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MEMORANDUM

TO: Barry D. Burgdorf

FROM: Karen Lundquist

SUBJECT: Summary of new federal regulations, effective July 1, 2008, governing certain aspects of the student loan industry relating to lender lists and to prohibited inducements

Lender Lists: 34 CFR Section 682.212(h)

A school may make available a list of recommended or suggested lenders, in print or any other medium or form, for use by the school's students or their parents if the list:

- Is not used to deny or otherwise impede a borrower's choice of lender.
- Does not contain fewer than three lenders that are not affiliated with each other and that will make loans to borrowers or students attending the school. A lender is affiliated with another lender if:
 - The lenders are under the ownership or control of the same entity or individuals;
 - The lenders are wholly or partly owned subsidiaries of the same parent company; or
 - The directors, trustees, or general partners (or individuals exercising similar functions) of one of the lenders constitute a majority of the persons holding similar positions with the other lender.
- Does not include lenders that have offered, or have offered in response to a solicitation by the school, financial or other benefits to the school in exchange for

inclusion on the list or any promise that a certain number of loan applications will be sent to the lender by the school or its students.

A school that provides or makes available a list of recommended or suggested lenders must do the following:

- Disclose to prospective borrowers, as part of the list, the method and criteria used by the school in selecting any lender that it recommends or suggests.
- Provide comparative information to prospective borrowers about interest rates and other benefits offered by the lenders.
- Include a prominent statement in any information related to its list of lenders advising prospective borrowers that they are not required to use one of the school's recommended or suggested lenders.
- For first-time borrowers, not assign, through award packaging or other methods, a borrower's loan to a particular lender.
- Not cause unnecessary certification delays for borrowers who use a lender that has not been recommended or suggested by the school.
- Update any list of recommended or suggested lenders and any information accompanying such a list not less often than annually.

Prohibited Inducements by Lenders: 34 CFR Section 682.200 (Definition of Lender)

The federal regulations provide that a lender is not an eligible lender if the Secretary of Education determines that the lender has engaged in the following, either directly or through an agent or contractor:

- (1) Offered, directly or indirectly, points, premiums, payments, or other inducements to a school or other party to secure applications for FFEL loans or to secure FFEL loan volume. This includes the following:
 - Payments or offerings of other benefits, including prizes or additional financial aid funds, to a prospective borrower in exchange for applying for or accepting a FFEL loan from the lender.
 - Payments or other benefits to a school, any school-affiliated organization, or any individual in exchange for FFEL loan applications, application referrals, or a specified volume or dollar amount of loans made, or placement on a school's list of recommended or suggested lenders.

- Payments or other benefits provided to a student at a school who acts as the lender's representative to secure FFEL loan applications from individual prospective borrowers.
 - Payments or other benefits to a loan solicitor or sales representative of a lender who visits schools to solicit individual prospective borrowers to apply for FFEL loans from the lender.
 - Payment to another lender or any other party of referral fees or processing fees, except those processing fees necessary to comply with federal or state law.
 - Solicitation of an employee of a school or school-affiliated organization to serve on a lender's advisory board or committee and/or payment of costs incurred on behalf of an employee of a school or school-affiliated organization to serve on a lender's advisory board or committee.
 - Payment of conference or training registration, transportation, and lodging costs for an employee of a school or school-affiliated organization.
 - Payment of entertainment expenses, including expenses for private hospitality suites, tickets to shows or sporting events, meals, alcoholic beverages, and any lodging, rental, transportation, and other gratuities related to lender-sponsored activities for employees of a school or a school-affiliated organization.
 - Philanthropic activities, including providing scholarships, grants, restricted gifts, or financial contributions in exchange for FFEL loan applications or application referrals, or a specified volume or dollar amount of FFEL loans made, or placement on a school's list of recommended or suggested lenders.
 - Staffing services to a school, except for services provided to participating foreign schools at the direction of the Secretary of Education, as a third-party servicer, or otherwise on more than a short-term, emergency basis, and which is non-recurring, to assist a school with financial aid-related functions.
- (2) Conducted unsolicited mailings to a student or a student's parents of FFEL loan application forms, except to a student who previously has received a FFEL loan from the lender or to a student's parent who previously has received a FFEL loan from the lender.
- (3) Offered, directly or indirectly, a FFEL loan to a prospective borrower to induce the purchase of a policy of insurance or other product or service by the borrower or other person.
- (4) Engaged in fraudulent or misleading advertising with respect to its FFEL loan activities.

Notwithstanding the above, a lender, in carrying out its role in the FFEL program and in attempting to provide better service, may provide the following:

- Assistance to a school that is comparable to the kinds of assistance provided to a school by the Secretary of Education under the Direct Loan program, as identified by the Secretary in a public announcement, such as a notice in the Federal Register.
- Support of and participation in a school's or a guaranty agency's student aid and financial literacy-related outreach activities, excluding in-person school-required initial or exit counseling, as long as the name of the entity that developed and paid for any material is provided to the participants and the lender does not promote its student loan or other products.
- Meals, refreshments, and receptions that are reasonable in cost and scheduled in conjunction with training, meeting, or conference events if those meals, refreshments, or receptions are open to all training, meeting, or conference attendees.
- Toll-free telephone numbers for use by schools or others to obtain information about FFEL loans and free data transmission service for use by schools to electronically submit applicant loan processing information or student status confirmation data.
- A reduced origination fee in accordance with 34 CFR Sec. 682.202(c).
- A reduced interest rate as provided under the Higher Education Act of 1965, as amended.
- Payment of federal default fees in accordance with the Act.
- Purchase of a loan made by another lender at a premium.
- Other benefits to a borrower under a repayment incentive program that requires, at a minimum, one or more scheduled payments to receive or retain the benefit or under a loan forgiveness program for public service or other targeted purposes approved by the Secretary of Education, provided those benefits are not marketed to secure loan applications or loan guarantees.
- Items of nominal value to schools, school-affiliated organizations, and borrowers that are offered as a form of generalized marketing or advertising, or to create good will.
- Other services as identified and approved by the Secretary through a public announcement, such as a notice in the Federal Register.

The following definitions apply to the above:

- “School” means an institution of higher education.
- “School-affiliated organization” means any organization that is directly or indirectly related to a school and includes alumni organizations, foundations, athletic organizations, and social, academic, and professional organizations.
- “Applications” includes the Free Application for Federal Student Aid (FAFSA), FFEL loan master promissory notes, and FFEL consolidation loan application and promissory notes.
- “Other benefits” includes preferential rates for or access to the lender’s other financial products, computer hardware or non-loan processing or non-financial aid-related computer software at below market rental or purchase cost, and printing and distribution of college catalogs and other materials at reduced or no cost.
- “Emergency basis,” for the purpose of providing staffing services to a school, means a state- or federally-declared natural disaster, a federally-declared national disaster, and other localized disasters and emergencies identified by the Secretary of Education.

(The federal regulations also prohibit an eligible lender from making or holding a loan as trustee for a school or for a school-affiliated organization except under certain circumstances described by the regulations.)

Prohibited Activities of Guaranty Agencies: 34 CFR Section 682.401(e)

The federal regulations provide that a guaranty agency may not engage in the following, either directly or through an agent or contractor:

- (1) Offer directly or indirectly from any fund or assets available to the guaranty agency, any premium, payment, or other inducement to a prospective borrower of a FFEL loan, or to a school or school-affiliated organization or an employee of a school or school affiliated organization, to secure applications for FFEL loans. This includes the following:
 - Payments or offerings of other benefits, including prizes or additional financial aid funds, to a prospective borrower in exchange for processing a loan using the agency’s loan guarantee.
 - Payments or other benefits, including prizes or additional financial aid funds under any Title IV or state or private program, to a school or school-affiliated organization based on the school’s or organization’s voluntary or coerced

agreement to use the guaranty agency for processing loans, or to provide a specified volume of loans using the agency's loan guarantee.

- Payments or other benefits to a school, any school-affiliated organization, or any individual in exchange for FFEL loan applications or application referrals, a specified volume or dollar amount of FFEL loans using the agency's loan guarantee, or the placement of a lender that uses the agency's loan guarantee on a school's list of recommended or suggested lenders.
 - Payment of entertainment expenses, including expenses for private hospitality suites, tickets to shows or sporting events, meals, alcoholic beverages, and any lodging, rental, transportation, and other gratuities related to any activity sponsored by the guaranty agency or a lender participating in the agency's program, for employees of a school or employees of a school-affiliated organization.
 - Philanthropic activities, including providing scholarships, grants, restricted gifts, or financial contributions in exchange for FFEL loan applications or application referrals, a specified volume or dollar amount of FFEL loans using the agency's loan guarantee, or the placement of a lender that uses the agency's loan guarantee on a school's list of recommended or suggested lenders.
 - Staffing services to a school, except for services provided to participating foreign schools at the direction of the Secretary of Education, as a third-party servicer, or otherwise on more than a short-term emergency basis, and which is non-recurring, to assist a school with financial aid-related functions.
- (2) Assess additional costs or deny benefits otherwise provided to schools and lenders participating in the agency's program on the basis of the lender's or school's failure to agree to participate in the agency's program, or to provide a specified volume of loan applications or loan volume to the agency's program, or to place a lender that uses the agency's loan guarantee on a school's list of recommended or suggested lenders.
- (3) Offer, directly or indirectly, any premium, incentive payment, or other inducement to any lender, or any person acting as an agent, employee, or independent contractor of any lender or other guaranty agency to administer or market FFEL loans, other than unsubsidized Stafford loans or subsidized Stafford loans made under a guaranty agency's lender-of-last-resort program, in an effort to secure the guaranty agency as an insurer of FFEL loans. Examples of prohibited inducements include:
- Compensating lenders or their representatives for the purpose of securing loan applications for guarantee;
 - Performing functions normally performed by lenders without appropriate compensation;
 - Providing equipment or supplies to lenders at below market cost or rental; and

- Offering to pay a lender that does not hold loans guaranteed by the agency a fee for each application forwarded for the agency's guarantee.
- (4) Mail or otherwise distribute unsolicited applications to students enrolled in a secondary school or a postsecondary institution, or to parents of those students, unless the potential borrower has previously received loans insured by the guaranty agency.
- (5) Conduct fraudulent or misleading advertising concerning loan availability.

Notwithstanding Paragraphs (1) – (3) above, a guaranty agency is not prohibited from providing:

- Assistance to a school that is comparable to that provided by the Secretary of Education under the Direct Loan program, as identified by the Secretary in a public announcement, such as a notice in the Federal Register.
- Default aversion activities approved by the Secretary of Education under Section 422(h)(4)(B) of the Higher Education Act of 1965, as amended.
- Student aid and financial literacy-related outreach activities, excluding in-person school-required initial or exit counseling, as long as the name of the entity that developed and paid for any material is provided to participants and the guaranty agency does not promote its student loan or other products; but a guaranty agency may promote benefits provided under other federal or state programs administered by the guaranty agency.
- Meals and refreshments that are reasonable in cost and provided in connection with guaranty agency provided training of program participants and elementary, secondary, and postsecondary school personnel and with workshops and forums customarily used by the agency to fulfill its responsibilities under the Higher Education Act of 1965, as amended.
- Meals, refreshments, and receptions that are reasonable in cost and scheduled in conjunction with training, meeting, or conference events if those meals, refreshments, or receptions are open to all training, meeting, or conference attendees.
- Travel and lodging costs that are reasonable as to cost, location, and duration to facilitate the attendance of school staff in training or service facility tours that they would otherwise not be able to undertake, or to participate in the activities of an agency's governing board, a standing official advisory committee, or in support of other official activities of the agency.
- Toll-free telephone numbers for use by schools or others to obtain information about FFEL loans and free data transmission service for use by schools to

electronically submit applicant loan processing information or student status confirmation data.

- Payment of federal default fees in accordance with the Higher Education Act of 1965, as amended.
- Items of nominal value to schools, school-affiliated organizations, and borrowers that are offered as a form of generalized marketing or advertising, or to create good will.
- Loan forgiveness programs for public service and other targeted purposes approved by the Secretary of Education, provided the programs are not marketed to secure loan applications or loan guarantees.
- Other services as identified and approved by the Secretary of Education through a public announcement, such as a notice in the Federal Register.

The following definitions apply to the above:

- “School” means an institution of higher education.
- “School-affiliated organization” means any organization that is directly or indirectly related to a school and includes alumni organizations, foundations, athletic organizations, and social, academic, and professional organizations.
- “Applications” includes the Free Application for Federal Student Aid (FAFSA), FFEL loan master promissory notes, and FFEL consolidation loan application and promissory notes.
- “Other benefits” includes preferential rates for or access to a guaranty agency’s products and services, computer hardware or non-loan processing or non-financial aid-related computer software at below market rental or purchase cost, and printing and distribution of college catalogs and other non-counseling or non-student financial aid-related materials at reduced or no cost.
- “Premium,” “incentive payment,” and “other inducement” do not include services directly related to the enhancement of the administration of the FFEL Program that the guaranty agency generally provides to lenders that participate in its program. However, those terms do apply to other activities specifically intended to secure a lender’s participation in the agency’s program.
- “Emergency basis,” for the purpose of providing staffing services to a school, means a state- or federally-declared natural disaster, a federally-declared national disaster, and other localized disasters and emergencies identified by the Secretary of Education.

Rebuttable Presumption: 34 CFR Sections 682.413(h) and 682.705(c)

In certain actions against a lender or guaranty agency, if the Secretary of Education finds that the lender or guaranty agency provided or offered prohibited payments or activities discussed above, the Secretary will apply a rebuttable presumption that the payments or activities were offered or provided to secure applications for FFEL loans or to secure FFEL loan volume. To reverse the presumption, the lender or guaranty agency must present evidence that the activities or payments were provided for a reason unrelated to securing applications for FFEL loans or securing loan volume.