Jessica: Good morning. My name is Jessica and this is Gail. We both work in the office of Post-Secondary Education at the Department of Education.

A heads up before we get started. We have a lot of information to cover. These could actually probably be two separate presentations, but they've put them in one for the purposes of the session.

So we're gonna be moving through the slides very quickly. In some cases we may not stop to discuss what's on the slide, but we wanted to include all the information in case you missed something, in case people couldn't make it to the session over the week, we wanted them to have all the information.

So just be aware that we're gonna move quickly and we might not talk about everything. But with that let me get started.

Just a basic overview. Congress passed the Higher Education Opportunity Act on August 14, 2008. In doing so, they reauthorized and amended the Higher Education Act.

A big component of this law was transparency for consumers. There was a big focus on that in Congress. It was passed as a bipartisan measure representing both sides of interest in having information available and usable to consumers.

So in order to address this issue they established a number of institution based disclosure requirements.

This slide and the next one talk a little bit about our negotiated rule making session. We developed the regulations through negotiated rule making. If you were at the general session this morning, David and Danny and Jeff talked about the neg reg a little bit.

But I wanna point out on this next slide the key point that most of these provisions – in fact, all these provisions are already in effect. Some of them were in effective on enactment under the statutory language and the rest of them were developed through regulatory implementation and those are all in effect. Then a few had a delayed implemented date and those are also in effect.

So all of these have been around. They are not new requirements. In practice, your institutions should already be making these disclosures.

So I'm gonna be talking about the non-loan disclosure issues and then Gail is gonna pick up and talk about some of the loan disclosures.

The first topic I wanna cover is campus safety. The HEOA added a number of disclosures related to campus safety issues broadly expanding the existing disclosures under the Cleary Act. The four areas, as you can see are fire safety, missing students, emergency notifications and hate crimes.

For fire safety there are actually three components and I'm gonna cover each in a little bit more detail, but the key point on the slide that I wanna point out is that these disclosures are only required at institutions participating in Title IV that have on campus student housing facilities. So keep that in mind.

Some of the campus safety provisions will apply to schools with these on campus student housing facilities, which are basically dorms on campus, and some apply to all institutions participating in Title IV. So just make a note. Pay attention to when that applies.

So the first component is the fire statistics piece. Institutions must collect statistics for each on campus student housing facility. Then they have to both disclose those statistics in their annual fire safety report to their students and they also have to report those to the secretary.

I make this distinction, sorry, because sometimes people don't recognize that there's a difference and get them confused. Disclosures are made to students, to the public. It's public information and you report things to the department, to the secretary. So keep that in mind.

But back to the statistics – am I on the big mic or the little one?

Male: _______.

Jessica: Okay. The statistics have to cover the three most recent calendar years and this is modeled after the Cleary crime statistics, which similarly cover three years. Then we did this for the main reason because it would reduce administrative burden because the process is literally identical to the existing Cleary process. So we thought that since institutions have already been doing it with Cleary, they know how to report statistics, they know that they cover three years. We thought that it made sense to continue that policy.

Then the other reason we required three years of statistics is because we think it will give institutions a better chance of spotting patterns in their fire statistics in dorms and then they could use that information to potentially prevent future fires.

The second piece is the annual fire safety report which has to be disseminated to enrolled students and current employees by October 1 of each year. The report has to include the statistics that I just discussed, as well as the descriptions of your institution's fire safety policies and other fire safety information.

As I said, I'm gonna flip through these slides. So you'll see that the slides detail all the information that you have to include in your annual fire safety report, but I'm gonna go through and skip ahead.

Sorry. I've been told I'm speaking too fast. If I really am, please raise your hand and wave at me. Okay. I'll try to slow down a little bit.

So the third part of the fire safety provisions is the fire log. Generally, institutions have to make, keep and maintain a log of all fires occurring at on campus student housing facilities cited by the date reported. The format for the log is up to your institution as long as it includes at a minimum the nature, date, time and general location of each fire.

As with the fire statistics, the fire log is very similar to the existing Cleary crime log and the specifications for how the fire log must be maintained are identical to the requirements in the Cleary crime log.

The statute requires institutions to make annual reports to the campus community on the fires that are recorded in the log. It's the last bullet point up here.

In the regulations, we specified that you can make this annual report on the fires in the crime log as part of your annual fire safety report. You can combine those two requirements, but it's not required that you can combine them. Your institution can choose to do them separately if that makes sense for your school.

So the next area where the HEOA made some changes was missing student notification. It added these new provisions again that only apply to institutions with on campus student housing

facilities and requires them to disclose a statement of policies and procedures on missing student notification.

Generally the provision requires institutions to disclose exactly what you're gonna do when a student is reported missing, including who you're going to contact. It also requires institutions to give students living in on campus student housing facilities the option to register a confidential – and that's a key point – a confidential contact person to be notified within 24 hours of the determination that a student is missing.

The next few slides detail the specific elements that you have to include in your missing student notification policy statement, but I'm gonna go ahead and jump to emergency notification.

The HEOA added requirements related to emergency response and evacuation procedures, which we generally refer to as emergency notification because that's actually what the bulk of the discussions at negotiated rulemaking focused around. People were very interested in what it meant to notify people and how you would notify them, when you would notify them, who would you notify, what might be scenarios for delaying notification; things like that.

Notice that this requirement applies to all Title IV participating institutions unlike the others that only applied to institutions with on campus student housing facilities.

Again, I have included all of the specific elements that you have to include in your emergency response notification procedures policy statement, but I'm going to move quickly through those.

The only one that I wanted to point out is that there's also a requirement that your institution test your procedures on at least an annual basis. These tests can range from a tabletop exercise to a full-scale evacuation.

It's up to your institution how you want to structure the tests, but they have to be made at least once a year. They can be announced or unannounced. You have to publicize your procedures in conjunction with at least one test per year and you have to document each test that you perform.

Hate crimes. The only change that the HEOA made in this area was to add additional crimes that institutions must report as hate crimes. Those are the four additional crimes that should be reported as such.

The important thing to remember about hate crimes and this is something I didn't know before I started working on this is that a hate crime has to actually have an investigation. It has to be found to be and determined to be a hate crime. That determination is based on the perpetrator's intent. It's not actually based on how the victim feels about the event.

So on your college campuses you would have an investigation of whether the crime was a hate crime and if it's determined to be a hate crime, then you would include it in that section of your reporting.

So that was a really fast overview and I apologize I couldn't go into more detail, but we have a great handbook that we've published in February earlier this year. It is extremely comprehensive and it's also very user friendly. It's available online.

If you're the person at your institution that's responsible for carrying out these disclosures, make sure you read it. It has information with a help desk. It has contact information for them and again, it's very thorough and will probably answer most of your questions related to campus safety.

One other reminder that I like to put in right here is that there's a PPA requirement that your institution have a program for drug and alcohol abuse prevention. This is just sort of a public service announcement to remind you that this requirement exists and if you're not familiar with it, read up on it in the handbook.

So peer-to-peer file sharing. This actually has two pieces. There's the disclosure piece and the PPA piece, but I'm gonna mostly focus on the disclosures. We did publish a Dear Colleague letter on this back in June of 2010 summarizing all of the requirements for both disclosures and PPA. So if you haven't had a chance to read it, make sure to check that one out.

But in general, institutions must disclose to perspective and enrolled students a statement that the unauthorized distribution of copyrighted materials, which is the longhand for peer-to-peer file sharing. It distinguishes between file sharing that's okay and file sharing that's not. In this case, unauthorized distribution of copyrighted materials.

It has to let students know that if they perform the bad peer-to-peer file sharing I guess, then they may be subject to civil and criminal liabilities.

The statement also has to describe your institution's policies for handling illegal peer-to-peer file sharing including any disciplinary actions that your institution will take against a student who engages in it and it also has to include a summary of penalties for violation of federal copyright laws.

The Dear Colleague letter that I had on the prior slide actually includes a sample summary of the penalties for federal copyright laws. That was for your convenience. That's something the department agreed to do during the negotiations. We said that we would help you out by providing a summary and a sample list. So we did that and we followed up on that promise in the Dear Colleague letter published in 2010.

The only change here was that we added the peer-to-peer file sharing as a requirement that you have to include in your notice, the one-to-one notice that you send to students letting them know where they can find disclosure information. All this slide is explaining is that you would add a bullet point basically on that notice saying that you can get peer-to-peer file sharing disclosure information at the site where you decide to post it.

Again, there's some program participation agreement requirements related to peer-to-peer file sharing, but I'm gonna go ahead and skip through those in the interest of time today, but they're there if you want to refer back to them.

For educational outcomes, there are actually three pieces of information that you have to disclose. There's placement information, retention rates and graduation and completion rates.

So first of all you have placement information. You have to disclose the placement and types of employment obtained by graduates of the institution's degree or certificate programs and the types of graduate and professional education in which graduates of your institution's four-year degree programs enroll.

A couple years ago when we were negotiating this provision, I thought it was interesting, but I didn't think it was really something to get all excited about and cheerlead over, but I think in the past few years with the economic situation, I think that this provision has actually become a lot more pertinent and a lot more important

because I think it's critical to know what students are able to do with their degree after they finish with school and I think it's also important to know how many students are then going on to get degrees.

Maybe they're going on because they can't find employment in the area where they were trained for. I'm not really sure what the reasons would be, but I do think that this provision has become a lot more interesting sort of in the past few years.

In the regulations, we use the term placement information to mirror the statute instead of a placement rate. What this means is that institutions have to provide information. It could just be a verbal explanation of what their students are doing after they graduate or what graduate programs they pursue.

You can gather that information from a variety of sources. You can use surveys. You can use other methods of talking to your students and finding out what they're doing and that's information.

We also consider placement rates to be information. The compromise that we ended up with in the regulations was that if you calculate a rate for any purpose, institutional purposes, accrediting agency purposes, state purposes, whatever reason, if you calculate a rate or multiple rates, then you have to disclose them. To make that information more meaningful to students you would also have to disclose the timeframe, methodology and the source of the information so that it puts the information in context and people can understand what they're looking at.

Retention rates are fairly straightforward. You have to disclose the retention rate of certificate or degree seeking first time full time students entering your institution. At the request of the negotiators, we decided to use the IPED's retention rate and the IPED's reporting definition. So we just applied that reporting definition to the disclosures.

For completion and graduation rates, this wasn't exactly a new provision. Institutions were already required to disclose it, but what the HEOA did was it required institutions to disaggregate that information by the categories that you see here on the slide.

A few things to point out are that you're not required to disclose this rate if the number doesn't yield statistically reliable information or if it would reveal personally identifiable information.

The textbook provisions are purely a statutory requirement. You can find them in Section 133 of the Higher Education Act. They apply to all institutions receiving any type of federal financial assistance.

We published a Dear Colleague letter back in June 2010 just before these provisions went into effect. Again, so take time to read it if you haven't already, but generally schools have two responsibilities. First, they have to provide information to students and, second, they also have to provide information to their college bookstores.

So for disclosures to your students, you have to disclose on your web-based course schedule. That's your course schedule that you post online. Not the schedule of online courses. Distinction. That was a question that I've received a number of times so we wanted to make that clear. It's your web-based course schedule. You have to disclose the ISBN and retail price information for each required and recommended college textbook and supplement materials for each course listed in your course schedule.

As I said, this is a purely statutory provision. So Congress went ahead and wrote in some guidelines for what to do and some scenarios that they envisioned.

First of all, sometimes the ISBN and retail price information isn't available. They specified that if that's the case you should provide the author, title, publisher and copyright date of each of those textbooks.

Then they also recognized that maybe sometimes you have a professor or faculty member who doesn't like to give you textbook information until a week after the courses have started. So they said that if that's the case, if it's not practicable to disclose the information you could put to be determined in lieu of that information.

The other piece that Congress included was a note that if you still have written course schedules, so if you have paper copy course catalogues, things like that, you would include a statement or a notice or some type of information directing students to the online location where that information is available.

So as I said, there's information that you have to provide to students and then information for college bookstores. Institutions

have to give their bookstores information about the course schedule for the upcoming academic period. Then they also have to give them information about the books and the student enrollment levels in each course or class being offered.

Again, the law Section 133 if you wanna look up the requirements. They're fairly comprehensive in the law itself. They specific exactly what you need to provide to students. And bookstores. Excuse me.

Oh. This I thought was interesting. Normally the law requires everyone to do things, right. In this case, Congress actually decided to encourage us to do something. It encourages institutions to give students information about programs for renting or purchasing used textbooks, guaranteed buyback programs, other alternative content delivery options I guess.

So we really encourage you to do that. Again, the idea behind the law was consumer transparency, information for students helping them lower college costs and Congress encourages institutions to take advantage of any and all opportunities to lower costs for students and provided some examples how you might go about doing that.

So the net price calculator was the last provision to go into effect under this statute and it actually kicked in exactly a month ago on October 29th. Generally, institutions must post a net price calculator on their websites.

You can post it wherever you want on your website. A lot of people have put it in financial aid information pages. Others have put it in general information, admissions pages; things like that, but you have to post it in an accessible and prominent place on your website to help students and families get a better idea of what they might have to pay to attend a particular school. The estimate that they receive is based on what a student in a similar economic situation paid in the prior year.

The critical piece to point out here is that the tool has to provide students an estimated net price. Net price is the cost of attendance minus grant aid. It's not minus grant M loan; just grant aid. I know I'm probably preaching to the choir, but a lot of people don't know what net price is and I think that it's very important to make that clear to students and families who are using your net price calculator.

The department published a template for the net price calculator last October 29th in 2010. Institutions have the option of using the department's template, which will be updated annually in December. We anticipate updating it next month. They can develop their own calculator and many institutions have decided to contract with a third-party to provide the calculator. We have said that all of those are fine as long as your calculator provides the minimum required data elements that are found in the department's template.

We have a great resource page for net price calculators if your institution is still working to get yours on board, but I know none of you here are in that boat. You can access the net price calculator resource page from the link on the slide. You can also access it from _______. When you click on net price calculator it takes you directly to this NCES based website.

I included a few tips here on the slides based on questions that I've received. Generally, if you have any first time full time students, even if you only have one first time full time student you're required to have the net price calculator. You can use your federal or institutional methodology to approximate a student's EFC. It has to be accessible from your institution's website. While you can link to a third-party, it has to be accessible from your actual website and it also has to provide campus specific information.

Then you're expected to keep the net price calculator updated annually as new information becomes available.

I included the definition of net price here again, but I really wanna focus on the second bullet point on this slide, the disclaimer. This is sort of another piece of the disclosure that comes with net price calculator.

You have to have a disclaimer along with the calculator letting students know that the estimate is not final or binding. We all know the budget situation and state budgets and institutional budgets are all in – what's the word I'm looking for. Flux. Thank you. They're all in flux and you may not know exactly what tuition is gonna be next year.

So you have to let them know that the estimate is final and not binding, that they have to complete the FAFSA to be eligible for and receive student aid funds and it also has to include a link to the FAFSA website.

Then these last two slides are just additional disclosures that you have to make to your students. They don't have a lot more detail behind them, but you have to include plans by your institution for improving the academic program. So if you have any of these plans you would disclose them to your students.

An existing requirement before the HEOA was that you disclose services and facilities available for students with disabilities and we've clarified that this also includes services and facilities available for students with intellectual disabilities and these students remain eligible to receive certain types of aid under the HEOA. So we wanted to make sure that we reflected that new eligibility in other requirements include disclosures.

You have to include transfer of credit policies, policies regarding vaccines and then also disclosures related to student body diversity at your institution. With that I'm gonna turn it over to Gail.

Gail: Good morning and welcome to part 2 of consumer information. More disclosures for you. I'm going to be talking about student loan consumerism this morning. Specifically private education loan disclosures and requirements subject to regulation by both the Department of Education and the Federal Reserve Board.

Interestingly these regulations written by the Federal Reserve Board have been transferred. The enforcement and future implementation has been transferred to the consumer financial protection bureau.

You may have heard of this agency, separate agency established by the Congress, an umbrella agency, if you will, on consumer issues, but they will be handling student loan consumerism from the Federal Reserve perspective, their regulations going forward.

I wanted to let you know that there's a session tomorrow. It is Section number 54 that will include the consumer financial protection bureau staff. Also staff from other banking agencies for a general discussion of student loan consumerism from the larger government agency perspective. So you may wanna attend that tomorrow. It should be very interesting.

Let's take a brief look at the statutory framework around these new requirements for student loan consumerism. This is the legal underpinning for these new requirements. As Jessica mentioned, the Higher Education Opportunity Act established many consumerism provisions with the Higher Education Act.

Interestingly it also amended the Truth in Lending Act to establish lender disclosures and prohibit certain activities. So we see setup here a dual responsibility between both the Department of Education and the Federal Reserve Board in implementing and enforcing these new requirements.

When the HEOA was enacted back in August of 2008, the department's regulations covered both the FFEL loans as well as private education loans. So the next legislative installment, if you will, was fairly significant. The Healthcare and Budget Reconciliation Act, of course, as we know, eliminated the origination of new FFEL loans as of June 30, 2010.

So going forward from June 30, 2010 and as we discuss these new disclosure requirements in this presentation, we'll be talking solely about private education loans.

I call this my why slide. Recall that when Congress finally enacted the HEOA they were basically reauthorizing the Higher Education Act. The Higher Education Act had last been reauthorized in 1998. So there was a ten-year period between reauthorizations. A lot happened in that ten-year period including the discovery of alleged inappropriate relationships between schools and lenders.

We had various investigations by the Senate Help Committee, by then Attorney General Mario Cuomo that revealed in some cases that the basis for relationships between schools and lenders was not in the best interest of the borrower. It was in the best interest of schools and lenders.

So you see the concern here on the part of Congress trying to rectify this situation by creating disclosures by amending the Higher Education Act and the Truth in Lending Act that would ensure and inform student loan borrower, borrower choice of lender. Borrower's choice of lender is a statutory entitlement. We wanna make sure that the borrower has choice of lender.

We want to ensure transparency and high ethical standards and a selection of a preferred lender based on the best interests of the borrower. What these disclosures are doing is turning the process away from relationships between lenders and schools and toward the relationship between a school and the borrower or a lender and the borrower for the benefit of the borrower.

As we heard Secretary Duncan say this morning, the Obama administration is launching a couple of new initiatives. These disclosures I think are more important than ever as we seek to ease the burden of loan repayment for student borrowers. The more they know, the more informed a borrower they are. The more information they have, the better off they will be when it comes time to repay those loans.

Here is a brief overview of the regulatory framework, as Jessica mentioned. We did have to negotiate these rules. We have rules in 34 CFR 601 that were effective on July 1, 2010. The board's rules are in 12 CFR 226. They were effective on February 14th of 2010.

Then the board and the department worked together to develop a private education loan self-certification form. So again, you see this setup of joint oversight between the two agencies over private education loans, which is rather unusual.

Just a resource slide for you. This is a link to our final regulations as well as the board's final regulations. It's really important that you take a look at final regulations. I know people's eyes glaze over, but there is a wonderful preamble discussion generally in both notices of proposal rulemaking and final rules that give you a lot of the rationale, a lot of the reasons behind what the department or the Federal Reserve Board did in their regulations and subsequently answers a lot of the questions that you might have about some of those regulations. So I urge you to take a look at these links.

I wanna turn now to the actual rules and I wanna begin by covering some of the key terms in these final regulations. The first one I wanna talk about is covered institution. That term is defined as an institution of higher education as defined in Section 102 of the Higher Education Act that receives any federal funding. So this is a term basically that includes any institution of higher education that receives any federal funding whatsoever.

Generally, you see the department's regulations governing only institutions that participate in the financial aid programs. So even if you don't participate in the financial aid program and you receive money from say the Veterans' Administration or you're participating in another program, you must comply with these regulations.

The next key term I wanna discuss is private education lender. This term is defined as a financial institution, a federal credit union

or any other person engaged in the business of soliciting, making or extending private education loans. This is a term actually that was not subject to negotiation by the department because it's a term that's contained in the Truth and Lending Act. So we had no jurisdiction over this definition. We had to take it lock, stock and barrel out of Truth and Lending and drop it into our regulations.

I point it out to you because a private education lender has long included institutions of higher education. In other words, the Federal Reserve Board or now the Consumer Financial Protection Bureau has long considered you institutions of higher education as private education lenders if you make loans to your students.

That came as somewhat of a surprise when we negotiated the rules for these programs or these provisions rather.

Private education loan is a non-Title IV loan provided by a private educational lender expressly for post-secondary educational expenses. It does not include extensions of credit under an open end consumer credit plan. Think credit cards. Nor does it include loans secured by real property. Think mortgages in that case.

A private education loan, there's a couple exceptions to what a private education loan includes. These are for loans made by educational institutions, institutions of higher education. If you extend credit that's due in a period of 90 days or less and fees and interest are fine, that is not considered a private education loan.

Generally what we're referring to here when we say extensions of credit of 90 days or less are the emergency loans that you make to your students. This is the board's terminology by the way because we didn't have the authority to regulate this term. This is the Federal Reserve Board using the comments they received from institutions of higher education to carve out a few exceptions here.

The other exception is an extension of credit on which interest is not applied to the credit balance. The term is one-years or less, even if it's payable in more than four payments. That's the board's way of referring to your institutional billing plans.

So, it's again when you read these regulations, they will make these references. They'll say institutional billing plans. They'll say emergency loans, but in their actual regulations, they refer to them as extensions of credit with a term of 90 days or less. So in attempt to clarify for you, that's what they're trying to get at when they made these exceptions.

Preferred lender arrangement. This was a very hotly debated issue during the negotiator rulemaking. Basically, this is an arrangement or agreement between a lender and a covered institution in which the lender provides education loans to students and the covered institution recommends, promotes or endorses the education loan products of the lender.

Again, I wanna emphasize going forward of July 1, 2010, your preferred lender arrangements will only be with a private education lender since we had seen the FFEL program eliminated.

Continuing on with preferred lender, there are a couple exclusions to the preferred lender arrangement definition. It does not include arrangements involving direct loan program loans and it does not include arrangements involving loans originated through the Plus auction pilot program.

These are statutory exclusions. We had no control basically over the arrangements that all of you have with the department in terms of the Direct Loan Program. At the time, we negotiated these rules both major loan programs were in play. There was a little bit of pushback from some of the negotiators about why aren't you requiring direct loan schools to make these sorts of disclosures.

The answer to that is it's statutory. We had no control over that particular requirement.

During the negotiator rulemaking process we were persuaded to carve out a few exceptions to the definition and that's because we believed that implicit in the definition of a preferred lender arrangement is the understanding that the lender and the covered institution are not one and the same entity.

So we agreed to exclude private education loans made by the institution to your own students from the definition as long as those loans were funded by the institution's own funds or donor directed contributions.

Again, an example of where the preamble adds a lot of clarity to the regulations, we go into quite a lengthy discussion clarifying what we mean by this. Basically, we say that we consider you to be using your own funds if the loan was made with funds that include but are not limited to tuition and fee revenue, investment income, endowment funds, borrowed money or line of credit. You can use all of those.

All of those things we consider your own funds, but there is a caveat. You have to not sell or collateralize that loan for at least two years from the date that the loan is fully disbursed. Nor can you have an arrangement tying the sale of that private education loan to a lender until after that two-year period has elapsed.

So you may wonder why would we do a thing like that. Well that was because we were concerned. We weren't concerned about all institutions, but we were definitely concerned that some institutions might borrow money to make a private education loan and then sell that loan back to the lender from whom the money was borrowed.

Basically, in that scenario the school would be acting as a pass-through. They would also be able to create a loophole and not be subject to preferred lender arrangements.

I'm gonna take questions at the end because our experience is if we take questions we get very bogged down and we don't have time at the end. So, I will make my best effort to get to your question.

We also agreed that a preferred lender arrangement does not include private education loans. This is, again, made by an institution to the students attending the institution if the private loan is made under Title VII or VIII of the Public Service Act or it's made under a state funded financial aid program if the terms and conditions of the loan include a loan forgiveness option for public service.

I wanna stop here for a minute and emphasize that state loan programs under which the state is the lender are not excluded from a preferred lender arrangement. We've got a lot of negative feedback from states that have these kinds of loan programs. Massachusetts, Rhode Island, Minnesota protesting the fact that they are considered private education lenders under both the Federal Reserve Board regulations and the department's regulations.

But the fact remains that they aren't excluded from the definition and that if you as a school recommend a state loan program to your students and that state loan program makes loans to your students, you are in a preferred lender arrangement with that program.

Schools don't wanna be considered to be participating in a preferred lender arrangement, but still wish to provide some

information to their students on private education loans. We have extended the guidance that we published some years back in Dear Colleague letter GEN0806 to private education loans. Here you see that guidance on the slide.

You're not considered to be in a preferred lender arrangement if you want to provide information in the form of a neutral, comprehensive listing of private education lenders that have made loans to the students at your school within a three to five-year time period or you can specify some other time period. Three to five years isn't written in stone. You can have one to two. As long as it's a specified period of time and a statement that the borrower can choose any lender.

Also, you cannot recommend any lender and you may include a comparison of the private loan terms and conditions. Few questions that we've been asked about this guidance. What if the lenders that have made loans to your students are no longer making loans to your students. What do you do then. Do you include them on the list. The answer is no. You would not include a lender on your neutral comprehensive list who is no longer making loans. That does a disservice to your borrowers.

Also, by definition this is a retroactive list because it's a list of lenders who have made loans to your students in a past period, a specific time period. So how do you add a new lender. What are the criteria under which you would add a new lender.

We have decided that you have to have somewhat of a track record before you can add a new lender to your list and that would be a lender who has for at least one academic year been making loans to your students before you add them to the list.

We've also extended the guidance in GEN0806 to third-party entities that provide lists. We know there's lots of those folks out there that are doing lists of lenders. Basically, if you're a covered institution, referring your borrowers to a third-party that maintains a list, they have to meet these requirements. The list has to be neutral. Again, neutral, comprehensive list and the site cannot endorse the lender and the lender can't be placed in a list of who's the best lender. No recommendations.

And more importantly, there can't be any fees generated based on loan volume or loan applications.

There are all kinds of third-party entities out there. They all have various business models. It's up to you to do your homework. If you're referring your borrowers to these lists online offered by third-party entities that that third-party entity meets these requirements. Especially be careful of fees based on loan applications or loan volume generated. We view that as compromising the neutrality of a list. Once you know lenders are being paid or getting a fee based on part of a third party entity's list, that to us says that's a little bit of a conflict of interest.

So again, we want to maintain the neutrality of any kind of third-party entity's list that you may refer your borrowers to.

Let's turn the focus now on the actual disclosures associated with a preferred lender arrangement. Covered institutions that participate in such an arrangement have to disclose on their website and all information material that describes private education loans the following disclosures.

The first is the maximum amount of aid available under Title IV. You might say why in the world must we disclose this information. This is the beginning of a common theme throughout these new disclosure requirements and that is to make the borrower aware of his or her alternatives, that there are federal loans out there, that federal loans often have better terms and conditions than private education loans. So we want you to see again and again the Congress and the regulations subsequently requiring you to make sure your borrowers are informed about Title IV loans.

An institution must disclose on its website and all informational materials that describe loans the disclosures required by the Truth in Lending Act Section 128E11 for private education loans offered by a school and 128E1 for those offered by institution affiliates.

You might say my gosh, what is 128E1 and 128E11. I'm gonna be referring to those cross-references to the ______ frequently. When I do, all I am referring to is a laundry list of the terms and conditions that are associated with the private education loan.

In the Truth and Lending Act these two sections, there is probably 15 or 16 disclosures; interest rates, repayment terms, collection fees, all manner of terms and conditions associated with a loan. So this is a shorthand way for me to alert you to the fact that that's what these disclosures are all about. We use these cross references between the department and the Federal Reserve Board regs very frequently.

What are informational materials. They are publications, mailings, electronic messages or materials that you distribute to prospective or current students and that describe and discuss available financial aid opportunities. Again, as we discussed in my why slide, the goal here is to make the borrower an informed borrower to help them make an informed decision when they apply for a private education loan and make it easier for them to compare financial aid at different schools.

Links to a school's website are acceptable when you provide this information. As long as there's a point of contact at your school that can provide a potential borrower with this information in writing.

These disclosures have to be provided annually for each type of private education loan offered pursuant to a preferred lending arrangement. That has to be done before the student borrows so the student has access and can consider that before they borrow.

In terms of this annual disclosure, all of these disclosures have to be made by you. Sending the borrower directly to the lender's website, for instance, is not a disclosure being made by you. We have made on exception to this and that is the annual disclosure regarding interest rates. Because interest rates change frequently on a private education loan, many are tied to an index. We have said it's acceptable for you to in that case send the borrower directly to a lender's website.

For any year in which you participate in a preferred lender arrangement with regard to private education loans, you have to compile, maintain and make available for students attending the institution a list of your lenders. This is your preferred lender list. It's not an uncommon term from the FFEL days. We had regulations in the FFEL program around preferred lending and preferred lender lists.

This list has to contain at least two unaffiliated private education lenders and disclose for each lender the reasons the institution includes these lenders on the list particularly with respect to terms and conditions of the loans.

Also on the list, you have to disclose that the borrower doesn't have to borrow from a lender on the list and you have to disclose the method and criteria you used to choose the lenders on the list. Again, focus on the borrower.

Let's see. A private education loan. Disclosures have to be made regardless of whether an institution participates in a preferred lender arrangement in some cases. If you provide information about a private education loan, you also have to provide some disclosures.

Here you see the disclosures you have to provide. Again, prospective borrower with ______ disclosures under 128E1. Also, inform borrowers of the possibility of eligibility for Title IV loans and the terms of those loans. So again, the continuing theme here of availability of Title IV.

Just a point here. I just went over your option to provide a neutral comprehensive list. If you do, you have to provide these disclosures as well because you are providing information to borrowers by providing that neutral comprehensive list. So you would be subject to these disclosures.

Lastly, the private loan disclosures must be presented in a manner that's distinct from Title IV.

Institutions that participate in a preferred lender arrangement cannot agree to any co-branding of loans by the lender and what do we mean by that? That means you cannot agree to the lender's use of your name, emblem, mascot, logo, et cetera, et cetera. This is to make sure the borrower it's the institution making the loan; not the lender.

There is a preferred lender arrangement annual report that is required by statute and regulations. These two slides cover that report. The good news is that the department has not determined a submission date for that annual report. So this requirement is not enforced at this time. This requirement is on hold.

Next thing I wanna talk about is the code of conduct. The next 20 or so slides talk about the code of conduct. As Jessica did, I'm gonna skip over. I'm gonna hit the high points, if you will, of the code of conduct.

Recall that when we discussed the reasons Congress required so many new disclosures, we were talking about inappropriate relationships. We were talking about activities that caused concern.

So what we have with the code of conduct is basically a list. Rather a list of things and a list of prohibitions and a list of actions that you must take to prevent conflicts of interest.

For instance, you cannot engage in revenue sharing agreements, you cannot have employees in your financial aid office receive gifts from lenders. The code of conduct defines what a gift is; defines what a gift is not.

There is a prohibition on having consulting and contracting arrangements between the school employees and lenders. There are some exceptions to that, but again, this is all covered in the slides. You have to have this code prominently displayed on your website and you have to administer and enforce that code by requiring all covered institution, all your agents to be annually informed of the code's provisions.

So I'm gonna skip forward to some, as I said, high points here. You can see all of these slides contain all the information that you need on what is a gift, what is not, specific information on the things you can and cannot do.

Now let's see for the first time. I'm gonna stop here. I'm gonna go back one. Basically I'm gonna stop here and talk about directing borrowers to particular lenders. I'm on the wrong slide here. I went too far. Yes. Okay. Sorry about that.

Basically, part of the code of conduct prohibits you from directing borrowers to particular lenders or delaying loan certification. Specifically for first time borrowers you cannot assign through award packaging or other methods the borrower's loan to a particular lender.

One of the issues that arose around this particular provision in the code was that schools wanted to automatically package borrowers beyond that first year, subsequent years with loans from state agencies. We just talked about the states agencies you may or may not have in your state that make loans to students. They wanted to automatically package borrowers in their subsequent year of lending.

They wanted to know if that constituted a preferred lending arrangement. Our answer to that question was that if you are packaging a borrower with a loan from a state agency based solely on the fact that that borrower borrowed in their first year of borrowing, then that we consider to be preferred lender

arrangement. So I just wanted to make that point to you if you're a school that does business with a state agency.

Also, you cannot delay, refuse to certify or delay certification based on the borrower's choice of lender. Another question that's come up around this provision is often times schools will do business with a few lenders and they will have a process in place that's fairly efficient.

When you get a borrower that has a lender that you don't often use, the process slows down. I wanted to reassure you that we would not consider that to be delaying certification of the loan if the borrower's picking a lender that you don't often do business with.

The next slide I wanna focus on is the prohibition on call center help and staffing assistance from lenders and private education lenders.

There are a few exceptions and I wanna talk about the exception on this slide, the first bullet: counseling, financial literacy and debt management. It is okay for you to accept or request counseling, financial literacy or debt management materials for borrowers as long as the materials disclose that the lender prepared or provided the materials.

Lots of schools are really confused about this because they equate this with providing information on private education loans to students. We just talked about the disclosures you have to make when you provide information on private education loans.

So schools are now very skittish about what they're giving to students and what they're not. So I want to reassure you that you can provide counseling, financial literacy or debt management materials to students as long as it's clear that they were prepared by the lender.

Now I'm gonna jump forward a little bit and focus on the contents of the private loan self-certification form. We'll stop there and talk about that for a minute.

This is the form I mentioned earlier that was developed by both the department and the Federal Reserve Board and we basically are using this to provide the borrower with very important information before they borrow that private education loan.

Basically there's a requirement that when requested provide the form to the borrower and the lender has to receive that form before they can disburse the loan to the applicant.

The form has to contain only certain disclosures and this is statutory. Basically, these are the disclosures that you see on the slide that the student may qualify for federal aid. Again, the emphasis on the availability of Title IV. The private education loan may affect their eligibility for other aid and the information on the form is available at the financial aid office.

Here you see what's on the form, the cost of attendance, estimated financial assistance and the difference between those two. This obviously is to prevent the borrower from over borrowing. We want them to see what their need is there before they jump out and borrow more in private loans than they actually need.

So with that I'm going to jump forward to Federal Reserve Board requirements for institutions of higher education. We'll start with coverage. Who is subject to the board's final regulations? Well the board's final regulations apply to creditors and that's a term that's already defined in regulation in the Federal Reserve Board.

Basically, this was a defined term. The Federal Reserve Board felt this covered the needs of their new regulations on private education loans. So they chose to use a definition already in place. Just a reminder again that institutions of higher education are and have long been considered private education lenders under the board's regulations.

So what is the definition of a creditor? How do you know if you're a creditor? Basically it's a person who regularly extends credit that is subject to a finance charge, is payable by a written agreement in more than four installments and is the person to whom the obligation is initially payable.

What does regularly extend credit mean? This means extending any type of consumer credit more than 25 times in the preceding calendar year. So if you're an institution that meets this definition, then you are subject to the Federal Reserve Board's regulations.

What do the Federal Reserve Board's regulations cover? Well, they cover extensions of credit for post-secondary educational expenses. Basically, we're looking at post-secondary educational expenses as that term is defined in the Higher Education Act. That includes tuition and fees, books and supplies, room and board,

allowance for loan origination fees, et cetera, et cetera. So that's where we get the post-secondary educational expenses.

It excludes federal student loans, again, open end credit, revolving credit. Think credit cards, real estate is secured loans, mortgages and the two types of credit extensions made by institutions of higher education that we spoke about earlier. These are the short term emergency loans, extensions of credit 90 days or less and also your institutional billing plans.

Again, just to emphasize. Not excluded are state education loan programs and loans made under Title VII and VIII of the Public Health Service Act or health profession loans. So those two loans are covered by the board's regulations.

Exclusions applicable to credit extended by private institutions are only not subject to these regulations. The board had existing regulations under the Truth in Lending Act prior to the publication of these new regulations. So you may still be subject to some of those regulations and they are in 12 CFR 226.17 and 18. You may wanna consult with your attorney regarding that.

I'm gonna do a real quick overview of the points in the disclosures you have to make in the process of making a private education loan. Before I do, I wanna just give you some general information. All of our disclosures around your private education loans have to be clear and conspicuous. They have to be grouped together and segregated from other disclosures so as not to confuse the borrower.

Application disclosures, if you are delivering them electronically are not subject to e-sign requirements. However, if you are delivering approval and final acceptance disclosures electronically, you are subject to e-sign.

With that being said, let's take a look at the application disclosure requirements. Application disclosures are made on or with an application or a solicitation where no application is required. These disclosures contain general information about the loan; interest rates, fees, default or late payments, repayment terms, things of this nature.

These disclosures also provide information about federal student loan alternatives. Again, that recurring theme about federal student loan alternatives including the interest rates and types of Title IV loans that student may qualify for title loans and that they

can get more information on Title IV loans from the office of federal student aid.

Then come the approval disclosures. These are provided after the approval of the application for the loan or with any notice of approval. These approval disclosures contain transaction specific information, like the borrowers, this borrower's interest rate, this borrowers fees. You may offer different types of loans to different types of borrowers. We know that lenders do that. ______ often based on borrower's credit worthiness. So this second disclosure, the approval disclosure, is borrower specific.

Finally, there is a – not finally – the consumer has 30 days to accept a private education loan from the date the approval disclosure is received. They can accept it any time during that 30 day period. You have to give them the 30 days. They can accept it at day 4; they can accept it at day 29. At any rate, whatever day they accept it, you still have to give them that 30 days.

There are some limitations on the changes that you can make on your private education loans, but I'm gonna let you take a look at those slides and we will move to final disclosures. They are very similar to the approval disclosures that we talked about earlier. They contain the borrower's interest rate, fees, repayment terms, cancellation rates.

The final disclosure has to be provided after the borrower accepts the loan. In other words, within that 30-day period following the date on which the consumer received the approval disclosures and at least 3 days before disbursement.

The borrower is entitled to a three-day period to cancel the loan after receiving the final disclosure. This is a three-day period that cannot be waived by you and it cannot be waived by the borrower. So no matter what happens that three-day period has to elapse.

We talked about the self-certification point from your perspective. As an institutional private education lender, you must receive that self-certification from the borrower. That might seem counter-intuitive. You're gonna give the form to the borrower and you're gonna take it back, but the Federal Reserve Board did not exclude you from that responsibility. So you have to get that form from the borrower.

I'm gonna end here. We have a couple of more slides. There's a co-branding slide for the board's regulations, but I know there's

some questions. So we've got about I'd say a good 15 minutes, 10-15 minutes worth of time for questions if you'd like to ask any. I know you had a question. Do you wanna step to the microphone here in the middle of the room so everybody can hear your question?

Male: In terms of the loans that are made by institutions of higher education where the student has a balance on the charges, but they never post that loan to the student's account. One of the panels that you showed talked about that from the point of the full disbursement of the loan they had so many days to do something. Where it's never posted to the account, how is that determined?

Gail: So are you speaking of an outstanding receivable? Is that what you would characterize –

Male: Exactly.

Gail: That is not a private education loan. There's the two exclusions are very succinct. It's either emergency loans, which you have in place to make to students when there's an issue with their funding or your institutional billing plan. Outstanding receivables are not part of that scenario.

Male: And if you have a receivable for which you make a billing plan.

Gail: A receivable for?

Male: Which you make a billing plan, but that billing plan never results in a credit to the student's account until they make a cash payment on that bill.

Gail: So you have them on an institutional billing plan and?

Male: And there's no accounting transaction to the ledger card reflecting that until the student actually makes payments on their billing plan.

Gail: Well I would think if your institutional billing plan meets the requirements of the exception that you would be fine. I would be a little careful there. I think the board carved out those two exceptions as a result of comments from schools. Schools were very vocal about the Federal Reserve Board requirements as the board considers you to be a private education lender.

So again, if there's two very specific exclusions and I'm not quite understanding what your billing plan is doing here, but if it meets the requirements of the exclusion, you're fine.

There is, I should tell you also, there's a contact person in the Federal Reserve Board regulations. His name is Brent Latin. I don't have his phone number with me. If you wanna come up after and give me your card, I can give you his name.

Male: Okay. Thank you.

Gail: Anybody else? Okay, great. Thank you so much for coming. We appreciate it.