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Preferred Lender Lists

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Overview

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Key Principles

- Must provide borrowers with a meaningful choice of lenders and the ability to exercise that choice
- May not limit borrower choice of lender
- Should facilitate informed choice by borrowers
- Must focus on prospective borrower's best interests
- Must be unbiased
- May not prejudice one prospective borrower's interests for a benefit to other borrowers




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Several Laws and Regulations

- Student Lending Accountability, Transparency and Enforcement Act of 2007 [New York SLATE]
 - Effective now
- US Department of Education Regulations
 - 34 CFR 682.212, 34 CFR 682.401
 - Effective July 1, 2008
- Student Loan Sunshine Act (S. 486, H.R. 890)
 - Pending, Part of HEA Reauthorization

→ When the laws and regulations overlap, follow the strictest combination of rules




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Are Preferred Lender Lists Required?

- There is no requirement to have a preferred lender list.
- But if school provides a preferred lender list, the list must comply with the law and regulations.




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Disclosures: Criteria

- Must disclose of method, process and criteria used to select lenders for the preferred lender list. [SLATE 627(1); 34 CFR 682.212(h)(2)(i)]
- Must disclose why each lender was selected as a preferred lender, highlighting terms and conditions that are favorable to the borrower. [Sunshine HEA 487(a)(24)(A)(i)(I)]
- Must disclose the relative importance of the criteria used to select lenders for the preferred lender list. [SLATE 627(1)]



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FastWeb! Disclosures: Lender Affiliates

- If the school knows that a lender has an agreement to sell its loans to another lender, this must be disclosed in the preferred lender list in a clear and conspicuous manner. [SLATE 627(6)]
- Must disclose for each lender whether it is an affiliate of another lender on the list and the nature of the affiliation. [Sunshine HEA 487(a)(24)(A)(ii)(II)]
- No private labeling of a lender's private student loans with the school's name, logo, mascot, emblem. [Sunshine HEA 152(c)]

FastWeb! Disclosures: Borrower Choice

- Must disclose that borrowers may choose any lender, are not required to choose a lender from the preferred lender list, and will not suffer any penalty for choosing a lender that is not on the preferred lender list. This disclosure must be made in a clear and conspicuous manner. [SLATE 627(2) federal and private; Sunshine HEA 487(a)(24)(A)(i)(II) just federal; 34 CFR 682.212(h)(2)(iii) just federal]

FastWeb! Disclosures: Informed Choice

- Must provide comparative information about interest rates and other benefits. [34 CFR 682.212(h)(2)(ii)]
- Must disclose the availability of federal student aid, including federal loans, before the lender may provide a private student loan to the borrower. Must highlight the terms and conditions of the federal loans that are more favorable to the borrower. [SLATE 626(1); Sunshine HEA 152(b), 154(1); Sunshine TILA 128(e)]
- Must disclose details of any education loan arrangements between colleges and lenders to the Department. [Sunshine HEA 152]
- Disclosures must be in the same font size and same manner as the predominant text of the preferred lender list. [SLATE 627(2)]

FastWeb! Construction of List

- The college must review and update the preferred lender list at least annually. [SLATE 627(4); 34 CFR 682.212(h)(2)(vi)]
- Information about private student loans must be displayed separately (distinct manner) from information about federal education loans. [Sunshine HEA 154(2)]
- Private student loans are required, at the school's request, to disclose to the school the various interest rates charged to the school's borrowers during the previous year and the number of borrowers obtaining each interest rate, along with the historic default rates. [SLATE 629]

FastWeb! Number of Lenders on the Preferred Lender List

- Minimum of 3 unaffiliated lenders on each preferred lender list [Sunshine HEA 487(a)(24)(A)(ii)(I), 34 CFR 682.212(h)(1)(i)]
 - Affiliate defined in terms of control [Sunshine HEA 487(a)(24)(A)(ii)(I)] or ownership and control [34 CFR 682.212(h)(3)]
 - No requirement to disclose affiliate relationships [DCL GEN-08-06]
- May substitute a list of all the lenders that are willing to make FFEL loans to the school's students and parents (e.g., all who have made loans in the last 3-5 years). [DCL GEN-08-06]
 - Must be clear that the list is not an endorsement of the lenders.
 - Cannot include any additional information about the lenders.
 - Must make clear that borrowers can choose any FFEL lender.

FastWeb! Borrower Best Interests

- The inclusion of a lender in the preferred lender list and the order in which lenders appear on the list must be based solely on the best interests of the prospective borrowers without regard to the pecuniary interests of the college. May consider loan interest rates, terms and conditions, quality of loan servicing, and other loan benefits. [SLATE 627(3); Sunshine HEA 487(a)(24)(A)(iii)]
- To be included in a preferred lender list, lenders must provide assurance to the school that the advertised benefits will continue to be provided to the borrower regardless of whether the lender's loans are sold. [SLATE 627(5)]
- Lenders cannot trade off improved benefits on one loan for inclusion or more favorable placement in the preferred lender list for another loan. [SLATE 626(3), 627(7); 34 CFR 682.401(e)(3)(iii)]



May Not Limit Borrower Choice

- Preferred lender lists may not link to master promissory notes or other loan agreements that do not allow the borrower to enter the lender code or name of any lender offering that loan. It is ok to prefill the lender code, so long as the borrower can change it. [SLATE 628]
- May not assign first-time borrowers to a particular lender through preferential packaging or other means. [34 CFR 682.212(h)(2)(iv)]
- Choice of education lender must be made by borrower. [HEA 432(m)(1)(B)(ii)]
- Preferred lender lists may not be used to deny or impede borrower's choice of lender or guaranty agency. [34 CFR 682.212(h)(1)(i), 34 CFR 682.603(e)]
- May not cause unnecessary certification delays for non-preferred lenders. [34 CFR 682.212(h)(2)(v)]



Lender Violations

- May not include any lender that has provided a prohibited inducement to the school. [34 CFR 682.212(h)(1)(iii)]
- If a lender is found to have violated the SLATE law, the lender cannot be placed on a preferred lender list without disclosure of the violation to all prospective borrowers at the college. [SLATE 630(3)]



Gift Ban

- Colleges may not accept any gifts from a lender in exchange for inclusion or preferred placement in a preferred lender list (or any other advantage to the lender). [SLATE 621(1), 622(1); 34 CFR 682.212(h)(1)(iii)]
- College employees (including agents, contractors, directors, officers and trustees) may not accept any gifts from a lender in exchange for inclusion or preferred placement in a preferred lender



Penalties

- SLATE Civil Penalties
 - \$50,000 per college or lender [SLATE 630(1)]
 - \$7,500 per employee [SLATE 630(2)]
- Student Loan Sunshine Act
 - \$25,000 per college or lender [Sunshine HEA 156(b)(1)]
 - Termination/suspension of lender eligible status [Sunshine HEA 156(b)(2)]



Other State Rules

- Most state codes of conduct are subsets of the New York Attorney General's Code of Conduct
- Missouri Attorney General's Code of Conduct
 - Requires lenders to agree to code of conduct to appear on preferred lender lists of Missouri colleges



Thank You

For more information, see:

- Prohibited Inducements and Preferred Lender Lists, FinAid
 - finaid.org/illegalinducements
- Guide to Developing a Preferred Lender List, NASFAA Monograph 15, May 2005
 - nasfaa.org/PDFs/2005/Monograph15.pdf
 - nasfaa.org/publications/2007/anrfi072307.html

