



New York Attorney General Code of Conduct, Proposed Federal Legislation and Regulations, and Potentially Implicated Practices¹

April 16, 2007

Code of Conduct ²	Selected provisions of proposed federal Sunshine Act ³	Selected provisions of proposed federal regulations ⁴	Examples of potentially implicated practices ⁵
<p><u>Prohibits certain remuneration to institutional employees:</u></p> <p>Institutions shall ensure that no officer, trustee, director, employee or agent accepts anything of more than nominal value from a “lender”⁶ on his or her own behalf or on behalf of another, including any payment or reimbursement by the lender to an institutional employee for lodging, meals or travel to conferences or training seminars.</p> <p>EXCEPTIONS:</p> <ul style="list-style-type: none"> • Allows institutional officers, trustees, directors, employees or agents to conduct non-institutional business with lenders or to receive reimbursement for conferences or training related solely to non-institutional business. • Allows institutions to hold memberships in nonprofit professional associations. 	<p>Forbids lenders from:</p> <ul style="list-style-type: none"> • offering gifts—including travel, lodging, entertainment, and in-kind services—worth more than \$10 to employees or agents of educational institutions. <p>Permits lenders to provide:</p> <ul style="list-style-type: none"> • informational brochures. • favorable terms on loans. • food incidental to training or advisory sessions. 	<p>Forbids lenders from:</p> <ul style="list-style-type: none"> • paying entertainment expenses for institutional employees, such as sporting event tickets, meals, beverages, lodging or transportation. • paying for conference or training registration, transportation or lodging costs for an employee of an institution or a school-affiliated organization. <p>Expressly permits lenders to provide:</p> <ul style="list-style-type: none"> • meals, refreshments, and receptions in conjunction with meetings, trainings or conference events open to all attendees. • gifts of nominal value to school-affiliated organizations and to borrowers. 	<ul style="list-style-type: none"> • Preferred lender lists that include lenders that offered, or were solicited to offer, financial or other benefits to the institution or its borrowers in exchange for inclusion on the list. • Lenders paying for trips for financial aid officers (and their spouses). • Lenders providing meals, gifts or entertainment of more than nominal value to institutional employees.
<p><u>Limits institutional employees’ participation on lenders’ advisory boards:</u></p> <p>Institutions shall forbid any officer, trustee,</p>	<p>Not explicitly addressed.</p>	<p>Not explicitly addressed.</p>	<ul style="list-style-type: none"> • Institutional employees receiving remuneration or expense-reimbursement for service on a lender’s advisory board.

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<p>director, employee or agent from receiving remuneration or expense-reimbursement for serving as a member of a lender's advisory board.</p> <p>EXCEPTIONS:</p> <ul style="list-style-type: none"> • Allows participation on advisory boards unrelated in any way to higher education loans. • Allows institutional officers, trustees, directors, employees or agents who are uninvolved in the financial aid office to serve on the board of directors of a publicly traded or privately held company. 			
<p><u>Prohibits certain remuneration to the institution:</u></p> <p>Institutions may not accept on their own behalf anything of value from any lender in exchange for any advantage or consideration provided to the lender related to its education loan activity. The prohibition includes:</p> <ul style="list-style-type: none"> (i) "revenue sharing" by a lender with an institution; (ii) an institution's receipt of computer hardware at below-market prices; and (iii) printing services at below-market prices. <p>EXCEPTION: Institutions may accept assistance as contemplated in 34 C.F.R. § 682.200(b)(5)(i), which permits lenders to provide assistance to an institution that is comparable to the assistance provided by the U.S. Department of Education to institutions in the Direct Loan Program.</p>	<p>Forbids institutions from entering into arrangements that permit a lender to "brand" the lender's loan product with the institution's name, emblem or logo.</p> <p>Requires lenders to report to the U.S. Department of Education any special loan arrangements they have with colleges, including any terms of the arrangement related to marketing, recommending, or endorsing student loans, and any benefit, direct or indirect, provided to or paid to any party in connection with the arrangement.</p> <p>Requires the U.S. Department of Education, together with the higher education community and students, to develop an easy-to-use model format for reporting the terms and conditions of student loans, similar to the APR disclosure required for other types of loans.</p>	<p>Specifies certain lender practices that are prohibited under the Higher Education Act's anti-inducement provision when done to secure federal loan applications or volume or placement on preferred lender lists, including but not limited to:</p> <ul style="list-style-type: none"> • payments or other benefits, including prizes or additional financial aid funds, to students; • payments to students who act as a lender's representatives in securing federal loans; • payments to sales representatives who visit schools to solicit individual borrowers; • payments of unreasonable referral or compensation fees to other lenders for administering or marketing federal loans; and • undertaking philanthropic activities, including providing scholarships, grants or other contributions to institutions. 	<ul style="list-style-type: none"> • Financial arrangements between institutions and lenders, such as revenue sharing and referral fees. • Lenders providing computers or other equipment to an institution at low or no cost. • Lenders providing printing or publication services to an institution at low or no cost.

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		<p>Specifies practices that are permitted under the Higher Education Act's anti-inducement provision, including but not limited to:</p> <ul style="list-style-type: none"> • reduced origination fees, lower interest rates, and repayment incentive programs for borrowers. 	
<p><u>Conditions use of preferred lender lists:</u></p> <p>In the event that an institution promulgates a list of preferred or recommended lenders, then:</p> <p>(a) Every brochure, web page or other document that sets forth the preferred lender list must clearly disclose the process by which the institution selected lenders for the list, including the criteria used and their relative importance;</p> <p>(b) Every brochure, web page or other document that sets forth the preferred lender list or identifies any lender as being on the list must state in the same font and manner as the predominant text in the document that students and parents have a right to select the lender of their choice, are not required to use any lenders on the preferred lender list, and will suffer no penalty for choosing a lender not on the list;</p> <p>(c) The institution's decision to include a lender on any preferred lender list and its decision as to where on the list the lender's name appears shall be determined solely based on the best interests of students and parents without regard to the institution's pecuniary interests;</p>	<p>Requires preferred lender lists to include at least three non-affiliated lenders; clearly and fully disclose why the institution has identified a lender as a preferred lender; and state that students are not required to borrow from the preferred lenders.</p>	<p>Prohibits use of a preferred lender list if it:</p> <ul style="list-style-type: none"> • is used to deny or impede a borrower's choice of lender; • contains less than three lenders; or • includes lenders who have offered payments or benefits to institutions or borrowers in exchange for inclusion on the list or for loan volume. <p>Requires institutions:</p> <ul style="list-style-type: none"> • to disclose methods and criteria used to compile preferred lender lists; • to include a disclaimer that borrowers are not required to use recommended lenders; • not to assign first-time borrowers' loans to a particular lender through award packaging or other methods; and • not to cause unnecessary certification delays for borrowers who use a lender not on the list. 	<ul style="list-style-type: none"> • Failure to disclose (a) bases for selection of lenders for a preferred lender list, (b) that borrowers have a right to select the lender of their choice without penalty, (c) specific benefits to students or parents of using preferred lenders (<u>e.g.</u>, competitive upfront rates, repayment benefits, service), or (d) whether any preferred lenders are affiliated or have agreements with each other to sell loans. • Placement on a preferred lender list of a lender who has failed to provide reasonable assurances that advertised repayment benefits will travel with a loan if the loan is subsequently sold on the secondary market. • Placement of a lender on a preferred lender list for reasons other than the borrower's best interests, including an institution's pecuniary interests. • Failure to review a preferred lender list at least annually.

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<p>(d) The preferred lender list shall be reviewed at least annually;</p> <p>(e) No lender shall be placed on any preferred lender list unless it provides assurance that advertised benefits upon repayment will continue to inure to the benefit of borrowers regardless of whether it sells the loans;</p> <p>(f) No lender that, to the institution's knowledge after reasonable inquiry, has an agreement to sell its loans to another unaffiliated lender shall be included on a preferred lender list unless such agreement is disclosed in the same font and manner as the predominant text in the document in which the list appears;</p> <p>(g) No lender shall be placed on a preferred lender list or in a favored placement on such a list for one type of loan in exchange for benefits provided to the institution or its students in connection with a different type of loan.</p>			<ul style="list-style-type: none"> • Placement of lenders on the preferred lender list in exchange for benefits regarding a separate loan product.
<p><u>Prohibits lenders from staffing an institution's financial aid offices:</u></p> <p>Institutions may not allow a lenders' employees or agents to be identified to students, prospective students or their parents as employees or agents of the institution.</p> <p>No employee or agent of a lender may staff an institution's financial aid office at any time.</p>	<p>Forbids lenders from offering services to financial aid offices that create a conflict of interest, such as lending staff during peak loan processing times.</p>	<p>Permits lenders to provide staffing services to an institution, as a third-party servicer or otherwise, on an occasional, short-term, emergency basis to assist the institution with financial aid functions.</p> <p>Permits lenders to operate toll-free telephone numbers for use by institutions or others to obtain information about federal loans, or by institutions to submit electronically loan processing information.</p>	<ul style="list-style-type: none"> • Arrangements pursuant to which lenders operate "call center" for an institution, or lead borrowers who call designated financial aid help-lines to believe that they are speaking with a school financial aid counselor when they are speaking with a representative of a lender who may have an incentive to provide information that favors the lender. • Lenders providing staffing assistance at institutional financial aid facilities.

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<p><u>Conditions form of execution of master promissory notes:</u></p> <p>The institution may not link or otherwise direct potential borrowers to any electronic master promissory note or other loan agreement in an electronic format that incorporates any preferred lender list or similar device into the electronic medium, including any drop-down menus of possible lenders for the student to select. Students must be presented with the opportunity to enter the code or name for any lender that offers the relevant loan product.</p>	<p>Not explicitly addressed.</p>	<p>Not explicitly addressed.</p>	<ul style="list-style-type: none"> • Denials or impediments to a borrower's choice of a lender through, for example, statements that borrowers are required to use preferred lenders. • Use of loan applications or agreements structured or formatted in a way that limits or otherwise directs borrowers to particular lenders.
<p><u>Conditions on school-as-lender participants:</u></p> <p>If an institution participates in the school-as-lender program, it may not treat school-as-lender loans differently than loans originated by another lender; and all Code of Conduct provisions apply equally to school-as-lender loans as if the loans were provided by another lender.</p>	<p>Not explicitly addressed.</p>	<p>Not explicitly addressed.</p>	<ul style="list-style-type: none"> • Failure to disclose that an institution may sell loans made under the school-as lender program. • Interference with a borrower's ability to select an alternative lender or loan product.
<p><u>Prohibition of Opportunity Loans:</u></p> <p>An institution may not arrange with lenders to provide Opportunity Loans if provision of Opportunity Loans prejudices another borrower, except that an institution may offer loans to international students, at fair market rates, who would be otherwise unable to secure a domestic loan.</p>	<p>Not explicitly addressed.</p>	<p>Not explicitly addressed.</p>	<ul style="list-style-type: none"> • Lenders providing funds or credit lines which permit an institution to allocate loans to borrowers whose credit profile might make them otherwise ineligible, to the detriment of other borrowers.
<p>Not explicitly addressed.</p>	<ul style="list-style-type: none"> • Requires lenders of private educational loans to clearly state: that borrowers may qualify for low-interest federal loans; how interest rates are determined; sample loan costs disaggregated by type; fee information; 	<p>Not explicitly addressed.</p>	<ul style="list-style-type: none"> • Failure to encourage students and parents to seek federal loans over private loans.

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	<p>information on default; and Better Business, state consumer agency or state attorney general complaints against the lender.</p> <ul style="list-style-type: none"> • Before lenders can offer an education loan of more than \$1000, requires notification to the borrower's institution, so it can advise the borrower if the loan exceeds what is necessary to cover the cost of attendance after other aid is factored. • Bars lenders from offering private loans through an institution until the institution informs students of all options under federal loan programs -- including terms of more favorable federal loans. 		

¹ This chart summarizes selected aspects of the New York Attorney General's (NYAG) Code of Conduct as published in recent settlement agreements, pending federal legislation, and proposed draft amendments to U.S. Department of Education regulations. The chart does not address comprehensively such matters, nor does the chart address current federal law that may be pertinent to such matters. In addition, the chart summarizes certain activities on which state and federal regulators have focused, but it does not address all activities that might implicate current or pending state or federal law.

² This column summarizes Code of Conduct provisions in the University of Pennsylvania and New York University settlement agreements, which the NYAG released on April 2, 2007 and posted on its [website](#). The NYAG is not legally committed to such provisions with respect to other institutions and may impose different codes, or may articulate differently certain code provisions, with respect to other institutions, either through settlement agreements or other actions.

³ The information in this column is based on proposed federal legislation titled the Student Loan Sunshine Act. See the press releases announcing the introduction of this legislation in the [Senate](#) and [House of Representatives](#).

⁴ The information in this column is based on draft regulations that the U.S. Department of Education has proposed as part of negotiated rulemaking and has posted on its [website](#). The U.S. Department of Education has stated in the preamble to the draft regulations that they "reflect guidance provided by the Department in 'Dear Colleague' Letters published in 1989 and 1995 and other guidance provided in response to individual inquiries received by the Department since the [anti-inducement] prohibitions were first enacted into law." The draft regulations continue to be discussed as part of negotiated rulemaking and may change before they are proposed officially or promulgated in final form.

⁵ The practices described here are illustrative and non-exhaustive. They are based on (a) the Code of Conduct itself, (b) the NYAG's industry-wide findings contained in the University of Pennsylvania and New York University settlement agreements, and (c) the NYAG's March 15, 2007 press release, letter to universities and colleges, and Student Lending Brochure.

⁶ The chart uses the term “lender” to encompass any “Lending Institution” as defined in the New York University and University of Pennsylvania settlement agreements. Those settlement agreements define a “Lending Institution” as “(a) Any entity that itself or through an affiliate engages in the business of making loans to students, parents or others for purposes of financing higher education expenses or that securitizes such loans; or (b) Any entity, or association of entities, that guarantees education loans; or (c) Any industry, trade or professional association that receives money from any entity described above in subsections a and b.”