

Issue 1

Proposed Regulatory Language

Team II--School-based Loan Issues

Origin: HEOA sections 120 and 1021(b)
Issue: Required Disclosures for Covered
Entities
Statutory cites: HEA Sections 151 - 155, 487(a) and
(h)
Regulatory cites: New Part 601
DCL GEN-08-12 cite: Pages 39 - 44
Status: Unresolved

Regulatory language:

**PART 601--INSTITUTION AND LENDER REQUIREMENTS RELATING TO
EDUCATION LOANS**

Subpart A--General

Sec.

601.1 Scope.

601.2 Definitions

**Subpart B--~~Responsibilities of Loan Information to be~~
~~Disclosed by~~ Covered Institutions and Institution-
Affiliated Organizations**

- 601.10 Preferred lender arrangement disclosures.
- 601.11 Private education loan disclosures and self-certification form.
- 601.12 Use of institution and lender name.

**Subpart C--~~Loan Information to be Disclosed by~~
~~Responsibilities of~~ Covered Institutions and Institution-
Affiliated Organizations**

- ~~601.20 Providing information to students and families.~~
- 601.~~21~~ **20** Annual report.
- 601.~~22~~ **21** Code of conduct.

**Subpart D--Loan Information to be Disclosed by Institutions
Participating in the William D. Ford Direct Loan Program**

- 601.30 Duties of institutions

Subpart E--Lender Responsibilities

601.40 Disclosure and reporting requirements for lenders.

[See Team I's Issue Paper 15 For Proposed Reg Language]

Subpart A--General

§ 601.1 Scope.

This part establishes disclosure and reporting requirements for covered institutions, institution-affiliated organizations, and lenders that provide, issue, recommend, promote, endorse, or provide information relating to education loans. Education loans include loans authorized by the Higher Education Act of 1965, as amended (HEA) and private education loans.

§601.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Federal Family Education Loan (FFEL) Program

Secretary

Title IV, HEA program

(b) The following definitions also apply to this part:

Agent: An officer or employee of a covered institution or an institution-affiliated organization.

Covered institution: Any institution of higher education, proprietary institution of higher education, postsecondary vocational institution, or institution outside the United States, as these terms are defined in Part 600, that receives any Federal funding or assistance.

Education loan: Except when used as part of the term "private education loan",

(1) Any loan made, insured, or guaranteed under the Federal Family Education Loan (FFEL) Program;

(2) Any loan made under the William D. Ford Federal Direct Loan Program; or

(3) A private education loan.

Institution-affiliated organization: (1) Any organization that--

(i) Is directly or indirectly related to a covered institution; and

(ii) Is engaged in the practice of recommending, promoting, or endorsing education loans for students attending such covered institution or the families of such students.

(2) An institution-affiliated organization--

(i) May include an alumni organization, athletic organization, foundation, or social, academic, or professional organization, of a covered institution; and

(ii) Does not include any lender with respect to any education loan secured, made, or extended by such lender.

Lender: **[Insert Definition--Team I]**

Officer: A director or trustee of a covered institution or institution-affiliated organization, if such individual is treated as an employee of such covered institution or institution-affiliated organization, respectively.

Preferred lender arrangement: (1) An arrangement or agreement between a lender and a covered institution or an institution-affiliated organization of such covered institution--

(i) Under which a lender provides or otherwise issues education loans to the students attending such covered institution or the families of such students; and

(ii) That relates to such covered institution or such institution-affiliated organization recommending, promoting, or endorsing the education loan products of the lender.

(2) A preferred lender arrangement does not include--

(i) Arrangements or agreements with respect to loans made under the William D. Ford Federal Direct Loan Program; or

(ii) Arrangements or agreements with respect to loans that originate through the PLUS Loan auction pilot program under section 499(b) of the HEA.

Private education loan: **[Insert Definition--Team I]**

Subpart B--~~Responsibilities of Loan Information to be~~
~~Disclosed by~~ Covered Institutions and Institution-
Affiliated Organizations

§601.10 Preferred lender arrangement disclosures.

**[NOTE: This section has been revised to incorporate the
substance of draft section 601.20 from the last session.]**

(a) A covered institution, or an institution-affiliated organization of such covered institution, that participates in a preferred lender arrangement must disclose--

(1) On such covered institution's or institution-affiliated organization's Web site and in all informational materials described in paragraph (b) of this section that describe or discuss education loans--

(i) The maximum amount of Federal grant and loan aid under title IV of the HEA available to students, in an easy to understand format;

(ii) The information identified on a model disclosure form developed by the Secretary pursuant to section 153(a)(2)(B) of the HEA, for each type of education loan

that is offered pursuant to a preferred lender arrangement of the institution or institution-affiliated organization to students of the institution or the families of such students; and

(iii) A statement that such institution is required to process the documents required to obtain a loan under the Federal Family Education Loan **(FFEL)** Program from any eligible lender the student selects; **and**

(2) On such covered institution's or institution-affiliated organization's Web site and in all informational materials **described in paragraph (b) of this section** that describe or discuss private education loans--

(i) In the case of a covered institution, the information that the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(11) of the Truth in Lending Act **(15 U.S.C. 1638(e)(11))**, for each type of private education loan offered pursuant to a preferred lender arrangement of the institution to students of the institution or the families of such students; and

(ii) In the case of an institution-affiliated organization of a covered institution, the information the

Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(1) of the Truth in Lending Act **(15 U.S.C. 1638 (e) (1))**, for each type of private education loan offered pursuant to a preferred lender arrangement of the organization to students of such institution or the families of such students.

(b) The informational materials described in paragraphs (a)(1) and (a)(2) of this section are publications, mailings, or electronic messages or materials that--

(1) Are distributed to prospective or current students of a covered institution and families of such students; and

(2) Describe or discuss the financial aid opportunities available to students at an institution of higher education.

(c)(1) Each covered institution and each institution-affiliated organization that participates in a preferred lender arrangement must provide the information described in paragraph (a)(1)(ii) of this section, and the information described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, respectively, for each type of

education loan offered pursuant to the preferred lender arrangement.

(2) The information identified in paragraph (c)(1) of this section must be provided to students attending the covered institution, or the families of such students, as applicable, annually and must be provided in a manner that allows for the students or their families to take such information into account before selecting a lender or applying for an education loan.

~~(c)~~ (d) If ~~an~~ a covered institution ~~recommends,~~ ~~promotes or endorses loans made by any lender and compiles,~~ maintains, and makes available a preferred lender list as required under §668.14(b)(28), the institution must--

(1) Clearly and fully disclose on such preferred lender list--

(i) Not less than the information required to be disclosed under section 153(a)(2)(A) of the HEA;

(ii) Why the institution ~~has entered into~~ participates in a preferred lender arrangement with each lender on the preferred lender list, particularly with respect to terms and conditions or provisions favorable to the borrower; and

(iii) That the students attending the institution, or the families of such students, do not have to borrow from a lender on the preferred lender list;

(2) Ensure, through the use of the list of lender affiliates provided by the Secretary under section 487(h)(2) of the HEA, that--

(i) There are not less than three FFEL lenders that are not affiliates of each other included on the preferred lender list and, if the institution recommends, promotes, or endorses private education loans, there are not less than two lenders of private education loans that are not affiliates of each other included on the preferred lender list; and

(ii) The preferred lender list under paragraph ~~(e)~~ **(d)** of this section--

(A) Specifically indicates, for each listed lender, whether the lender is or is not an affiliate of each other lender on the preferred lender list; and

(B) If a lender is an affiliate of another lender on the preferred lender list, describes the details of such affiliation;

(3) Prominently disclose the method and criteria used by the institution in selecting lenders with which to **participate in** ~~enter into~~ preferred lender arrangements to ensure that such lenders are selected on the basis of the best interests of the borrowers, including--

(i) Payment of origination or other fees on behalf of the borrower;

(ii) Highly competitive interest rates, or other terms and conditions or provisions of Title IV, HEA program loans or private education loans;

(iii) High-quality servicing for such loans; or

(iv) Additional benefits beyond the standard terms and conditions or provisions for such loans;

(4) Exercise a duty of care and a duty of loyalty to compile the preferred lender list under paragraph ~~(e)~~ **(d)** of this section without prejudice and for the sole benefit of the students attending the institution, or the families of such students; and

(5) Not deny or otherwise impede the borrower's choice of a lender or cause unnecessary delay in loan certification under title IV of the HEA for those borrowers

who choose a lender that is not included on the preferred lender list.

§601.11 Private education loan disclosures and self-certification form.

(a) A covered institution, or an institution-affiliated organization of such covered institution, that provides information regarding a private education loan from a lender to a prospective borrower must provide private education loan disclosures to the prospective borrower, **regardless of whether the covered institution or institution-affiliated organization participates in a preferred lender arrangement.**

(b) The private education loan disclosures must--

(1) Provide the prospective borrower with the information the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(1) of the Truth in Lending Act (15 U.S.C. 1638(e)(1)) for such loan;

(2) Inform the prospective borrower that--

(i) The prospective borrower may qualify for loans or other assistance under title IV of the HEA; and

(ii) The terms and conditions of Title IV, HEA program loans may be more favorable than the provisions of private education loans.

(c) The covered institution or institution-affiliated organization must ensure that information regarding private education loans is presented in such a manner as to be distinct from information regarding Title IV, HEA program loans.

(d) Upon an applicant's request for a private education loan self-certification form, an institution must provide to the applicant, in written or electronic form--

(1) The self-certification form for private education loans developed by the Secretary in consultation with the Board of Governors of the Federal Reserve System, to satisfy the requirements of section 128(e)(3) of the Truth in Lending Act **(15 U.S.C. 1638(e)(3))**; and

(2) The information required to complete the form, to the extent the institution possesses such information.

§601.12 Use of institution and lender name.

~~(a)~~ A covered institution, or an institution-affiliated organization of such covered institution, that ~~enters into~~ **participates in** a preferred lender arrangement with a lender regarding private education loans must ~~--~~

(a) Not agree to the lender's use of the name, emblem, mascot, or logo of such institution or organization, or other words, pictures, or symbols readily identified with such institution or organization, in the marketing of private education loans to students attending such institution in any way that implies that the loan is offered or made by such institution or organization instead of the lender; **and**

~~(b) The covered institution or institution-affiliated organization must e~~**Ensure** that the name of the lender is displayed in all information and documentation related to the private education loans described in ~~paragraph (a) of~~ this section.

Subpart C--~~Loan Information to be Disclosed by~~
Responsibilities of Covered Institutions and Institution-
Affiliated Organizations

~~§601.20 Providing information to students and families.~~

~~[Former Section 601.20 has been incorporated into Section 601.10]~~

~~(a) Each covered institution, and each institution-affiliated organization of such covered institution, that has a preferred lender arrangement must provide the following information to students attending such institution, or the families of such students, as applicable:~~

~~(1) The information included on a model disclosure form developed by the Secretary pursuant to section 153(a)(2)(B) of the HEA, for each type of education loan that is offered pursuant to a preferred lender arrangement of the institution or organization to students of the institution or the families of such students. ; and~~

~~(i) In the case of a covered institution, the information that the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(11) of the Truth in Lending Act (15 U.S.C. 1638(e)(11)) to the covered institution, for each type of~~

~~private education loan offered pursuant to such preferred lender arrangement to students of such institution or the families of such students.~~

~~(ii) In the case of an institution-affiliated organization, the information the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(1) of the Truth in Lending Act (15 U.S.C. 1638(e)(1)) for each type of private education loan offered pursuant to such preferred lender arrangement to students of the institution with which such organization is affiliated or the families of such students.~~

~~(b) The covered institution or institution-affiliated organization must provide the information described in this section in a manner that allows for the students or their families to take such information into account before selecting a lender or applying for an education loan.~~

~~(c) The covered institution or institution-affiliated organization must provide the information described in this section at least annually to students attending the institution or to the families of such students, as applicable.~~

§601.2120 Annual report.

~~(a)~~ Each covered institution, and each institution-affiliated organization of such covered institution, that ~~has~~ **participates in** a preferred lender arrangement, must--

~~(1)~~ **(a)** Prepare and submit to the Secretary an annual report, by a date determined by the Secretary, that includes, for each lender that ~~has~~ **participates in** a preferred lender arrangement with such covered institution or organization--

~~(i)~~ **(1)** The information described in ~~§601.20(a)~~ **§601.10(c)**; and

~~(ii)~~ **(2)** A detailed explanation of why such covered institution or institution-affiliated organization ~~entered~~ **into participates in** a preferred lender arrangement with the lender, including why the terms, conditions, and provisions of each type of education loan provided pursuant to the preferred lender arrangement are beneficial for students attending such institution, or the families of such students, as applicable; **and**

~~(2)~~ **(b)** Ensure that the report required under this section is made available to the public and provided to

students attending or planning to attend such covered institution and the families of such students.

§601.2021 Code of conduct.

(a) **(1) A** covered institution that ~~has~~ **participates in** a preferred lender arrangement must comply with the code of conduct requirements described in this section.

~~(1)~~ **(2)** The covered institution must--

(i) Develop a code of conduct with respect to ~~Title IV, HEA program loans~~ **FFEL Program loans and private education loans** with which the institution's officers, employees, and agents must comply. The code of conduct must--

(A) Prohibit a conflict of interest with the responsibilities of an officer, employee, or agent of an institution with respect to ~~Title IV, HEA program loans~~ **FFEL Program loans and private education loans;** and

(B) At a minimum, include the provisions specified in paragraph ~~(b)~~ **(c)** of this section;

(ii) Publish such code of conduct prominently on the institution's Web site; and

(iii) Administer and enforce such code by, at a minimum, requiring that all of the institution's officers, employees, and agents with responsibilities with respect to ~~Title IV, HEA program loans~~ **FFEL Program loans or private education loans** be annually informed of the provisions of the code of conduct.

(b) Any institution-affiliated organization of **a covered institution that participates in a preferred lender arrangement** must--

(1) Comply with the code of conduct developed and published by such covered institution under paragraphs **(a)(1)** of this section;

(2) If such institution-affiliated organization has a Web site, publish such code of conduct prominently on the Web site; and

(3) Administer and enforce such code of conduct by, at a minimum, requiring that all of such institution-affiliated organization's agents with responsibilities with respect to **FFEL Program loans or private education loans** be annually informed of the provisions of such code of conduct.

~~(b)~~ **(c)** A covered institution's code of conduct must prohibit--

(1) Revenue-sharing arrangements with any lender. The institution must not enter into any revenue-sharing arrangement with any lender. For purposes of this paragraph, the term revenue-sharing arrangement means an arrangement between an **a covered** institution and a lender under which--

(i) A lender provides or issues a ~~Title IV, HEA~~ **program loan-- FFEL Program loan or private education loan** to students attending the institution or to the families of such students; and

(ii) The institution recommends the lender or the loan products of the lender and in exchange, the lender pays a fee or provides other material benefits, including revenue or profit sharing, to the institution, an officer or employee of the institution, or an agent;

(2) **(i)** Employees of the financial aid office receiving gifts from a lender, a guarantor, or a loan servicer. Officers or employees of the institution who are employed in the financial aid office of the institution or who otherwise have responsibilities with respect to **FFEL**

Program loans or private education loans, or agents who have responsibilities with respect to **FFEL Program loans or private** education loans, must not solicit or accept any gift from a lender, guarantor, or servicer of **FFEL Program loans or private** education loans;

(i) **(ii)** For purposes of paragraph ~~(b)~~ **(c)** of this section, the term gift means any gratuity, favor, discount, entertainment, hospitality, loan, or other item having a monetary value of more than a de minimus amount. The term includes a gift of services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred;

~~(ii)~~ **(iii)** The term gift does not include any of the following:

(A) Standard material, activities, or programs on issues related to a loan, default aversion, default prevention, or financial literacy, such as a brochure, a workshop, or training.

(B) Food, refreshments, training, or informational material furnished to an officer or employee of an institution, or to an agent, as an integral part of a

training session that is designed to improve the service of a lender, guarantor, or servicer of **FFEL Program loans or private** education loans to the institution, if such training contributes to the professional development of the officer, employee, or agent.

(C) Favorable terms, conditions, and borrower benefits on ~~an~~ **a FFEL Program loan or private** education loan provided to a student employed by the institution if such terms, conditions, or benefits are comparable to those provided to all students of the institution.

(D) Entrance and exit counseling services provided to borrowers to meet the institution's responsibilities for entrance and exit counseling as required by §§682.604(f) and 682.604(g), as long as the institution's staff are in control of the counseling (whether in person or via electronic capabilities) and such counseling does not promote the products or services of any specific lender.

(E) Philanthropic contributions to an institution from a lender, servicer, or guarantor of **FFEL Program loans or private** education loans that are unrelated to **FFEL Program loans or private** education loans or any contribution from any lender, **servicer, or** guarantor, ~~or servicer~~ that is not

made in exchange for any advantage related to **FFEL Program loans or private** education loans.

(F) State education grants, scholarships, or financial aid funds administered by or on behalf of a State. ~~;~~ **and**

~~(iii)~~ **(iv)** For purposes of paragraph ~~(b)~~ **(c)** of this section, a gift to a family member of an officer or employee of an institution, to a family member of an agent, or to any other individual based on that individual's relationship with the officer, employee, or agent, ~~shall be~~ **is** considered a gift to the officer, employee, or agent if-

-

(A) The gift is given with the knowledge and acquiescence of the officer, employee, or agent; and

(B) The officer, employee, or agent has reason to believe the gift was given because of the official position of the officer, employee, or agent;

(3) Consulting or other contracting arrangements. An officer or employee who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to **FFEL Program loans or private** education loans, or an agent who has responsibilities with respect to **FFEL Program loans or**

private education loans, must not accept from any lender or affiliate of any lender any fee, payment, or other financial benefit (including the opportunity to purchase stock) as compensation for any type of consulting arrangement or other contract to provide services to a lender or on behalf of a lender relating to **FFEL Program loans or private** education loans. Nothing **in** paragraph (c) (3) of this ~~sub~~section will be construed as prohibiting-

(i) An officer or employee of an institution who is not employed in the institution's financial aid office and who does not otherwise have responsibilities with respect to **FFEL Program loans or private** education loans, or an agent who does not have responsibilities with respect to **FFEL Program loans or private** education loans, from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of education loans;

(ii) An officer or employee of the institution who is not employed in the institution's financial aid office but who has responsibility with respect to **FFEL Program loans or private** education loans as a result of a position held at the institution, or an agent who has responsibility with

respect to **FFEL Program loans or private** education loans, from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of **FFEL Program loans or private** education loans, if the institution has a written conflict of interest policy that clearly sets forth that officers, employees, or agents must recuse themselves from participating in any decision of the board regarding **FFEL Program loans or private** education loans at the institution; or

(iii) An officer, employee, or contractor of a lender, guarantor, or servicer of **FFEL Program loans or private** education loans from serving on a board of directors, or serving as a trustee, of an institution, if the institution has a written conflict of interest policy that the board member or trustee must recuse themselves from any decision regarding **FFEL Program loans or private** education loans at the institution--;

(4) Directing borrowers to particular lenders or delaying loan certifications. The institution may **must** not--

(i) For any first-time borrower, assign, through award packaging or other methods, the borrower's loan to a particular lender; or

(ii) Refuse to certify, or delay certification of, any loan based on the borrower's selection of a particular lender or guaranty agency.—;

(5) **(i)** Offers of funds for private loans. The institution ~~shall~~ **must** not request or accept from any lender any offer of funds to be used for private education loans ~~(as defined in section 140 of the Truth in Lending Act)~~, including funds for an opportunity pool loan, to students in exchange for ~~(i) The~~ institution providing concessions or promises regarding providing the lender with--

(A) A specified number of ~~Title IV, HEA program~~ **FFEL Program loans or private education** loans;

(B) A specified loan volume of such loans; or

(C) A preferred lender arrangement for such loans.

(ii) For purposes of paragraph (c) of this section, the term opportunity pool loan means a private education loan made by a lender to a student attending the institution or the family member of such a student that

involves a payment, directly or indirectly, by such institution of points, premiums, additional interest, or financial support to such lender for the purpose of such lender extending credit to the student or the family;

(6) Staffing assistance. The institution ~~shall~~ **must** not request or accept from any lender any assistance with call center staffing or financial aid office staffing, except that nothing in this paragraph will be construed to prohibit the institution from requesting or accepting assistance from a lender related to--

(i) Professional development training for financial aid administrators;

(ii) Providing educational counseling materials, financial literacy materials, or debt management materials to borrowers, provided that such materials disclose to borrowers the identification of any lender that assisted in preparing or providing such materials; or

(iii) Staffing services on a short-term, nonrecurring basis to assist the institution with financial aid-related functions during emergencies, including State-declared or federally declared natural disasters, federally declared

national disasters, and other localized disasters and emergencies identified by the Secretary; and

(7) Advisory board compensation. Any employee who is employed in the financial aid office of the institution, or who otherwise has responsibilities with respect to **FFEL Program loans or private** education loans or other student financial aid of the institution, and who serves on an advisory board, commission, or group established by a lender, guarantor, or group of lenders or guarantors, must not receive anything of value from the lender, guarantor, or group of lenders or guarantors, except that the employee may be reimbursed for reasonable expenses, **as that term is defined in §668.16(d)(2)(ii)**, incurred in serving on such advisory board, commission, or group.

**Subpart D--Loan Information to be Disclosed by Institutions
Participating in the William D. Ford Direct Loan Program**

§601.30 Duties of institutions.

(a) Each covered institution participating in the William D. Ford Direct Loan Program under part D of title IV of the HEA **shall ~~must~~--**

(1) Make the information identified in a model disclosure form developed by the Secretary pursuant to section 154(a) of the HEA available to students attending or planning to attend the institution, or the families of such students, as applicable; and

(2) If the institution provides information regarding a private education loan to a prospective borrower, concurrently provide such borrower with the information identified on the model disclosure form that the Secretary provides to the institution under section 154(a) of the HEA.

(b) In providing the information required under paragraph (a) of this section, a covered institution may use a comparable form designed by the institution instead of the model disclosure form.

Subpart E—Lender Responsibilities

[See Team 1's Issue Paper 15]

Issue 1

Amendatory Language

Team II - School-based Loan Issues

For the reasons discussed in the preamble, the Secretary proposes to amend chapter VI of title 34 of the Code of Federal Regulations as follows:

PART 601 [ADDED]

x. Add part 601 to read as follows:

**PART 601—INSTITUTION AND LENDER REQUIREMENTS RELATING TO
EDUCATION LOANS**

Subpart A--General

Sec.

601.1 Scope.

601.2 Definitions.

Subpart B--Loan Information to be Disclosed by Covered Institutions and Institution-Affiliated Organizations

Sec.

601.10 Preferred lender arrangement disclosures.

601.11 Private education loan disclosures and self-certification form.

601.12 Use of institution and lender name.

Subpart C--Responsibilities of Covered Institutions and Institution-Affiliated Organizations

Sec.

601.20 Annual report.

601.21 Code of conduct.

Subpart D--Loan Information to be Disclosed by Institutions
Participating in the William D. Ford Direct Loan Program

Sec.

601.30 Duties of institutions.

Authority: 20 U.S.C. 1019-1019d, 1021, 1094(a) and
(h).

Subpart A--General

§601.1 Scope.

This part establishes disclosure and reporting requirements for covered institutions, institution-affiliated organizations, and lenders that provide, issue, recommend, promote, endorse, or provide information relating to education loans. Education loans include loans authorized by the Higher Education Act of 1965, as amended (HEA) and private education loans.

(Authority: 20 U.S.C. 1019-1019d, 1021, 1094(a)(25) and
(e))

§601.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Federal Family Education Loan (FFEL) Program
Secretary

Title IV, HEA program

(b) The following definitions also apply to this part:

Agent: An officer or employee of a covered institution or an institution-affiliated organization.

Covered institution: Any institution of higher education, proprietary institution of higher education, postsecondary vocational institution, or institution outside the United States, as these terms are defined in 34 CFR part 600, that receives any Federal funding or assistance.

Education loan: Except when used as part of the term "private education loan",

(1) Any loan made, insured, or guaranteed under the Federal Family Education Loan (FFEL) Program;

(2) Any loan made under the William D. Ford Federal Direct Loan Program; or

(3) A private education loan.

Institution-affiliated organization: (1) Any organization that--

(i) Is directly or indirectly related to a covered institution; and

(ii) Is engaged in the practice of recommending, promoting, or endorsing education loans for students attending such covered institution or the families of such students.

(2) An institution-affiliated organization--

(i) May include an alumni organization, athletic organization, foundation, or social, academic, or professional organization, of a covered institution; and

(ii) Does not include any lender with respect to any education loan secured, made, or extended by such lender.

Lender: [**Insert Definition--Team I**]

Officer: A director or trustee of a covered institution or institution-affiliated organization, if such individual is treated as an employee of such covered institution or institution-affiliated organization, respectively.

Preferred lender arrangement: (1) An arrangement or agreement between a lender and a covered institution or an institution-affiliated organization of such covered institution--

(i) Under which a lender provides or otherwise issues education loans to the students attending such covered institution or the families of such students; and

(ii) That relates to such covered institution or such institution-affiliated organization recommending, promoting, or endorsing the education loan products of the lender.

(2) A preferred lender arrangement does not include--

(i) Arrangements or agreements with respect to loans made under the William D. Ford Federal Direct Loan Program; or

(ii) Arrangements or agreements with respect to loans that originate through the PLUS Loan auction pilot program under section 499(b) of the HEA.

Private education loan: **[Insert Definition--Team I]**

(Authority: 20 U.S.C. 1019)

Subpart B--Loan Information to be Disclosed by Covered Institutions and Institution-Affiliated Organizations
§601.10 Preferred lender arrangement disclosures.

(a) A covered institution, or an institution-affiliated organization of such covered institution, that

participates in a preferred lender arrangement must disclose--

(1) On such covered institution's or institution-affiliated organization's Web site and in all informational materials described in paragraph (b) of this section that describe or discuss education loans--

(i) The maximum amount of Federal grant and loan aid under title IV of the HEA available to students, in an easy to understand format;

(ii) The information identified on a model disclosure form developed by the Secretary pursuant to section 153(a)(2)(B) of the HEA, for each type of education loan that is offered pursuant to a preferred lender arrangement of the institution or institution-affiliated organization to students of the institution or the families of such students; and

(iii) A statement that such institution is required to process the documents required to obtain a loan under the Federal Family Education Loan (FFEL) Program from any eligible lender the student selects; and

(2) On such covered institution's or institution-affiliated organization's Web site and in all informational

materials described in paragraph (b) of this section that describe or discuss private education loans--

(i) In the case of a covered institution, the information that the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(11) of the Truth in Lending Act (15 U.S.C. 1638(e)(11)), for each type of private education loan offered pursuant to a preferred lender arrangement of the institution to students of the institution or the families of such students; and

(ii) In the case of an institution-affiliated organization of a covered institution, the information the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(1) of the Truth in Lending Act (15 U.S.C. 1638(e)(1)), for each type of private education loan offered pursuant to a preferred lender arrangement of the organization to students of such institution or the families of such students.

(b) The informational materials described in paragraphs (a)(1) and (a)(2) of this section are publications, mailings, or electronic messages or materials that--

(1) Are distributed to prospective or current students of a covered institution and families of such students; and

(2) Describe or discuss the financial aid opportunities available to students at an institution of higher education.

(c) (1) Each covered institution and each institution-affiliated organization that participates in a preferred lender arrangement must provide the information described in paragraph (a) (1) (ii) of this section, and the information described in paragraphs (a) (2) (i) and (a) (2) (ii) of this section, respectively, for each type of education loan offered pursuant to the preferred lender arrangement.

(2) The information identified in paragraph (c) (1) of this section must be provided to students attending the covered institution, or the families of such students, as applicable, annually and must be provided in a manner that allows for the students or their families to take such information into account before selecting a lender or applying for an education loan.

(d) If a covered institution compiles, maintains, and makes available a preferred lender list as required under §668.14(b)(28), the institution must--

(1) Clearly and fully disclose on such preferred lender list--

(i) Not less than the information required to be disclosed under section 153(a)(2)(A) of the HEA;

(ii) Why the institution participates in a preferred lender arrangement with each lender on the preferred lender list, particularly with respect to terms and conditions or provisions favorable to the borrower; and

(iii) That the students attending the institution, or the families of such students, do not have to borrow from a lender on the preferred lender list;

(2) Ensure, through the use of the list of lender affiliates provided by the Secretary under section 487(h)(2) of the HEA, that--

(i) There are not less than three FFEL lenders that are not affiliates of each other included on the preferred lender list and, if the institution recommends, promotes, or endorses private education loans, there are not less than two lenders of private education loans that are not

affiliates of each other included on the preferred lender list; and

(ii) The preferred lender list under paragraph (d) of this section--

(A) Specifically indicates, for each listed lender, whether the lender is or is not an affiliate of each other lender on the preferred lender list; and

(B) If a lender is an affiliate of another lender on the preferred lender list, describes the details of such affiliation;

(3) Prominently disclose the method and criteria used by the institution in selecting lenders with which to participate in preferred lender arrangements to ensure that such lenders are selected on the basis of the best interests of the borrowers, including--

(i) Payment of origination or other fees on behalf of the borrower;

(ii) Highly competitive interest rates, or other terms and conditions or provisions of Title IV, HEA program loans or private education loans;

(iii) High-quality servicing for such loans; or

(iv) Additional benefits beyond the standard terms and conditions or provisions for such loans;

(4) Exercise a duty of care and a duty of loyalty to compile the preferred lender list under paragraph (d) of this section without prejudice and for the sole benefit of the students attending the institution, or the families of such students; and

(5) Not deny or otherwise impede the borrower's choice of a lender or cause unnecessary delay in loan certification under title IV of the HEA for those borrowers who choose a lender that is not included on the preferred lender list.

(Authority: 20 U.S.C. 1019a(a)(1)(A) and 1019b(c))

§601.11 Private education loan disclosures and self-certification form.

(a) A covered institution, or an institution-affiliated organization of such covered institution, that provides information regarding a private education loan from a lender to a prospective borrower must provide private education loan disclosures to the prospective borrower, regardless of whether the covered institution or

institution-affiliated organization participates in a preferred lender arrangement.

(b) The private education loan disclosures must--

(1) Provide the prospective borrower with the information the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(1) of the Truth in Lending Act (15 U.S.C. 1638(e)(1)) for such loan;

(2) Inform the prospective borrower that--

(i) The prospective borrower may qualify for loans or other assistance under title IV of the HEA; and

(ii) The terms and conditions of Title IV, HEA program loans may be more favorable than the provisions of private education loans.

(c) The covered institution or institution-affiliated organization must ensure that information regarding private education loans is presented in such a manner as to be distinct from information regarding Title IV, HEA program loans.

(d) Upon an applicant's request for a private education loan self-certification form, an institution must provide to the applicant, in written or electronic form--

(1) The self-certification form for private education loans developed by the Secretary in consultation with the Board of Governors of the Federal Reserve System, to satisfy the requirements of section 128(e)(3) of the Truth in Lending Act (15 U.S.C. 1638(e)(3)); and

(2) The information required to complete the form, to the extent the institution possesses such information.

(Authority: 20 U.S.C. 1019a(a)(1)(B) and 1019d)

§601.12 Use of institution and lender name.

A covered institution, or an institution-affiliated organization of such covered institution, that participates in a preferred lender arrangement with a lender regarding private education loans must--

(a) Not agree to the lender's use of the name, emblem, mascot, or logo of such institution or organization, or other words, pictures, or symbols readily identified with such institution or organization, in the marketing of private education loans to students attending such institution in any way that implies that the loan is offered or made by such institution or organization instead of the lender; and

(b) Ensure that the name of the lender is displayed in all information and documentation related to the private education loans described in this section.

(Authority: 20 U.S.C. 1019a(a)(2)-(a)(3))

Subpart C--Responsibilities of Covered Institutions and Institution-Affiliated Organizations

§601.20 Annual report.

Each covered institution, and each institution-affiliated organization of such covered institution, that participates in a preferred lender arrangement, must--

(a) Prepare and submit to the Secretary an annual report, by a date determined by the Secretary, that includes, for each lender that participates in a preferred lender arrangement with such covered institution or organization--

(1) The information described in §601.10(c); and

(2) A detailed explanation of why such covered institution or institution-affiliated organization participates in a preferred lender arrangement with the lender, including why the terms, conditions, and provisions of each type of education loan provided pursuant to the preferred lender arrangement are beneficial for students

attending such institution, or the families of such students, as applicable; and

(b) Ensure that the report required under this section is made available to the public and provided to students attending or planning to attend such covered institution and the families of such students.

(Authority: 20 U.S.C. 1019b(c)(2))

§601.21 Code of conduct.

(a)(1) A covered institution that participates in a preferred lender arrangement must comply with the code of conduct requirements described in this section.

(2) The covered institution must--

(i) Develop a code of conduct with respect to FFEL Program loans and private education loans with which the institution's officers, employees, and agents must comply. The code of conduct must--

(A) Prohibit a conflict of interest with the responsibilities of an officer, employee, or agent of an institution with respect to FFEL Program loans and private education loans; and

(B) At a minimum, include the provisions specified in paragraph (c) of this section;

(ii) Publish such code of conduct prominently on the institution's Web site; and

(iii) Administer and enforce such code by, at a minimum, requiring that all of the institution's officers, employees, and agents with responsibilities with respect to FFEL Program loans or private education loans be annually informed of the provisions of the code of conduct.

(b) Any institution-affiliated organization of a covered institution that participates in a preferred lender arrangement must--

(1) Comply with the code of conduct developed and published by such covered institution under paragraph

(a)(1) of this section;

(2) If such institution-affiliated organization has a Web site, publish such code of conduct prominently on the Web site; and

(3) Administer and enforce such code of conduct by, at a minimum, requiring that all of such institution-affiliated organization's agents with responsibilities with respect to FFEL Program loans or private education loans be annually informed of the provisions of such code of conduct.

(c) A covered institution's code of conduct must prohibit--

(1) Revenue-sharing arrangements with any lender. The institution must not enter into any revenue-sharing arrangement with any lender. For purposes of this paragraph, the term revenue-sharing arrangement means an arrangement between a covered institution and a lender under which--

(i) A lender provides or issues a FFEL Program loan or private education loan to students attending the institution or to the families of such students; and

(ii) The institution recommends the lender or the loan products of the lender and in exchange, the lender pays a fee or provides other material benefits, including revenue or profit sharing, to the institution, an officer or employee of the institution, or an agent;

(2)(i) Employees of the financial aid office receiving gifts from a lender, a guarantor, or a loan servicer. Officers or employees of the institution who are employed in the financial aid office of the institution or who otherwise have responsibilities with respect to FFEL Program loans or private education loans, or agents who

have responsibilities with respect to FFEL Program loans or private education loans, must not solicit or accept any gift from a lender, guarantor, or servicer of FFEL Program loans or private education loans;

(ii) For purposes of paragraph (c) of this section, the term gift means any gratuity, favor, discount, entertainment, hospitality, loan, or other item having a monetary value of more than a de minimus amount. The term includes a gift of services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred;

(iii) The term gift does not include any of the following:

(A) Standard material, activities, or programs on issues related to a loan, default aversion, default prevention, or financial literacy, such as a brochure, a workshop, or training.

(B) Food, refreshments, training, or informational material furnished to an officer or employee of an institution, or to an agent, as an integral part of a training session that is designed to improve the service of

a lender, guarantor, or servicer of FFEL Program loans or private education loans to the institution, if such training contributes to the professional development of the officer, employee, or agent.

(C) Favorable terms, conditions, and borrower benefits on a FFEL Program loan or private education loan provided to a student employed by the institution if such terms, conditions, or benefits are comparable to those provided to all students of the institution.

(D) Entrance and exit counseling services provided to borrowers to meet the institution's responsibilities for entrance and exit counseling as required by §§682.604(f) and 682.604(g), as long as the institution's staff are in control of the counseling (whether in person or via electronic capabilities) and such counseling does not promote the products or services of any specific lender.

(E) Philanthropic contributions to an institution from a lender, servicer, or guarantor of FFEL Program loans or private education loans that are unrelated to FFEL Program loans or private education loans or any contribution from any lender, servicer, or guarantor, that

is not made in exchange for any advantage related to FFEL Program loans or private education loans.

(F) State education grants, scholarships, or financial aid funds administered by or on behalf of a State; and

(iv) For purposes of paragraph (c) of this section, a gift to a family member of an officer or employee of an institution, to a family member of an agent, or to any other individual based on that individual's relationship with the officer, employee, or agent, is considered a gift to the officer, employee, or agent if--

(A) The gift is given with the knowledge and acquiescence of the officer, employee, or agent; and

(B) The officer, employee, or agent has reason to believe the gift was given because of the official position of the officer, employee, or agent;

(3) Consulting or other contracting arrangements. An officer or employee who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to FFEL Program loans or private education loans, or an agent who has responsibilities with respect to FFEL Program loans or

private education loans, must not accept from any lender or affiliate of any lender any fee, payment, or other financial benefit (including the opportunity to purchase stock) as compensation for any type of consulting arrangement or other contract to provide services to a lender or on behalf of a lender relating to FFEL Program loans or private education loans. Nothing in paragraph (c) (3) of this section will be construed as prohibiting--

(i) An officer or employee of an institution who is not employed in the institution's financial aid office and who does not otherwise have responsibilities with respect to FFEL Program loans or private education loans, or an agent who does not have responsibilities with respect to FFEL Program loans or private education loans, from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of education loans;

(ii) An officer or employee of the institution who is not employed in the institution's financial aid office but who has responsibility with respect to FFEL Program loans or private education loans as a result of a position held at the institution, or an agent who has responsibility with respect to FFEL Program loans or private education loans,

from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of FFEL Program loans or private education loans, if the institution has a written conflict of interest policy that clearly sets forth that officers, employees, or agents must recuse themselves from participating in any decision of the board regarding FFEL Program loans or private education loans at the institution; or

(iii) An officer, employee, or contractor of a lender, guarantor, or servicer of FFEL Program loans or private education loans from serving on a board of directors, or serving as a trustee, of an institution, if the institution has a written conflict of interest policy that the board member or trustee must recuse themselves from any decision regarding FFEL Program loans or private education loans at the institution;

(4) Directing borrowers to particular lenders or delaying loan certifications. The institution must not—

(i) For any first-time borrower, assign, through award packaging or other methods, the borrower's loan to a particular lender; or

(ii) Refuse to certify, or delay certification of, any loan based on the borrower's selection of a particular lender or guaranty agency;

(5)(i) Offers of funds for private loans. The institution must not request or accept from any lender any offer of funds to be used for private education loans, including funds for an opportunity pool loan, to students in exchange for the institution providing concessions or promises regarding providing the lender with--

(A) A specified number of FFEL Program loans or private education loans;

(B) A specified loan volume of such loans; or

(C) A preferred lender arrangement for such loans.

(ii) For purposes of paragraph (c) of this section, the term opportunity pool loan means a private education loan made by a lender to a student attending the institution or the family member of such a student that involves a payment, directly or indirectly, by such institution of points, premiums, additional interest, or financial support to such lender for the purpose of such lender extending credit to the student or the family;

(6) Staffing assistance. The institution must not request or accept from any lender any assistance with call center staffing or financial aid office staffing, except that nothing in this paragraph will be construed to prohibit the institution from requesting or accepting assistance from a lender related to--

(i) Professional development training for financial aid administrators;

(ii) Providing educational counseling materials, financial literacy materials, or debt management materials to borrowers, provided that such materials disclose to borrowers the identification of any lender that assisted in preparing or providing such materials; or

(iii) Staffing services on a short-term, nonrecurring basis to assist the institution with financial aid-related functions during emergencies, including State-declared or federally declared natural disasters, federally declared national disasters, and other localized disasters and emergencies identified by the Secretary; and

(7) Advisory board compensation. Any employee who is employed in the financial aid office of the institution, or who otherwise has responsibilities with respect to FFEL

Program loans or private education loans or other student financial aid of the institution, and who serves on an advisory board, commission, or group established by a lender, guarantor, or group of lenders or guarantors, must not receive anything of value from the lender, guarantor, or group of lenders or guarantors, except that the employee may be reimbursed for reasonable expenses, as that term is defined in §668.16(d)(2)(ii), incurred in serving on such advisory board, commission, or group.

(Authority: 20 U.S.C. 1019b(c)(2)), 1094(a)(25) and (e))

Subpart D--Loan Information to be Disclosed by Institutions Participating in the William D. Ford Direct Loan Program
§601.30 Duties of institutions.

(a) Each covered institution participating in the William D. Ford Direct Loan Program under part D of title IV of the HEA must--

(1) Make the information identified in a model disclosure form developed by the Secretary pursuant to section 154(a) of the HEA available to students attending or planning to attend the institution, or the families of such students, as applicable; and

(2) If the institution provides information regarding a private education loan to a prospective borrower, concurrently provide such borrower with the information identified on the model disclosure form that the Secretary provides to the institution under section 154(a) of the HEA.

(b) In providing the information required under paragraph (a) of this section, a covered institution may use a comparable form designed by the institution instead of the model disclosure form.

(Authority: 20 U.S.C. 1019c(b))