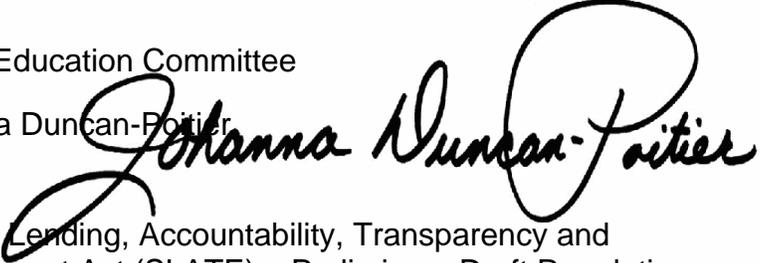




TO: Higher Education Committee

FROM: Johanna Duncan-Poitier 

SUBJECT: Student Lending, Accountability, Transparency and Enforcement Act (SLATE) – Preliminary Draft Regulations

DATE: February 27, 2008

STRATEGIC GOAL: Goals 2, 3 and 4

AUTHORIZATION(S):

SUMMARY

Issue for Discussion

Should the Board of Regents add subpart 145-10 of the Regulations of the Commissioner of Education concerning the implementation of the Student Lending, Accountability, Transparency and Enforcement Act (SLATE)?

Reason(s) for Consideration

Required by State statute.

Proposed Handling

The *preliminary draft* of the proposed amendment will come before the Higher Education Committee for discussion at its March 2008 meeting. After discussion by the Committee, the Department will widely distribute the draft regulation for comment by the educational community, lending institutions and professional associations. **It is essential that the Department receive sufficient financial resources to implement the requirements related to SLATE. At present, there are no such resources available to the Department.**

Background Information

The Student Lending, Accountability, Transparency and Enforcement Act (SLATE)

Chapter 41 of the Laws of 2007 enacted the Student Lending, Accountability, Transparency and Enforcement Act (SLATE). This act establishes a code of conduct for postsecondary institutions recognized and approved by the Regents and the University of the State of New York (referred to as “covered institutions”), employees of such institutions (referred to as “covered institution employees”) and lending institutions relating to the marketing and issuance of educational loans to students and their parents to pay for or finance higher education expenses. SLATE is a comprehensive law designed to regulate a \$5 billion industry in New York State which impacts 1.1 million students at over 700 separate educational institutions/locations each year. The key provisions of the law are as follows:

- Prohibits lending institutions from making gifts to covered institutions and their employees in exchange for any advantage or consideration provided to the lending institution related to educational loan activities, including revenue sharing.
- Bans covered institutions and their employees from soliciting, accepting or receiving gifts from lending institutions for any advantage related to educational loan activities, including revenue sharing.
- Bans covered institution employees from receiving any remuneration for serving as a member of a lending institution’s advisory board.
- Prohibits employees and/or agents of the lending institution from posing as covered institution employees, including staffing the covered institution’s financial aid offices with employees of the lending institution.
- Bans lending institutions and covered institutions from agreeing to certain quid-pro-quo high-risk loans that would prejudice potential borrowers.
- Requires any covered institution that makes available a preferred lender list to potential borrowers to disclose the process by which the covered institution selects lending institutions for such preferred lender list and require that the list shall contain a statement that borrowers have the right to select the education loan of their choice.
- Prohibits covered institutions from linking or directing 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 the state.
- Requires lending institutions to disclose to covered institutions, upon request, the historic default rates of the borrowers from the covered institution, the interest rates charged to borrowers and the number of borrowers obtaining each interest rate.

- Authorizes the Department to impose a civil penalty on any covered institution, covered institution employee or lending institution that violates any provision of SLATE.
- Establishes a student lending education account where any monies received as civil penalties shall be deposited.

The State Education Department's Responsibilities under SLATE

The Department has a significant investigative, quasi-judicial and fiduciary responsibility to implement the new law, including the following:

- Covered institution employees are required to report to the Department any instance of a lending institution attempting to give a gift to such employee.
- Covered institution employees who are directly involved with or benefit from the functions of the covered institution's financial aid office are required to submit a financial disclosure form to the Department as it relates to any financial interest or ownership in lending institutions identified on the covered institution's preferred lender list.
- Lending institutions are required to file an annual statement with the Commissioner, identifying the criteria they utilize for underwriting high-risk loans or providing opportunity loans for each covered institution they serve.
- For any violation of the provisions in SLATE, a hearing must take place and civil fines may be imposed.
- Any alleged violations must be investigated and appropriate evidence must be secured for use at a hearing for presentation to a hearing officer.
- Covered institutions are required to disclose pertinent information (i.e., interest rates, repayment terms, late payment penalties, etc.) to all students requesting information on a loan. Along with full disclosure will come student complaints which must be investigated and may lead to a hearing.
- The Department may collect fines for violations of SLATE and shall use the revenue from such fines to:
 - Operate a grant program to award covered institutions funds to initiate education programs to educate potential borrowers on the educational loan process; and/or
 - Repay borrowers who paid an inflated price for a loan caused by revenue sharing agreements between a covered institution and a lending institution.

With appropriate financial resources, the State Education Department will be able to effectively implement the provisions of SLATE resulting in:

- ✓ Timely investigation and resolution of student complaints
- ✓ Standardized information on student lending presented in a clear and simple manner to assist students and parents to make informed choices
- ✓ Students and parents gain access to the most cost efficient way to support postsecondary education through loans
- ✓ Protection for students and parents from being steered into student loans laden with conflicts of interest.

The Governor's proposed 2008-09 budget did not include an appropriation for the Department to implement SLATE. Rather, it authorized the Commissioner of Education to enter into a Memorandum of Agreement with the Attorney General to support the necessary operating expenses of the Department to implement the provisions of SLATE. The Regents have requested an appropriation of approximately \$1 million to implement SLATE. **Without resources, the Department will not be able to implement this proposed regulation.**

Preliminary Draft Regulations

The preliminary draft regulations that are before you today seek to provide additional guidance to institutions, their employees and lending institutions to clarify the statutory requirements.

Additional clarification is provided on what is and is not deemed to be a "gift" under the regulation. For example, the proposed regulation defines a gift as any gift in excess of twenty-five dollars per year and excludes from the definition of "gift", financial literacy training, entrance and exit loan counseling, grants to covered institutions for an educational purpose and access to electronic software and promissory notes. Also excluded from the definition of "gift", among other things, is reimbursement for training provided by covered institution employees at professional development conferences in New York State.

The regulation also requires a lending institution to file an annual statement with the Commissioner, identifying the criteria it utilizes for underwriting high risk loans or providing opportunity loans for each covered institution it serves.

The regulation defines in detail what information a covered institution must disclose for each lending institution included on its preferred list. The purpose of such information is to ensure that the student and his/her parents have clear information to determine the best financial arrangement for them to pursue.

Finally, the regulation defines in greater detail the hearing procedures the Department will utilize when the Department has reasonable cause to believe that a covered institution, a covered institution employee and/or a lending institution has violated any provision of SLATE.

The proposed addition of §145-10 of the Commissioner's Regulations includes the actual statutory language for SLATE with new proposed regulatory language to further define and clarify the requirements in the statute. For clarity purposes, the

proposed regulatory language is in bold in this draft. The unbolded sections represent the statutory provisions in the SLATE law.

Recommendation

It is recommended that the Board of Regents authorize the Department to widely distribute the draft regulation and seek feedback from the educational community, lending institutions and professional associations on the preliminary draft regulations to implement SLATE.

Timetable for Implementation

After receiving feedback from the educational community, lending institutions and professional associations, the Department will present the regulation for discussion by the Higher Education Committee at its June meeting with action by the Board of Regents scheduled for the July meeting. **The Department will continue to advise the Governor and the Legislature of the need to provide the Department with the necessary financial resources to implement the provisions of SLATE. The Department does not presently have the necessary resources.**