

Issue 7
Proposed Regulatory Language
Team II - School-based Loan Issues

Origin: HEOA section 493(h)

Issue: PPA: Preferred Lender Lists

Statutory cites: HEA section 487(h)

Regulatory cites: New §668.14(b)(28)

DCL GEN-08-12 cite: Page 70

Summary of issue: The HEOA adds a new requirement to the Program Participation Agreement (PPA) for an institution that enters into a preferred lender arrangement.

An institution that enters into a preferred lender arrangement must—as a condition of program participation—compile, maintain, and make available to students and their families a list of the specific lenders for loans made under a Title IV program and for private education loans the institution recommends or promotes in accordance with its lender arrangement. The institution must, at least annually, compile and make the list available in print or other medium.

In compiling, maintaining, and making available the preferred lender list, an institution must:

- disclose detailed information about the terms and conditions of the loans offered by preferred lenders, as required under section 153(a)(2)(A) of the HEA;

- disclose why it entered into an arrangement with each lender, particularly with respect to terms and conditions or provisions favorable to the borrower;

- disclose that students and families of students do not have to borrow from a lender on the preferred lender list;

- ensure that the list contains at least three unaffiliated lenders for FFEL loans and, if the institution has a preferred lender list for private loans, at least two unaffiliated lenders for those loans. The list must specifically indicate whether a lender is or is not an affiliate of each other lender on the list. If a lender is an affiliate of another lender, the institution must describe that affiliation;

- prominently disclose the method and criteria used in selecting the lenders to ensure that the lenders are selected on the basis of the best interests of the borrowers;

- exercise a duty of care and a duty of loyalty in compiling the list without prejudice and for the sole benefit of students and their families; and

- not deny or impede the borrower's choice of a lender or unnecessarily delay certifying a Title IV loan for a borrower who chooses a lender not on the list.

Regulatory language:

§ 668.14 Program participation agreement.

(a) (1) An institution may participate in any Title IV, HEA program, other than the LEAP and ~~NEISP~~ GAP programs, only if the institution enters into a written program participation agreement with the Secretary, on a form approved by the Secretary. A program participation agreement conditions the initial and continued participation of an eligible institution in any Title IV, HEA program upon compliance with the provisions of this part, the individual program regulations, and any additional conditions specified in the program participation agreement that the Secretary requires the institution to meet.

(2) An institution's program participation agreement applies to each branch campus and other location of the institution that meets the applicable requirements of this part unless otherwise specified by the Secretary.

(b) By entering into a program participation agreement, an institution agrees that—

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(28) If the institution enters into a preferred lender arrangement (as defined in 34 CFR 601.2), it will at least annually compile, maintain, and make available for students attending the institution, and the families of such students, a list in print or other medium, of the

specific lenders for loans made, insured, or guaranteed under title IV of the HEA or private education loans that the institution recommends, promotes, or endorses in accordance with such preferred lender arrangement. In making such a list, the institution must comply with the requirements in 34 CFR 682.212(h) and 34 CFR 601.10.

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~~(Approved by the Office of Management and Budget under control number 1840-0537)~~

~~(Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a-3, 1099c, and 1141)~~

~~[59 FR 22425, Apr. 29, 1994, as amended at 59 FR 34964, July 7, 1994; 63 FR 40623, July 29, 1998; 64 FR 58617, Oct. 29, 1999; 64 FR 59038, Nov. 1, 1999; 65 FR 38729, June 22, 2000; 65 FR 65637, Nov. 1, 2000; 67 FR 67072, Nov. 1, 2002; 73 FR 35492, June 23, 2008]~~

§ 682.212 Prohibited transactions.

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(h) ~~(1)~~ A school may, at its option, 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 ~~provided such list~~ **provided that such list complies with the requirements in 34 C.F.R. §§601.10 and 668.14 (a) (28) .**

~~(i) Is not used to deny or otherwise impede a borrower's choice of lender;~~

~~(ii) 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; and~~

~~(iii) 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.~~

~~(2) A school that provides or makes available a list of recommended or suggested lenders must-~~

~~(i) 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;~~

~~(ii) Provide comparative information to prospective borrowers about interest rates and other benefits offered by the lenders;~~

~~(iii) 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;~~

~~(iv) For first-time borrowers, not assign, through award packaging or other methods, a borrower's loan to a particular lender;~~

~~(v) Not cause unnecessary certification delays for borrowers who use a lender that has not been recommended or suggested by the school; and~~

~~(vi) Update any list of recommended or suggested lenders and any information accompanying such a list no less often than annually.~~

~~(3) For the purposes of paragraph (h) of this section, a lender is affiliated with another lender if-~~

~~(i) The lenders are under the ownership or control of the same entity or individuals;~~

~~(ii) The lenders are wholly or partly owned subsidiaries of the same parent company; or~~

~~(iii) 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.~~

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1097)

(Approved by the Office of Management and Budget under control number 1845-0020)

[57 FR 60323, Dec. 18, 1992, as amended at 72 FR 62002, Nov. 1, 2007]