widely with their credit scores. In terms of recent (December 31, 2011) offerings, the Sample Lenders reported low-end variable rates of 2.98% to 3.55%.” Bureau of Consumer Fin. Prot., *Private Student Loans*, at 12 (Aug. 29, 2012), [https://files.consumerfinance.gov/f/201207\\_cfpb\\_Reports\\_Private-Student-Loans.pdf](https://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf).

and super prime borrowers with high fixed-rate Federal education loans to consolidate or refinance their loans into a lower rate education loan product.

## 2. *Consolidation of education loans*

The market for consolidation or refinance of Federal education loans by private lenders largely did not exist prior to 2006, because there was little to no demand for such a private product. Between 2001 and 2006, nearly all consolidations of Federal education loans were through the Federal government's loan consolidation program.<sup>16</sup> The interest rate on Federal consolidation loans is generally the weighted average of interest rates on the loans consolidated.<sup>17</sup> Because most Federal loans issued prior to July 1, 2006 charged variable rates, Federal consolidation loans allowed borrowers to take advantage of a downturn in interest rates to lock in fixed interest rates as low as 2.875 percent.<sup>18</sup> Federal consolidation loans also generally offer the same deferment, forbearance, and discharge benefits available on the underlying Federal loans and a wide range of repayment options, including income-driven

---

<sup>16</sup> “A favorable interest rate environment and highly competitive marketing resulted in a dramatic surge in FFEL Consolidation Loan volume from FY 2001 to FY 2006 where volume grew from \$9.4 billion to a record high \$72 billion. Direct Loan Consolidation Loan volume also increased significantly during this period, growing from \$7.8 billion in FY 2001 to over \$19 billion in FY 2006. While the Direct Loan increase was not as large as FFEL, borrowers in both programs sought to lock in lower interest rates through consolidation, prior to the annual variable in-repayment interest rate jumping from 5.3 percent to 7.14 percent as of July 1, 2006. However, FFEL Consolidation Loan volume decreased substantially in FY 2007 and FY 2008 reflecting a saturated marketplace, an end to ‘two-step consolidation,’ and the statutory change to fixed borrower interest rates. Consolidation volume in Direct Loans also decreased substantially in FY 2007, but has been increasing since then....” STUDENT LOANS OVERVIEW 2010, *supra* note 6, at T-14.

<sup>17</sup> Specifically, the interest rate is the weighted average of interest rates on the loans consolidated, rounded to the nearest higher one-eighth of 1 percent (and capped at 8.25 percent for the 2001–2006 time period discussed), Federal Student Loans, *supra* note 8.

<sup>18</sup> STUDENT LOANS OVERVIEW 2010, *supra* note 6, at T-14. See also Federal Student Loans, *supra* note 7. See also <http://www.nelnetinvestors.com/news/press-release-details/2004/Families-Benefit-From-Record-Low-Student-Loan-Interest-Rates/default.aspx>.

repayment.<sup>19</sup> The few private creditors who offered education consolidation and refinance loans during this period typically offered variable-rate loans and did not offer the wide range of Federal loan repayment, deferment, forbearance, and discharge options.<sup>20</sup> In addition, education consolidation and refinance loans offered by private creditors typically did not allow borrowers to consolidate or refinance any Federal loans.<sup>21</sup> However, in 2006, legislative changes took effect which changed interest rates for Federal loans from variable rates to fixed rates, initially ranging from 6.8 percent to 8.5 percent, depending on the type of loan and whether the loan was issued under the Direct or FFELP program.<sup>22</sup> Thus, for loans originated after June 2006, a

---

<sup>19</sup> Repayment plans, deferment and forbearance options, and loan discharge benefits are detailed in the promissory notes for Direct Loans. These can be found at: <https://ifap.ed.gov/sites/default/files/attachments/2020-04/SubUnsubMPN.pdf>, <https://ifap.ed.gov/sites/default/files/attachments/2020-04/PLUSMPN.pdf>, and <https://studentaid.gov/app-static/images/ApplicationAndPromissoryNote.pdf> (all last visited Nov. 18, 2020).

<sup>20</sup> Natalie Cox, *Pricing, Selection, and Welfare in the Student Loan Market: Evidence from Borrower Repayment Decisions*, at 3 n.5 (Jan. 12, 2017). See also Sallie Mae SLM CORPORATION ANNUAL REPORT 2005, at 5 (2005), <https://www.salliemae.com/assets/investors/shareholder/annual-reports/SallieMaeFY2005AnnualReport1.pdf>; The 2007 UNITED STATES SECURITIES AND EXCHANGE COMMISSION Form-10K, at 5, 13, <https://www.salliemae.com/assets/investors/shareholder/annual-reports/200610K.pdf> (last visited Nov. 2, 2020); see The 2007 UNITED STATES SECURITIES AND EXCHANGE COMMISSION Form-10K, at 28, [https://www.salliemae.com/assets/investors/shareholder/annual-reports/BOW76911BOW024\\_BITS\\_N\\_1548.pdf](https://www.salliemae.com/assets/investors/shareholder/annual-reports/BOW76911BOW024_BITS_N_1548.pdf) (last visited Nov. 2, 2020). Bureau of Consumer Fin. Prot., *Private Student Loans* at 12-13 (Aug. 29, 2013), [https://files.consumerfinance.gov/f/201207\\_cfpb\\_Reports\\_Private-Student-Loans.pdf](https://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf).

<sup>21</sup> Forbes, *Tips On Consolidating Student Loans* (Apr. 15, 2009), <https://www.forbes.com/2009/04/15/student-loans-moneybuilder-personal-finance-consolidate.html?sh=ddb7c2714e50>.

<sup>22</sup> Legislation enacted in 2002 authorized the transition of Federal student loan interest rates from formula-based, variable rates to fixed rates, beginning in July 2006 and set a fixed rate of 6.8 percent for Stafford loans and 7.9 percent for PLUS loans. The Student Loan Interest Rates Act of 2002, Pub. L. 107-139, 116 stat. 9 (2002). 2005 legislation increased the PLUS loan rate to 8.5 percent for PLUS loans issued under the Federal Family Education Loan Program. The Deficit Reduction Act of 2005, Pub. L. 109-171, 120 stat. 159 (2006). In 2007, Congress gradually lowered the fixed rates for subsidized Stafford loans issued to undergraduate students, starting with 6 percent for the 2007-2008 financial aid award year, and dropping to 3.4 percent for the 2011-12 award year. The rate for subsidized loans for graduate students and all unsubsidized Stafford loans (for undergraduate and graduate students) remained at 6.8 percent. The College Cost Reduction and Access Act of 2007, Pub. L. 110-84, 121 stat. 784, 790-791 (2007).

borrower no longer had the ability to take advantage of a drop in market interest rates to lock in a low interest rate through a Federal loan consolidation.<sup>23</sup>

This change from variable to fixed rates on Federal loans led to an opening in the market for private lenders to offer a product that would allow borrowers with high fixed interest rate Federal loans to consolidate or refinance those loans and obtain a lower interest rate. In 2012, a few private creditors began offering private loan consolidation and refinance products that allowed borrowers who had graduated and were in repayment to consolidate or refinance their Federal education loans to reduce their interest rate.<sup>24</sup> These products are marketed to consumers with both high interest rate Federal education loans (which were generally issued or extended beginning in 2006) and prime or super prime<sup>25</sup> credit scores.<sup>26</sup> The market for private consolidation and refinancing of Federal education loans has continued to expand in recent

---

<sup>23</sup> Direct Loan consolidations still remain popular for the benefits they provide such as access to income-driven repayment and loan forgiveness programs. (FFELP consolidation origination authority ceased as of July 1, 2010.) The Department of Education provides a guide to loan terms, including repayment plans, deferment and forbearance options, loan discharge and forgiveness programs, *see* Fed. Student Aid, U.S. Dep’t of Educ., *Understanding Student Loan Repayment*, <https://studentaid.gov/h/manage-loans> (last visited Nov. 12, 2020); U.S. Dep’t of Educ., *Important Information for Student Borrowers on U.S. Treasury Changes to Federal Student Loan Interest Rates*, <https://www2.ed.gov/students/college/repay/2006-changes.html> (last modified June 6, 2006).

<sup>24</sup> U.S. Dep’t of Treasury, *Opportunities and Challenges in Online Marketplace Lending*, at 9-10, 14-19 (May 10, 2016), [https://home.treasury.gov/system/files/231/Opportunities\\_and\\_Challenges\\_in\\_Online\\_Marketplace\\_Lending\\_white\\_paper.pdf](https://home.treasury.gov/system/files/231/Opportunities_and_Challenges_in_Online_Marketplace_Lending_white_paper.pdf).

<sup>25</sup> There are variations in prime and super prime ranges. The Bureau’s Consumer Credit Card Market Report identified prime range as 660–719 and super prime at 720 and above. Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market* (Aug. 2019), [https://files.consumerfinance.gov/f/documents/cfpb\\_consumer-credit-card-market-report\\_2019.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2019.pdf). Consumer credit data published on the Bureau’s website identified prime range as 620 to 719 and super prime at 720 and above. Bureau of Consumer Fin. Prot., *Borrower Risk Profiles*, [https://www.consumerfinance.gov/data-research/consumer-credit-trends/student-loans/borrower-risk-profiles/#:~:text=Subprime%20\(credit%20scores%20of%20580,scores%20of%20720%20or%20above\)](https://www.consumerfinance.gov/data-research/consumer-credit-trends/student-loans/borrower-risk-profiles/#:~:text=Subprime%20(credit%20scores%20of%20580,scores%20of%20720%20or%20above)) (last visited Nov. 12, 2020).

<sup>26</sup> This is also true for borrowers with high interest rate private loans. U.S. Dep’t of Treasury, *Opportunities and Challenges in Online Marketplace Lending*, at 9, 14-19 (May 10, 2016), [https://home.treasury.gov/system/files/231/Opportunities\\_and\\_Challenges\\_in\\_Online\\_Marketplace\\_Lending\\_white\\_paper.pdf](https://home.treasury.gov/system/files/231/Opportunities_and_Challenges_in_Online_Marketplace_Lending_white_paper.pdf).

years.<sup>27</sup> In 2019, annual originations of private consolidation and refinance education loan products reached an estimated \$16 billion,<sup>28</sup> which was larger than that year’s originations for private education loans by currently enrolled students.<sup>29</sup>

As the market for private consolidations and refinancings of Federal student loans has grown, some industry participants have expressed uncertainty about the application of Regulation Z, which implements the Truth in Lending Act (TILA), to these loan products. Questions have arisen regarding whether consolidation and refinance products that satisfy and replace a consumer’s existing Federal loans (or existing Federal and private loans) are considered “private education loans” such that the disclosures and other protections under subpart F of Regulation Z<sup>30</sup> are required. Specifically, creditors need to know whether they are required to provide disclosures under TILA and Regulation Z, and if so, which disclosures they are required to provide. If the loan is not considered a private education loan and is over \$50,000, then the loan is not covered under TILA and Regulation Z, and a creditor is not required to provide any disclosures to the consumer.<sup>31</sup> For loans *under* \$50,000, whether a loan is a “private education loan” determines whether creditors must comply with either the private

---

<sup>27</sup> DBRS, *Commentary, DBRS Student Loan ABS Quarterly Update*, at 7 (July 2017), <https://lending-times.com/wp-content/uploads/2017/07/DBRS-Student-Loan-ABS-Update-Commentary-8.pdf>.

<sup>28</sup> Navient 2020 2nd Quarter Investor Deck, slide 7 (Aug. 6, 2020), <https://navient.com/assets/about/investors/webcasts/2020-Q2-Investor-Slides-Final.pdf>.

<sup>29</sup> The preliminary estimate for in-school student loan originations for the 2019-20 academic year is \$14.4 billion. The total for the 2018-19 academic year was \$13.3 billion. College Bd., *Trends in College Pricing and Student Aid 2020* (Oct. 2020), <https://research.collegeboard.org/pdf/trends-college-pricing-student-aid-2020.pdf>. Navient 2020 2nd Quarter Investor Deck (Aug. 6, 2020), <https://navient.com/assets/about/investors/webcasts/2020-Q2-Investor-Slides-Final.pdf>.

<sup>30</sup> See 12 CFR 1026.46, 1026.48(a) through (f).

<sup>31</sup> 15 U.S.C. 1603(3).

education loan disclosure requirements or installment loan disclosure requirements, because it is impossible to comply with both sets of requirements simultaneously.<sup>32</sup>

#### *B. Coverage*

This advisory opinion generally covers private loan consolidation products that satisfy and replace multiple Federal, or Federal and private, loans, as well as private loan refinance products that satisfy and replace a single Federal or private loan. This advisory opinion does not cover loans that are made, insured, or guaranteed by the Federal government under title IV of the Higher Education Act of 1965. For purposes of this advisory opinion, the terms “private creditor” or “private education creditor” broadly refer to creditors (other than the U.S. Department of Education) who offer refinance or consolidation products for education loans, regardless of whether the creditors themselves are private persons or institutions and whether they offer products other than education loans.

#### *C. Legal Analysis*

The Higher Education Opportunity Act of 2008 (HEOA) amended TILA by adding new requirements that apply to creditors making “private education loans.”<sup>33</sup> For example, HEOA’s amendments to TILA require creditors making “private education loans” to provide special disclosures;<sup>34</sup> prohibits creditors from co-branding with schools;<sup>35</sup> requires creditors to provide a

---

<sup>32</sup> For example, the required prominence of the annual percentage rate disclosure differs between private education loans and installment loans. Regulation Z requires that installment loan disclosures display the terms “finance charge” and “annual percentage rate” more conspicuously than any other disclosure, except the creditor’s identity. By contrast, in the private education loan disclosures under Regulation Z, the term “annual percentage rate” and the corresponding percentage rate must be less conspicuous than the term “finance charge,” the interest rate, and the notice of the right to cancel. 12 CFR 1026.17(a)(2).

<sup>33</sup> Pub. L. 110-315, 122 Stat. 3078 (2008).

<sup>34</sup> 15 U.S.C. 1650(b) and 12 CFR 1026.46.

<sup>35</sup> 15 U.S.C. 1650(d) and 12 CFR 1026.48(a).

30-day rumination period,<sup>36</sup> and mandates that borrowers have a right to cancel within three days of fund disbursement.<sup>37</sup>

HEOA amended TILA such that private education loans over a certain threshold—\$25,000 at the time of HEOA was passed, and \$50,000 after the passage of the Dodd-Frank Act<sup>38</sup>—were no longer excluded from coverage.<sup>39</sup> In relevant part, HOEA defined a “private education loan” under TILA as a loan that is (1) not “made, insured, or guaranteed under title IV of the Higher Education Act of 1965,” and (2) “issued expressly for postsecondary educational expenses to a borrower, regardless of whether the loan is provided through the educational institution that the subject student attends or directly to the borrower from the private educational lender.”<sup>40</sup> On August 14, 2009, the Board issued final amendments to TILA’s implementing regulation, Regulation Z. The Board also issued commentary to those amendments, including subpart F, which interpreted the term “private education loan” to include “loans extended to consolidate a consumer’s pre-existing private education loans.”<sup>41</sup>

---

<sup>36</sup> A creditor must give a borrower 30 days after a private education loan application is approved to decide whether to accept the loan. During that time, the creditor may not change the rates or terms of the offer, except in limited circumstances. *See* 15 U.S.C. 1650(d) and 12 CFR 1026.48(c).

<sup>37</sup> This is a non-exhaustive list of requirements and protections for private education loans under Regulation Z. *See* 12 CFR 1026.48. In addition, TILA contains some limitations concerning its applicability to private education loans. *See, e.g.*, 15 U.S.C. 1650(b) and (d).

<sup>38</sup> Section 1100E(a)(1): Section 104(3) of the Truth in Lending Act (15 U.S.C. 1603(3)) is amended by striking “\$25,000” and inserting “\$50,000.”

<sup>39</sup> HOEPA section 1022, 122 stat. 3488 (titled “Application of Truth in Lending Act to All Private Education Loans”).

<sup>40</sup> 15 U.S.C. 1650(a)(8)(A)(ii). Regulation Z, at 12 CFR 1026.46(b)(5) adopts similar language but replaces “borrower” with “consumer” and provides that the express purpose of the loan may be “in whole or in part” for postsecondary educational expenses. For ease of reading, the remainder of this advisory opinion will use the statutory phrasing, unless explicitly referencing Regulation Z, in which case the quotation, “expressly [] for postsecondary educational expenses” will be used. TILA and Regulation Z include other requirements not relevant here, such as that the loan does not include an open-ended extension of credit or a loan secured by real property.

<sup>41</sup> 12 CFR part 1026, supp. I, comment 46(b)(5)(1).

Questions have arisen regarding whether the refinance and consolidation loans covered by this advisory opinion are “private education loans” under the two conditions set forth in HEOA. The first condition is met because these loans are originated by private education creditors and are not originated or insured by the Federal government or otherwise under title IV of the Higher Education Act of 1965. Thus, this advisory opinion focuses on whether such loans meet the second condition—that is, are they issued or extended by creditors “expressly for postsecondary educational expenses”?<sup>42</sup> TILA is silent on the question, and the courts have not considered it. The commentary to Regulation Z states that the phrase “extended expressly [] for postsecondary educational expenses” includes “loans extended to consolidate a consumer’s pre-existing *private* education loans,”<sup>43</sup> but it does not address loans that consolidate existing *Federal* education loans, nor does it refer to loans that refinance a single existing loan, whether private or Federal.

With respect to consolidation loans, the Bureau believes that TILA and Regulation Z are ambiguous as to whether a loan that consolidates existing Federal education loans is issued or extended “expressly for postsecondary educational expenses to a borrower.” In other words, it is ambiguous whether the educational purpose of the underlying loans is transferred to the consolidation loan, or if instead the express purpose of the consolidation loan is to manage existing debt, benefit from more favorable interest rates, or some other purpose. The

---

<sup>42</sup> TILA defines “postsecondary educational expenses” as “any of the expenses that are included as part of the cost of attendance of a student, as set forth in the Higher Education Act of 1965.” That Act, in turn, defines those expenses by providing a lengthy and detailed list of expenses, including a broad range of items such as tuition and fees, books and supplies, room and board, and some dependent care expenses, among others. 20 U.S.C. 1087*ll*.

<sup>43</sup> 12 CFR part 1026, supp. I ¶ 46(b)(5)-1 (emphasis added).

commentary to Regulation Z resolves this ambiguity only for loans consolidating existing *private* education loans.

The Bureau believes that the best reading of TILA and Regulation Z is that a loan that consolidates Federal loans or a loan that refinances a Federal loan incurred expressly for postsecondary educational expenses is, itself, “expressly for postsecondary educational expenses.” Borrowers apply for these loans explicitly to consolidate loans that were originated expressly for postsecondary educational expenses, and a creditor issues them pursuant to an explicit understanding that they will be used to satisfy debt incurred expressly for postsecondary educational expenses. Thus, these loans, from the perspective of both the borrower and the creditor, are “expressly for” postsecondary education expenses.<sup>44</sup> Additionally, Congress included the term “borrower” (and the Board included the term “consumer”) in its definition of “private education loan,” instead of referring solely to a “student,” as in other sections of TILA.<sup>45</sup> This choice suggests that the statute can best be implemented by construing “private education loan” to include loans originated to consumers other than those currently in school, such as former students.<sup>46</sup>

---

<sup>44</sup> The Bureau believes that the word “for” incorporates a broad understanding of the purpose of the loan. See generally *Merriam-Webster Dictionary* (defining “for” as indicating “purpose,” “an intended goal,” or “the object or recipient of a perception, desire, or activity”). Congress and the Board could have, but did not, use narrower language that would focus more precisely on the initial transaction between the borrower and the educational institution regarding those expenses. Congress and the Board also could have, but did not, include refinancings and consolidations among the exclusions to “private education loans” that are enumerated in 15 U.S.C. 1650(a)(7)(B) and 12 CFR 1026.46(b)(5)(iii)-(iv).

<sup>45</sup> See, e.g., 15 U.S.C. 1650(a)(9).

<sup>46</sup> See NORMAN J. SINGER & SHAMBIE SINGER, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 46:6 (7th ed. 2020) (stating that the omission of the same term or phrase from a similar section demonstrates a different legislative intent). This word could be read to mean that subpart F applies to loans taken out by parents or other non-students, at the time period when the borrower is in school.

This reading also best implements one of the general purposes of TILA, which Congress amended in HEOA, “to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.”<sup>47</sup> Prior to HEOA, borrowers seeking credit relating to postsecondary educational expenses would receive comprehensive disclosures if they were seeking Federal loans originated pursuant to title IV of the Higher Education Act of 1965,<sup>48</sup> but they would not receive even ordinary TILA disclosures for education loans over \$25,000.<sup>49</sup> As a result, pre-HEOA borrowers were less able to compare their options. But with the TILA amendments in HEOA, Congress made more robust comparisons possible for all “private education loans,” regardless of their size.

Additionally, this reading is most consistent with the statement in the Regulation Z commentary that “loans extended to consolidate a consumer’s pre-existing private education loans” are themselves private education loans originated “expressly [] for postsecondary educational purposes.” Nothing in the text of TILA or Regulation Z supports concluding that private education loans retain their purpose as “expressly for postsecondary educational

---

<sup>47</sup> 15 U.S.C. 1601(A).

<sup>48</sup> See, e.g., 20 U.S.C. 1087e; 34 CFR 685.202; Fed. Student Aid, U.S. Dep’t of Educ., *Sample Master Promissory Notes*, <https://ifap.ed.gov/sites/default/files/attachments/2019-07/DLMPNsandComms.pdf> (last visited Nov. 18, 2020); Fed. Student Aid, U.S. Dep’t of Educ., *Understand how interest is calculated and what fees are associated with your federal student loan*, <https://studentaid.gov/understand-aid/types/loans/interest-rates> (last visited Nov. 18, 2020); Fed. Student Aid, U.S. Dep’t of Educ., *Federal Student Aid: Choose the federal student loan repayment plan that’s best for you*, <https://studentaid.gov/manage-loans/repayment/plans> (last visited Nov. 18, 2020).

<sup>49</sup> 15 U.S.C. 1603(3). As noted above, the Dodd-Frank Act raised the TILA exemption threshold to \$50,000.

expenses” when they are consolidated but that Federal education loans originated for the same expenses do not.<sup>50</sup>

The Bureau also does not believe that the Comment’s specific mention of “pre-existing *private* education loans” precludes the interpretation that consolidated pre-existing Federal loans are covered. The Board issued the commentary to Regulation Z, which interpreted the term “private education loan,” in 2009.<sup>51</sup> As discussed in the Background section, while there was a small market for consolidating private education loans in 2009, the private market for consolidation of Federal loans did not emerge until 2012. The Board did not receive any comments on its proposed rule that indicated the existence of such a market and no commenters sought clarity on the application of the proposed rule to Federal education loan consolidations.<sup>52</sup> Additionally, the relevant Comment to Regulation Z indicates that it is intended to be illustrative rather than exhaustive because it states that “[t]he term *includes*” loans consolidating private loans as well as loans extended for expenses incurred while the student is enrolled.<sup>53</sup>

The above analysis addressing the *consolidation* of multiple Federal education loans also applies to loans that *refinance* a single pre-existing loan that was originated expressly for postsecondary education expenses, regardless of whether the pre-existing loan was a private or

---

<sup>50</sup> Because the definition of “private education loan” requires that the loan is not made, insured, or guaranteed under title IV, the Bureau does not believe the general exclusion for title IV loans in TILA and Regulation Z is relevant to the analysis. *See* 15 U.S.C. 1603(7), 12 CFR 1026.3(b)(1)(i)(B).

<sup>51</sup> TILA mandated that the Board prescribe regulations to carry out the purposes of the statute. 15 U.S.C. 1604(a); 12 CFR part 1026, supp. I, comment 46(b)(5)(1). The Bureau itself adopted these regulations and the accompanying commentary without substantive change in an interim final rule, later finalized in 2017. *See* 81 FR 25323 (Apr. 28, 2016). Additionally, when the Bureau reissued the rule and commentary via an interim final rule in 2011, it merely reflected the transfer of authority to the Bureau; the Bureau did not make any substantive changes either at that time or when the Bureau finalized its interim final rule in 2017. *See generally* 76 FR 79768, 79769 (Dec. 22, 2011) and 81 FR 252323, 25324 (Apr. 28, 2016).

<sup>52</sup> *See generally* 74 FR 41194, 41201-09 (Aug. 14, 2009).

<sup>53</sup> 12 CFR part 1026, supp. I ¶ 46(b)(5)-1 (emphasis added).

Federal loan. While the commentary refers only to consolidation of multiple pre-existing loans, the commentary is not intended to be exhaustive,<sup>54</sup> and the Bureau does not believe there is any principled reason to conclude that the postsecondary education purpose of multiple loans may transfer to a new loan, while the postsecondary purpose of a single loan transferred to a new loan may not.<sup>55</sup>

Accordingly, the Bureau interprets the commentary’s reference to loans that “consolidate a consumer’s pre-existing private education loans” as simply referencing the type of consolidation loan that existed at the time the commentary was issued by the Board. Thus, for the reasons discussed in this advisory opinion, the Bureau interprets the phrase “expressly for postsecondary educational expenses” to include loans that either consolidate Federal education loans that were themselves originated expressly for postsecondary education expenses or to refinance a single private or Federal education loan that was originated for such purpose.

As a result, these consolidation or refinance loans are covered under the term “private education loan” in TILA and Regulation Z and are therefore subject to TILA and Regulation Z’s requirements in subpart F (including Regulation Z’s disclosures, prohibition on co-branding, 30-day rumination period, and a right to cancel).

## **II. Regulatory Matters**

This advisory opinion is an interpretive rule issued under the Bureau’s authority to interpret TILA and Regulation Z, including under section 1022(b)(1) of the Dodd-Frank Act

---

<sup>54</sup> See also 12 CFR part 1026, Supp. I, introduction comment 3(a) (“Rules of construction. Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. In most cases, illustrative lists are introduced by phrases such as ‘including, but not limited to,’ ‘among other things,’ ‘for example,’ or ‘such as.’”).

<sup>55</sup> 12 CFR part 1026, supp. I ¶ 46(b)(5)-1.

Wall Street Reform and Consumer Protection Act,<sup>56</sup> which authorizes guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial laws.<sup>57</sup>

By operation of TILA section 130(f), no provision of TILA sections 130, 108(b), 108(c), 108(e), or 112 imposing any liability applies to any act done or omitted in good faith in conformity with this interpretive rule, notwithstanding that after such act or omission has occurred, the interpretive rule is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.<sup>58</sup>

As an interpretive rule, this advisory opinion is exempt from the notice-and-comment rulemaking requirements of the Administrative Procedure Act.<sup>59</sup> Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.<sup>60</sup> The Bureau has also determined that this advisory opinion does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.<sup>61</sup>

Pursuant to the Congressional Review Act,<sup>62</sup> the Bureau will submit a report containing this interpretive rule and other required information to the United States Senate, the United

---

<sup>56</sup> Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>57</sup> 12 U.S.C. 5512(b)(1).

<sup>58</sup> 15 U.S.C. 1640(f).

<sup>59</sup> 5 U.S.C. 553(b).

<sup>60</sup> 5 U.S.C. 603(a), 604(a).

<sup>61</sup> 44 U.S.C. 3501 *et seq.*

<sup>62</sup> 5 U.S.C. 801 *et seq.*

States House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a "major rule" as defined by 5 U.S.C. 804(2).

### **III. Signing Authority**

The Director of the Bureau, Kathleen L. Kraninger, having reviewed and approved this document, is delegating the authority to electronically sign this document to Grace Feola, a Bureau Federal Register Liaison, for purposes of publication in the *Federal Register*.

Dated: November 30, 2020.

/s/Grace Feola

---

**Grace Feola,**

*Federal Register Liaison, Bureau of Consumer Financial Protection.*