



# **HEOA Webinar Series – Code of Conduct & Preferred Lender Lists**

February 2009

# Agenda

- Resources
- Code of conduct requirements
- Preferred lender lists
- Question and answer

**Submit questions at any time!  
We will compile and address  
questions following each topic.**

# HEOA

- Higher Education Opportunity Act
  - “Reauthorization”
  - Public Law 110-315
- Enacted August 14, 2008
- Many provisions effective upon enactment
- ED guidance
  - DCL GEN-08-12
  - Regulations (still to come)
    - notice and final rule
    - negotiated rulemaking

# Disclaimer

- Summary information intended for informational purposes only
- Consult bill for details
- Not intended as legal advice or implementation guidance



# Resources

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- Department of Education
  - Reauthorization page
  - <http://www.ed.gov/policy/highered/leg/hea08/index.html>
- NASFAA website
  - Reauthorization page
  - <http://www.nasfaa.org/SubHomes/HEA/home.html>
- NCHELP website
  - E-library
  - <http://www.nchelp.org/elibrary/index.cfm?parent=1945>

# Reference Information

- School Code of Conduct (COC)
  - HEA 487(a)(25) & 487(e), DCL pg 69-71
- Preferred Lender Lists (PLL)
  - HEA 487(a)(27) & 487(h), DCL pg 71
- Responsibilities of institutions and institution-affiliated organizations (related to PLL)
  - HEA 151, 152 & 153
- Prohibited inducements
  - HEA 435(d)(5) , DCL pg 134-135 (lender)
  - HEA 428(b)(3), DCL pg 134-135 (guarantor)
  - TILA 140, DCL pg 173-174 (private loans)



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# Code of Conduct

# School Code of Conduct

- Code of Conduct (COC) requirement added as part of program participation agreement (PPA)
  - applies to all officers, employees, and agents
- School must develop a COC
  - must enforce COC
  - must publish COC prominently on its website
  - must annually inform all officers, employees, and agents with loan responsibilities

# School Code of Conduct

- Institution-affiliated organizations must comply if under a preferred lender arrangement
  - publish the Code of Conduct prominently on its website (if any)
  - enforce Code of Conduct with its agents
  - must annually inform agents with loan responsibilities of the Code

# School Code of Conduct

- Minimum content requirements for COC (see law for exhaustive list)
- Prohibit revenue-sharing agreements
  - lender provides loans, institution recommends lender or product, and lender provides fee or other benefit in exchange for recommendation
- Prohibit solicitation or acceptance of funds for private loans (“opportunity pools”) in exchange for
  - specified numbers or volume of title IV loans
  - preferred lender arrangements

# School Code of Conduct

- Prohibit contracting arrangements
  - applies to officers or employees employed in financial aid office or other employees with education loan responsibilities
  - cannot accept compensation from lender or lender affiliate for any type of consulting arrangement relating to education loans

# School Code of Conduct

- Contracting arrangement exceptions
  - person w/o loan responsibilities may serve on board of lender, servicer, or guarantor
  - person not in FAO but w/ loan responsibility may serve on board of lender, servicer, or guarantor
    - must have written conflict of interest policy requiring person to recuse from loan decisions
  - board member or trustee may be employed by lender, guarantor, or servicer
    - school must have written conflict of interest policy requiring person to recuse from education loan decisions at the school

# School Code of Conduct

- Prohibit lender assignment to first-time borrowers
  - must also prohibit delayed loan certification or certification refusal based on lender choice
- Prohibit lender staffing assistance, other than short-term staffing during emergencies
  - professional development training and education materials are not prohibited
- Prohibit advisory board compensation
  - applies to FAO employees or others with student financial aid responsibilities
  - allows reimbursement for reasonable expenses

# School Code of Conduct

- Prohibit gifts to financial aid office employees or others with loan responsibilities
  - cannot solicit or accept gifts from lender, guarantor, or servicer
  - gift includes virtually anything of value (other than of a de minimis amount)
    - includes payment in kind, payment in advance, and payment reimbursement
  - gift to family member is deemed gift to employee (and prohibited!), if given due to employee's position

# School Code of Conduct

- Gift exceptions
  - standard materials, activities, and programs
    - loan issues, default aversion / prevention, financial literacy
  - training expenses to improve service to schools
    - includes refreshments that are an integral part of a training session
  - favorable loan conditions
    - must be available to all students at school

# School Code of Conduct

- Gift exceptions (cont'd)
  - entrance & exit counseling services
    - note: for lenders and guarantors, prohibited inducement limitations supersede
  - philanthropic contributions
  - grants, scholarships, aid administered by State

# Prohibited Inducements

- FFEL guarantor cannot perform any function that the school is required to perform under title IV
  - also cannot pay anyone else
  - exception for exit counseling
- FFEL lender cannot perform any function that the school is required to perform under title IV
  - also cannot pay anyone else
  - exception for exit counseling

# Permissible and Prohibited “Gifts”

- Lenders / guarantors can offer materials and technology for entrance and exit counseling
  - booklets, online products, presentation materials, “train the trainer”
- Lenders / guarantors can assist with exit counseling
  - neutral and school-controlled
- Lenders / guarantors can provide other training and materials
  - financial literacy
  - program and/or technical training

# Annual Report on Reimbursement

- Report to ED all reimbursements for advisory board participation
  - annual report
  - identify expense, date, amount, and recipient
- Lenders and schools to report on FFEL reimbursements
- Schools to report on private loan reimbursements
- ED to provide summary report to Congress

# Annual Report on Code of Conduct

- ED IG to submit annual report on COC violations
  - include all substantiated violations of gift ban
  - report to Congress
  - make report available to public on ED website



# Preferred Lender Arrangements

# Preferred Lender Arrangements

- New definitions
  - institution-affiliated organization
    - directly or indirectly related to school
    - recommends, promotes, or endorses loans
  - education loan
    - FFEL, DL, or private loan
  - preferred lender arrangement
    - lender agrees to provide education loans
    - involves recommending, promoting, or endorsing education loans

# Preferred Lender Arrangements

- School that enters into preferred lender arrangement must
  - annually compile, maintain, and make available its preferred lender list (PLL)
    - print or other medium
  - exercise “duty of care” and “duty of loyalty” in compiling PLL “without prejudice and for the sole benefit” of students
  - cannot deny loan certification or otherwise impede borrower’s choice of lender

# Preferred Lender Arrangements

- Schools with preferred lender arrangement
  - make list available to student
  - disclose reason for including lender
    - esp terms and benefits
  - method and criteria for lender selection
  - statement of freedom to choose any lender
- Applies to federal and private loans
  - federal:  $\geq 3$  unaffiliated lenders
  - private:  $\geq 2$  unaffiliated lenders
- ED to maintain lender affiliation list

# Preferred Lender Arrangements

- School must disclose on website and in all informational materials that discuss loans
  - max amount of grant and loan aid available
  - statement that school must process FFEL loans from any eligible lender
  - content required in new disclosures (HEA 153 and TILA 128)
- School must not permit use of name, logo, emblem, mascot, or other school identifiers
- School must ensure lender name is displayed on all private loan info & materials

# Preferred Lender Arrangements

- ED to consult with broad community on disclosure content
  - must also include info required by Federal Reserve on private loan disclosures
- ED to provide model form
  - organizations may also use their own form
- Disclosure required to be provided by schools and institution-affiliated organizations
- ED to provide model disclosure on DL loans
  - DL schools to provide info to students
  - may use model disclosure or their own

# Preferred Lender Arrangements

- Schools and institutional-affiliated organizations w/ preferred lender arrangement must report to ED
  - annual report
  - due date established by ED
  - detailed explanation of why it entered into a preferred lender arrangement
    - include why terms, conditions, and provisions are beneficial to borrowers
- School to ensure report is publicly available
  - provide to prospective & enrolled students

# Lender Lists

- Preferred lender lists are permitted
  - no prescribed method for collecting information
  - use administration colleagues and financial aid community for ideas
- Must be able to explain decisions
- Not a “once & done” process



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## Next Steps

# Implementation

- COC provisions effective August 14, 2008
  - as PPA requirement, expect to demonstrate compliance at next PPA renewal
- PLL provisions effective August 14, 2008
  - disclosure under HEA section 153 effective February 14, 2010, or effective date of regs
  - disclosure under TILA section 128 effective within 2 years of enactment

# Looking Ahead

- 2009 negotiated rulemaking
  - 5 committees
    - code of conduct
      - Team II: Loans-School-based Loan Issues
    - preferred lender lists
      - Team II: Loans-School-based Loan Issues
    - lender and GA prohibited inducements
      - Team I: Loans-Lender/General Loan Issues
  - expected to commence in February
  - DCL notes some topics will be incorporate through notice and rule (without neg reg)

