

The New York State Financial Aid Administrators Association
May 20, 2008

Responses to Subpart 145-10 of the Regulations of the Commissioner of Education is added, effective July 17, 2008, as follows:

Subpart 145-10

Student Lending, Accountability, Transparency and Enforcement

§ 145-10.1 Definitions. As used in this Subpart:

(a) "Affiliate" shall mean the parent corporation of a lending institution or any other company or entity owned or controlled, in whole or in part, directly or indirectly, by such parent corporation or by the lending institution, that issues educational loans to borrowers attending covered institutions in New York State.

(b) "Borrower" shall mean a student attending a covered institution in New York State or a parent or person in ~~parental~~ a *financing relation agreement with* ~~to~~ such student, who also obtains an educational loan from a lending institution to pay for or finance higher education expenses.

NYSFAAA appreciates the clarification of New York state borrowers but recommends the removal of parental relation as cosigners of private educational loans are not necessarily the parents or parent substitutes of the student.

(c) "Covered institution" shall mean any college, vocational institution, or approved program as defined in Education Law section 601.

(d) "Covered institution employee" shall mean any employee, agent, contractor, director, officer or trustee of a covered institution.

(e) "Covered institution employees who are directly involved with or benefit from the functions of the covered institution's financial aid office" shall include:

- (1) professional employees in a covered institution's financial aid office; and
- (2) any covered institution administrator who has been assigned by the president of the covered institution with *direct* supervisory authority over the director of the financial aid office.

NYSFAAA believes this addition will clarify the definition.

(f) "Educational loan" shall mean any loan that is made, insured, or guaranteed under Part B of Title IV of the Federal Higher Education Act of 1965, as amended, any high risk loan or any private loan issued by a lending institution for the purposes of paying for or financing higher education expenses. Educational loans shall not include home equity loans or home equity lines of credit that students, their parents or persons in ~~parental relation~~ a *financing agreement with* ~~to~~ such students may utilize to finance higher education expenses and/or college installment payment plans for tuition, fees or books. Educational loans shall also not include credit cards that parents of students or persons in ~~parental relation~~ a *financing agreement with* ~~to~~ such students may utilize to

finance higher education expenses and/or college installment payment plans for tuition, fees or books.

(g) "Forward purchase agreement" shall mean any agreement between lending institutions to sell and/or purchase an educational loan upon execution of the promissory note by the borrower or ~~before~~ ~~upon~~ a student's graduation or termination from an educational program.

NYSFAAA suggests this modification to clarify the timing of such transactions.

(h) "Gift" shall mean any discount, favor, gratuity, inducement, loan, stock, thing of value, or other item having more than nominal value and shall include, but is not limited to:

(1) Any money, service, loan, entertainment, honoraria, hospitality, lodging costs, meals, registration fees, travel expenses, discount, forbearance or promise, in excess of twenty-five dollars per year;

(2) Gifts provided in kind, by purchase of a ticket, payment in advance, or reimbursement after expenses have been incurred, in excess of twenty-five dollars per year;

(3) Any computer hardware for which the recipient pays below-market value;

(4) Any printing costs or services for which the recipient pays below market value.

(5) Gift shall not include any of the following:

(a) standard informational material relating to a loan or a lending institution's own brochure or promotional literature, provided that it does not represent, in any manner, that the information is from a covered institution;

(b) reasonable food, refreshments, training, or informational material furnished to a covered institution employee or borrower as an integral part of a training session, if such training contributes to the professional development of the covered institution employee or contributes to the financial literacy of the borrower;

(c) private philanthropic activities of banks or other lending institutions that are unrelated to educational loans;

(d) the reimbursement of reasonable expenses to a *New York State* covered institution employee to ~~attend~~ *participate in* a training program or *planning function related to such training in New York State* when the covered institution employee performs a ~~essential~~ role in the implementation of the training program, as certified by the covered institution in a form and manner prescribed by the Commissioner. Such certification shall be maintained by the covered institution and made available to the Commissioner or his designee upon request;

NYSFAAA suggest this modification so that covered employees may attend training events held outside of New York State. We suggest the removal of the term "essential" as training may be specific to only the covered employee (i.e. Pell Grant coordinator is trained on new COD software version) in attendance. NYSFAAA supports the State

University of New York inclusion of the planning necessary to provide such training events.

(e) the reimbursement of expenses to a covered institution employee for serving on or for the board of a bona-fide professional association recognized by the Commissioner related to student financial aid;

Many of our members support the training and outreach functions of NYSFAAA as committee members which are subdivisions of the board.

(f) access to a lender's electronic platforms and/or software programs such as electronic promissory notes (e-MPN), electronic applications and disbursement systems, electronic comparison selection and application system, financial planning systems, default management systems, enrollment or degree verification services, electronic entrance and exit counseling systems, financial aid software systems and software that provides an interface with lender and school processing systems, provided that they are available and accessible to all covered institutions;

(g) grants to covered institutions, provided that the grant process is competitive and provides for an unbiased review of the proposals and that the grant funds are used by the covered institution for a specifically identified educational purpose or to educate students on financial literacy relating to student loans. A lending institution may not limit the eligibility for such grants to only those covered institutions that do business with the lending institution;

(h) favorable terms, conditions, and borrower benefits on an educational loan provided to a student employed by the covered institution if such terms, conditions or benefits are comparable to those provided to all students of the institution; and

(i) any discount or reduction in insurance, the default fee, the origination fee or any reduction of the principal on an educational loan that a lending institution may offer to a covered institution for the benefit of borrowers;

(i) "Higher education expenses" shall include the following:

(1) tuition and fees;

(2) costs incurred for books, supplies, transportation, and miscellaneous personal expenses;
and

(3) room and board costs.

(j) "High risk loans" or "opportunity loans" shall mean any agreement between a lending institution and a covered institution that provides for the lending institution to issue educational loans to students with no credit history or a poor credit history, who would otherwise not be eligible for educational loans. High risk loans are underwritten by the lending institution while opportunity loans are determined by the covered institution;

(k) "Lending institution" shall mean:

(1) any entity that itself or through an affiliate makes educational loans to pay for or finance higher education expenses or that securitizes such loans;

(2) any entity, or association of entities, that guarantees educational loans;
or

(3) any industry, trade or professional association, financial aid association, alumni association, athletic booster association or any other entity that receives money related to educational loan activities, from any entity described above in paragraphs (1) and (2) of this subdivision;

(a) any organization that is currently approved under IRS code 501(c) and files IRS form 990 annually, maintains this status shall not be considered a lender;

(b) any organization who provides at least half of its resources to training and outreach shall not be considered a lender.

NYSFAAA supports this modification to support the training and outreach activities of itself and sister organizations.

(1) "Preferred lender list" shall mean a list of one or more suggested or recommended lending institutions that a covered institution makes available for consideration by borrowers, potential borrowers or others, in print or any other medium or form.

(m) "Revenue sharing" shall mean any arrangement whereby a lending institution pays a covered institution or an affiliated entity or organization of such covered institution a percentage of the principal of each loan directed towards the lending institution from a borrower at the covered institution.

(n) "Training" shall mean any event where specialized instruction, practice or information regarding postsecondary student financial aid is provided to covered institution employees or borrowers, including entrance loan counseling, and exit loan counseling to meet a covered institution's responsibilities for counseling under federal law provided that a covered institution's staff provides the entrance or exit counseling or has direct oversight of the counseling and such counseling does not promote the products or services of any lending institution.

(o) Educational loan activities shall mean any activity offered for the express purpose of promoting, advertising, and/or obtaining favorable market position for a lending institution's educational loan products as insured under Title IV of the HEA act as amended or as offered as a private educational loan.

(p) Money related to educational loan activities shall not include any money received as an unrestricted donation to an entity's charitable, educational, or public service purposes; donations to a legally administered scholarship fund for students attending covered institutions in New York State, payment of standard membership dues, or payment for the purchase of products or services at fair market value.

NYSFAAA believes it is necessary to define educational loan activities in this section. We further support SUNYFAP's text recommendation for § 145-10.1 (o) 2 with the modifications above.

§145-10.2 Prohibition of Gifts.

(a) Prohibition of gifts made by lending institutions to covered institutions and their employees.

(1) A lending institution shall not, directly or indirectly, offer or provide any gift to a covered institution or a covered institution employee.

(2) A lending institution may not engage in revenue sharing with a covered institution.

(b) Prohibition of receipt of gifts by covered institutions.

(1) A covered institution shall not, directly or indirectly, solicit, accept or receive any gift from or on behalf of a lending institution, in exchange for any advantage or consideration provided to such lending institution related to its educational loan activities.

(2) A covered institution shall not engage in revenue sharing with a lending institution.

(c) Prohibition of receipt of gifts by covered institution employees.

(1) A covered institution shall require that no covered institution employee on his or her own behalf or on behalf of another, directly or indirectly, solicit, accept or receive any gift from or on behalf of a lending institution. Nothing in this section shall be construed as prohibiting a covered institution employee from conducting business with a lending institution, provided that such business is unrelated in any manner whatsoever to a covered institution.

(2) A covered institution employee, on his or her own behalf or on behalf of another, shall not directly or indirectly solicit, accept or receive any gift from or on behalf of a lending institution. Nothing in this section shall be construed as prohibiting a covered institution employee from conducting business with any lending institution, provided that such business is unrelated in any manner whatsoever with the covered institution.

(3) Covered institution ~~employees~~ shall report to the State Education Department, in a format prescribed by the Commissioner, any instance of a lending institution attempting to give a gift to such covered institution employee.

NYSFAAA believes the onus of reporting must fall on the covered institution as there are functions of the institution that lie outside of the knowledge or supervision of the financial aid office and covered employees. The covered employee shall report any instance to the appropriate covered institutional official who then shall report to the Commissioner.

§145-10.3 Covered institution employee prohibitions and reporting requirements.

(a) A lending institution shall ensure that no covered institution employee receives any remuneration for serving as a member or participant of an advisory board of a lending institution or receives any reimbursement of expenses for so serving.

(b) A covered institution shall require that no covered institution employee of such covered institution receives any remuneration for serving as a member or participant of an advisory board of a lending institution or receives any reimbursement of expenses for so serving.

(c) Nothing in this section shall be construed as prohibiting:

(1) a covered institution employee's participation on an advisory board of a lending institution that is unrelated in any manner whatsoever to educational loans; or

(2) the President or trustees of a covered institution, or any other covered institution employee who is not directly involved with, and/or does not benefit from, the functions of the covered institution's financial aid office from serving on the board of directors of a publicly traded or privately held company.

(d) Covered institution employees who are directly involved with or benefit from the functions of the covered institution's financial aid office shall be required to report to the Department, in a format prescribed by the Commissioner: (1) any relationship with a lending institution identified on the covered institution's preferred lender list; (2) any financial relationship with a lending institution identified on the covered institution's preferred lender list in excess of ten thousand dollars; and (3) any ownership interest in a lending institution identified on the covered institution's preferred lender list.

§145-10.4. Prohibition on misleading identification of lending institutions' employees.

(a) A lending institution shall require that no employee or agent of such lending institution is identified to borrowers or potential borrowers of a covered institution as an employee, representative or agent of such covered institution.

(b) A covered institution shall require that no employee or agent of a lending institution is identified to borrowers or potential borrowers of such covered institution as an employee, representative or agent of such covered institution.

(c) No employee, representative or agent of a lending institution may staff a covered institution's financial aid offices.

§145-10.5. Loan disclosure and prohibition of quid pro quo high risk loans.

(a) If a borrower or potential borrower consults with a covered institution's financial aid office in connection with obtaining an educational loan to pay for or finance higher education expenses, the covered institution shall inform the borrower or potential borrower of all available financing options under Title IV of the Federal Higher Education Act of 1965, as amended, including information on any terms and conditions of available loans under such title that are more favorable to the borrower, before a lending institution may provide a private educational loan to a borrower attending a covered institution. A borrower or potential borrower shall be deemed to have consulted with a covered institution's financial aid office when the borrower applies for financial aid from the covered institution.

(b) A lending institution shall not enter into an agreement or otherwise provide any high risk or opportunity loans, in exchange for the covered institution providing concessions or promises to the lending institution that may prejudice other borrowers or potential borrowers such as, but not limited to, any agreement to provide high risk or opportunity loans based upon the volume of loans that the lending institution has, or will have, with students attending a covered institution.

(c) A lending institution shall file an annual statement, in a format prescribed by the Commissioner, which identifies the criteria it utilizes for underwriting high risk loans or providing opportunity loans for each covered institution they serve.

§145-10.6. Standards for preferred lender lists. A covered institution that provides or makes available a preferred lender list shall comply with the following standards:

(a) the preferred lender list shall disclose the process by which the covered institution selected lending institutions for such preferred lender list, including, but not limited to, the method and criteria used to choose the lending institutions and the relative importance of those criteria;

(b) the preferred lender list shall state in the same font size and same manner as the predominant text on the document that borrowers have the right and ability to select the education loan provider of their choice, are not required to use any of the lenders on such preferred lender list, and will suffer no penalty for choosing a lender that is not on such preferred lender list;

(c) the covered institution's decision to include a lending institution on any preferred lender list and the covered institution's decision as to where on the preferred lender list the lending institution's name appears shall be determined solely by consideration of the best interests of the borrowers who may use such preferred lender list without regard to the pecuniary interests of the covered institution;

(d) A covered institution that recommends the educational loan products of a lending institution to its borrowers on its preferred lender list shall not allow such lending institution to utilize the name, emblem, mascot, or logo of the covered institution, or pictures or symbols readily identified with the covered institution, in the marketing of private educational loans to the students attending such covered institution.

(e) If lending institutions are listed on a preferred lender list in other than alphabetical order, the preferred lender list shall include a statement explaining the basis for such ~~listing~~ ordering.

NYSFAAA believes this term provides more clarity.

(f) The contents of any preferred lender list shall be reviewed and updated no less than annually;

(g) No lending institution shall be placed on a preferred lender list unless such lending institution provides assurance to the covered institution and to borrowers who take out loans from such lending institution that the advertised benefits upon repayment will continue to inure to the benefit of borrowers regardless of whether the lending institution's loans are sold;

(h) No lending institution that, to the covered institution's knowledge after reasonable inquiry, has an agreement to sell its loans to another unaffiliated lending institution shall be included on a preferred lender list unless such agreement is disclosed therein in the same font size and same manner as the predominant text on the document in which the preferred lender list appears;

(i) No lending institution shall be placed on a covered institution's preferred lender lists or in favored placement on a covered institution's preferred lender lists for a particular type of loan, in exchange for benefits provided to the covered institution or to the covered institution's students in connection with a different type of loan;

(j) For each type of educational loan, including but not limited to consolidation loans, a covered institution's preferred lender list shall ~~disclose~~ ensure the following information is *made available to the borrower*:

NYSFAAA recommends that the covered institution make available the terms below. This information is usually provided by the lender and can be made available through the covered institution's website. Thus recommendation is made pursuant to § 145-10.8 (a).

(1) the interest rate of each loan and whether such interest rate is fixed or variable; and for variable interest rate loans, a statement as to when the interest rate may change, how much the interest rate may increase, whether there is a cap on any change in the interest rate and the annual percentage rate (APR) computed in the manner required under section 107 of the Truth in Lending Act (15 U.S.C. 1606) on the basis of the actual net disbursed amount of the loan;

(2) any fees associated with each type of loan;

(3) the repayment terms available for each loan;

(4) any additional terms and conditions applied to the loan;

(5) any benefits that may be applied to each loan and if any benefits may apply, an explanation of such benefits that is understandable by the general public, the percentage of borrowers that have benefited from such discount with such lending institution and whether such benefits would still apply if the loan were consolidated;

(6) the opportunity for deferment or forbearance in repayment of the loan, including a definition of deferment and forbearance and whether the loan payments can be deferred if the student is in school;

(7) the definition of loan consolidation and whether there is a penalty for early repayment;

(8) examples of a borrower's estimated monthly payments and the total payment using the interest rate being offered and, if the interest rate offered is variable, the list shall contain examples of estimated monthly payments and the total loan payment utilizing both the initial interest rate and the maximum potential interest rate for loans of five thousand dollars, ten thousand dollars and twenty thousand dollars, for loans taken out for both ten and fifteen years; and

(9) the average amount borrowed from the lending institution by students enrolled in such covered institution for the preceding academic year;

(10) whether such lending institution anticipates selling such loans to another lending institution;

(11) late payment penalties, if any;

(12) whether, and under what conditions, early repayment may be available without penalty and;

(13) the preferred lender list shall contain a statement that students are not limited to, or required, to select any of the listed lending institutions and that the covered institution is required to process the documents required to obtain a loan from any eligible lending institution that the student selects.

(k) A lending institution shall certify to the covered institution, in a form and manner prescribed by the Commissioner, the truth and accuracy of the information disclosed by such lending institution as set forth in paragraphs (1) through (13) of subdivision (j) of this section. The covered institution shall maintain such certification and make it available to the Commissioner, or his designee, upon request.

(l) Nothing herein shall prohibit a covered institution from processing educational loans through a primary guarantor or a guarantor selected by the borrower.

§145-10.7. Proper execution of master promissory notes.

A covered institution shall not direct in any manner whatsoever potential borrowers to any electronic master promissory notes or other loan agreements that do not provide a reasonable and convenient alternative for the borrower to complete a master promissory note with any federally approved lending institution offering the relevant loan in this state.

§145-10.8 Disclosures at request of covered institutions.

(a) Except for educational loans made, insured, or guaranteed by the federal government, upon the request of any covered institution, a lending institution shall disclose to such covered institution, in reasonable detail and form, the historic default rates of the borrowers from such covered institution, calculated according to any format prescribed by the Commissioner, and the rates of interest charged to borrowers from such covered institution in the year preceding the disclosures and the number of borrowers obtaining each rate of interest.

(b) If a loan is sold pursuant to a forward purchase agreement, the lending institution which purchases the loan shall be responsible for providing the information required under subdivision (a) of this section.

(c) A covered institution, utilizing any data and/or disclosures received from a lending institution pursuant to subdivision (a) of this section, shall periodically review its preferred lender list at least every 3 years, to determine whether the loans provided by the lending institutions identified on such list are benefiting the graduates of that covered institution, and shall revise its list accordingly.

§145-10.9. Penalties.

(a) If after providing notice and an opportunity for a hearing the Department determines that a covered institution or lending institution has violated any terms or provisions of this article, then the covered institution or lending institution may be liable for a civil penalty. Regardless of the Department's determination that a covered institution or lending institution is liable for a single violation or a series of violations under this article, the maximum penalty shall not exceed fifty thousand dollars. In taking action against a covered institution or lending institution, consideration shall be given to the nature and severity of violations of this article.

b) If after providing notice and an opportunity for a hearing the Department determines that a covered institution employee has violated any terms or provisions of this article, then the covered institution employee may be liable for a civil penalty. Regardless of the Department's determination that a covered institution employee is liable for a single violation or a series of violations under this article, the maximum penalty shall not exceed seven thousand five hundred dollars. In taking action against a covered institution employee, consideration shall be given to the nature and severity of violations of this article.

(c) If after providing notice and an opportunity for a hearing the Department determines that a lending institution has violated a term or provision of this article, such lending institution shall not be placed or remain on any covered institution's preferred lender list unless notice of such violation, in a format and manner directed by the Department, is provided to all potential borrowers.

(d) Nothing in this section shall prohibit the Department from reaching a settlement agreement with a covered institution, covered institution employee or lending institution in order to effectuate the purposes of this section. Provided, however, if such settlement agreement is reached with a covered institution or lending institution, the Department shall provide notice of such action to all potential borrowers, in a format and manner prescribed by the Commissioner.

§145-10.10. Hearing Procedures. This section applies to the conduct of hearings described in section 630 of the Education Law.

(a) Notice of proposed action. Whenever the Department has reasonable cause to believe that a covered institution, a covered institution employee and/or a lending institution has violated any terms or provisions of this Subpart or Article 13-B of the Education Law, the Department shall notify such covered institution, covered institution employee and/or lending institution of the Department's intent to take proposed action. Such notice shall include:

(1) a description of the alleged violations;

(2) a statement of the Department's proposed action to be taken, including, but not limited to, any administrative remedies and/or any civil penalties sought; and

(3) notice of the respondent's right to be heard and the opportunity to request a hearing on the matter within 30 days of service of such notice.

(b) The Department's proposed action shall become effective 30 days after service of such notice unless, within that time period, the party files with the Commissioner, or his designee, a written request for a hearing.

(c) Hearing. Upon receipt of a written request for a hearing within the timeframe set forth in subdivision (a) of this section, a hearing officer shall be appointed by the Commissioner, or his designee. In the order designating a hearing officer, the Commissioner, or his designee, shall also designate the place where said hearing will be held. At least 30 days prior to the hearing, the hearing officer shall provide the parties with written notice of the time and place of said hearing.

(d) Consolidation. If common questions of law and fact are involved, the Commissioner may, in his or her sole discretion and at any stage of the proceedings, consolidate two or more proceedings under this section for purposes of holding a hearing, the submission of pleadings and other papers and/or the issuance of a decision. In such case, the designated hearing officer may permit or require the service and filing of additional pleadings, affidavits, memoranda of law and any other papers required or authorized to be served pursuant to this Subpart upon such terms as the designated hearing officer may specify.

(e) Adjournment. All parties should be prepared to proceed at the time and date scheduled. Except for good cause shown, requests for adjournments shall be in writing and served on all parties and filed with the designated hearing officer. Requests for adjournments shall be granted at the discretion of the hearing officer, who shall notify all parties of the new time and date of the hearing.

(f) Answer. At least 10 days prior to the scheduled hearing, a verified answer to the matters asserted in the notice of hearing shall be served upon the Commissioner or his designee and filed with the hearing officer.

(g) Additional pleadings. At the discretion of the hearing officer, additional pleadings may be served and filed in the timeframe and manner prescribed by the hearing officer.

(h) The parties may be represented at the hearing by counsel and may produce witnesses and affidavits. The State Education Department shall have the burden of proving by a preponderance of the evidence that respondent(s) are in violation of Article 13-B of the Education Law and/or the provisions of this Subpart. Testimony given and other proceedings at the hearing must be recorded verbatim. *A copy of the recording shall be made available to the parties upon request.*

NYSFAAA supports the State University of New York, System Administrations suggested text.

(i) Hearing officer's recommendation. Within 60 days of the conclusion of the hearing, the hearing officer shall submit to all parties or their designated representatives a report of the hearing officer's findings and recommendations, together with a copy of the record. The findings and recommendations of the hearing officer shall be based solely upon the record and shall set forth the factual basis therefor.

(j) Final determination. *Within 30 days* ~~Upon~~ receipt of the hearing officer's findings and recommendations, the Commissioner shall make a final determination,

in writing. The Commissioner shall review all papers received, written responses filed, the transcript and all evidence presented in the proceeding before the hearing officer. Based upon the record, the Commissioner may affirm, adopt, reverse or modify the findings and recommendations of the hearing officer. If it is determined that a party has committed a violation, the Commissioner may issue a final order, imposing administrative sanctions and/or penalties in accordance with this Subpart and Article 13-B of the Education law. The Commissioner shall serve a copy of the final determination and order on the hearing officer and all parties or their designated representatives.

NYSFAAA recommends that the Commissioner make final determinations within 30 days of receiving the hearing officer's findings. We believe this protects the integrity and reputation of the covered employee and/or covered institution, especially when allegations are found to be untrue.

