

Congress of the United States

Washington, DC 20515

June 25, 2021

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Ave SW
Washington, DC 20202

Dear Secretary Cardona,

We have been encouraged by the U.S. Department of Education's (Department) efforts with the Next Gen Federal Student Aid (Next Gen FSA), and specifically the creation of the Annual Student Loan Acknowledgement;¹ however, more should be done to proactively disclose to borrowers the material terms of Direct Loans. We write to encourage you to update and modernize student loan disclosure forms that are provided to Direct Loan borrowers.

Under current practice, the Department is not disclosing basic terms of Direct Loans to borrowers prior to disbursement, including the loan interest rate.² Direct Loans generally have better terms and offer a lower interest rate than many private education loans, but such material loan terms should still be disclosed to borrowers prior to disbursement. Borrowers should be aware of the terms of any loan prior to incurring debt.

Before taking out any Direct Loan, students are required complete a Free Application for Federal Student Aid (FAFSA), sign a Master Promissory Note (MPN), and complete entrance counseling.³ Borrowers also receive a Plain Language Disclosure (PLD), which provides general terms about Direct Loans.⁴ After completing these steps, students and parents work with the institutional financial aid office to sign up for Direct Loans. None of these forms disclose the interest rate and origination fee for the Direct Loan and the student does not receive any other forms from the Department prior to disbursement that include such information. Some institutions disclose these terms, but they are not obligated to make such disclosures.

After a borrower signs up for a Direct Loan, it takes several days before funds are disbursed. After loan disbursement occurs, the Department sends students a Disclosure Statement from the Common Origination and Disbursement system (COD Disclosure Statement) which includes the loan amount, origination fee (both as a percentage and the dollar amount), and other relevant repayment obligations.⁵ Sometimes it takes several days after disbursement before students receive the form. The COD Disclosure Statement notably does not include the interest rate of the loan.⁶

¹ <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2019-11-21/informed-borrowing-confirmation-modification-approved-master-promissory-note-confirmation-processes-operational-impacts-schools-and-preliminary-cod-system-information>

² <https://fsapartners.ed.gov/sites/default/files/attachments/2019-07/DLOverview.pdf> at 6.

³ <https://studentaid.gov/understand-aid/types/loans>

⁴ <https://fsapartners.ed.gov/sites/default/files/attachments/2020-04/SubUnsubPLD.pdf>

⁵ See Exhibit 1 (Attached COD Disclosure Form)

⁶ *Id.*

Section 433(a) of the Higher Education Act of 1965, as amended (HEA), requires the Department ⁷ to “at or prior to the time” of disbursement to issue a loan disclosure that, among other things, states the interest rate and origination fee for the loan.⁸ It is unclear how the Department is currently fulfilling its legal requirement to disclose the interest rate under Section 433(a), since the interest rate is not disclosed in the COD Disclosure Statement, MPN, PLD, or as part of entrance counseling. Additionally, because the COD Disclosure Statement sometimes does not arrive “at the time of disbursement,” the Department may likewise be failing to meet the requirements to disclose the origination fee under Section 433(a).⁹

Direct Loan interest rates change on July 1st of every year.¹⁰ Although it is certainly possible for students to look up the current Direct Loan interest rate online, this is an extra step that requires them to conduct independent research and infer as to what the correct interest rate will be for their loans.¹¹ Students should not have to guess what their loan interest rate will be. This is especially problematic for certain students that take out loans in the summer. If a student signs up for a loan toward the end of June, but the loan does not disburse until on or after July 1, the loan will carry the new interest rate because the interest rate is determined based on the date of disbursement.¹² The Department should eliminate this guessing game by providing clear and accurate disclosures on material terms of Direct Loans prior to disbursement.

We acknowledge and recognize that this request could be technologically challenging for the Department, especially for loans disbursed around July 1st due to the fluctuating interest rate. However, technological processing challenges can be overcome and should not give cause for a *per se* rule that fails to disclose interest rates to all Direct Loan borrowers.

We also recognize that the Department is only required under Section 433(a) to disclose interest rates to students “at” disbursement.¹³ We implore you to utilize your authority to disclose these material loan terms “prior” to disbursement.¹⁴ Students and parents should receive disclosures about material terms of student loans before they incur debt, so they can make informed choices about how best to finance their educational pursuits.

We have authored bipartisan, bicameral legislation called the Student Loan Disclosure Modernization Act. This bill would require the Department to consumer test a student loan disclosure form and include material loan terms on the form, including the Annual Percentage Rate. The bill also requires students to sign the newly developed form prior to disbursement, acknowledging that they have received the disclosure. While we hope to see this legislation enacted into law, the Department has the authority to consumer test its loan disclosure forms and

⁷ 20 U.S.C. §1019a(b)(1)(A)(i) of the HEA requires the Department to provide disclosures to Direct Loan borrowers (except consolidation loans) as described under subsection (a) and (c) of 20 U.S.C. §1083.

⁸ 20 U.S.C. §1083(a)

⁹ *Id.*

¹⁰ 20 U.S.C. §1087e(b)

¹¹ <https://studentaid.gov/understand-aid/types/loans/interest-rates#what-are-the-interest-rates-on-federal-student-loans-first-disbursed-before-july-1-2020>

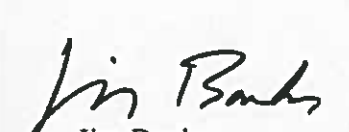
¹² *Id.*

¹³ 20 U.S.C. §1083(a)

¹⁴ *Id.*

to require borrowers to sign such forms without further statutory authorization. We implore you to consider this option, as we believe that a consumer tested Direct Loan disclosure form that is signed by borrowers will improve this process and reduce overborrowing.

Sincerely,



Jim Banks
Member of Congress



Emanuel Cleaver
Member of Congress



Tim Scott
United States Senator



Joe Manchin III
United States Senator

