

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

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

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

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

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

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

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

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

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

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



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

[AUDIENCE:] Not a bit.

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

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

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

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

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

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

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

[AUDIENCE:] Exactly, yes.

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



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

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

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

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

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

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

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

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

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

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



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

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

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

[AUDIENCE:] Yes.

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

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

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

[AUDIENCE:] Correct.

[MCLARNON:] Thank you for asking. Next?

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

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

[AUDIENCE:] What's the star rating?

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

[AUDIENCE:] Where do you get that?



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

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

[MCLARNON:] Sure.

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

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

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

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