

IN THE MATTER OF:

**OFFICE OF THE ATTORNEY
GENERAL OF TEXAS**

AND

**THE UNIVERSITY OF TEXAS
AT AUSTIN**

§
§
§
§
§
§
§
§
§
§

TRAVIS COUNTY, TEXAS

TEXAS HIGHER EDUCATION FAIR LENDING PRACTICES AGREEMENT

I. INTRODUCTION

1. The Office of the Attorney General of Texas (OAG) is engaged in an investigation of the student loan industry, including practices of the University of Texas at Austin (the University), related to the manner in which higher education loans are offered to students.

2. The OAG acknowledges that the University has cooperated with the OAG's investigation, and the University acknowledges that it desires to enter into this Agreement.

3. The University voluntarily conducted an internal investigation in which it examined the operations of its financial aid department and made a full, voluntary disclosure of its findings.

4. The internal investigation revealed that the University had neither entered into a revenue sharing agreement with, nor received revenue from, any student loan lender.

5. The University, without admitting that it has engaged in any wrong-doing or that it has in any way violated any law, agrees to institute and adopt the "Texas Higher Education Fair Lending Practices" as it is described in this agreement.

II. DEFINITIONS

1. "Employee of a public or private institution of higher education" includes any employee, agent, student financial aid contractor, director, officer, or trustee of the institution.

2. "Gift" means any discount, favor, gratuity, inducement, loan, stock, or thing of value exceeding \$20 in value. The term:

A. includes:

- i. any money, service, loan, entertainment, honoraria, hospitality, lodging costs, meal, registration fee, travel expense, discount, forbearance, or promise;
- ii. a gift provided in kind, by purchase of a ticket, through payment in advance, or through reimbursement after expenses have been incurred;
- iii. any computer hardware for which the recipient pays a below-market price; and
- iv. any printing costs or services; and

B. does not include:

- i. a student loan lender's own brochure or promotional literature; or
- ii. training, or informational material furnished to an employee of an institution of higher education as an integral part of a training session, if that training session contributes to the professional development of the employee.
- iii. money from a student loan lender that is given to the University, outside the office of student financial aid, for a philanthropic purpose and not for the purpose of securing a benefit relating to student lending for the student loan lender, including, but not limited to, money for (a) scholarships, grants, work study funds, or similar types of awards that are passed directly on to students; (b) any building, room,

facility, or equipment for a department other than the department in which the office of student financial services is located; (c) naming a facility or program in accordance with applicable naming regulations and policies adopted by the institution; and (d) programs or operations other than those related to the office of student financial services. Money donated as described in this section may not have any direct connection or benefit to any University employee involved in decisions relating to the offering of student loan products and may not be considered by the University in the assessment of a lender in the student loan process.

3. "Clear and conspicuous" means:
 - A. for print communications, the message shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.
 - B. in communications disseminated orally, the message shall be delivered in a volume and cadence sufficient for an ordinary consumer to comprehend it.
 - C. in communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), the message shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the message may be made through the same means by which the communication is presented. Any audio message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual message shall be of a size and shade, with a degree of contrast to

the background against which it appears, and shall appear on the screen for a duration and in a location sufficiently noticeable for an ordinary consumer to read and comprehend it. The message shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the message shall be used in any communication.

4. "High risk student loan agreement" means any agreement between a student loan lender and a public or private institution under which the lender provides student loans to students of the institution who have a poor credit history or no credit history and who would not otherwise be eligible for a student loan.

5. "High risk student loan" means a student loan made pursuant to a high risk student loan agreement.

6. "Higher education expenses" includes:

- A. tuition and fees charged by a public or private institution of higher education; and
- B. costs incurred in connection with attending a public or private institution of higher education for room, board, books, supplies, transportation, and miscellaneous personal expenses.

7. "Lender list" means a list of one or more recommended or suggested student loan lenders that a public or private institution of higher education makes available for use, in print or any other medium or form, by borrowers, prospective borrowers who attend or have indicated an intent to attend the institution, or members of the public.

8. "Public or private institution of higher education" means:

- A. an institution of higher education, as defined by Texas Education Code Sections 61.003 and 132.001 et seq.; and

B. a private or independent institution of higher education, as defined by Texas Education Code Sections 61.003 and Section 132.001 et seq.

9. "Revenue sharing" means any arrangement under which a student loan lender pays a public or private institution of higher education or an affiliated entity or organization of the institution a percentage of the principal of student loans directed toward the lender from a borrower for higher education expenses related to attending the institution.

10. "Student loan" means:

- A. any loan that is made, insured, or guaranteed under Title IV, Higher Education Act of 1965 (Pub. L. No. 89-329), as amended;
- B. a high risk student loan; or
- C. any private loan issued by a student loan lender that requires all or part of the loan proceeds to be used to assist a person in paying higher education expenses.

11. "Student loan lender" means:

- A. any person who is in the business of, independently or through an affiliate:
 - i. making, brokering, arranging, or accepting applications for student loans; or
 - ii. a combination of activities described by Subparagraph (i);
- B. any entity or association of entities that guarantees student loans, except for the Texas Guaranteed Student Loan Corporation or any similarly structured entity; or
- C. any industry, trade, or professional association or other entity that receives money from any entity or association of entities described by Paragraph (A) or (B).

12. "Person" means an individual, partnership, corporation, association, or other group, however organized.

13. "University President" means the president of the University, or any person designated by the president of the University to act on the president's behalf for purposes of this Agreement.

14. Terms not defined herein should be interpreted consistently with the opinions of the Texas Ethics Commission.

III. BACKGROUND

The OAG makes the following findings as to common practices found in the higher education loan industry.

1. Higher education loans take several forms. By dollar amount, most loans are borrowed by students themselves and are federally regulated and guaranteed. The federal government has created a program for providing loans, known as "Stafford Loans," to students. The interest rate for Stafford Loans is set by the federal government. Lenders, however, have wide latitude in offering benefits to borrowers, including discounts off of that interest rate.

2. Other federal loans, known as "PLUS Loans" are offered to students' parents to cover higher education expenses incurred by their children and to graduate students. Like Stafford Loans, the federal government sets the interest rates for PLUS Loans and lenders have wide latitude in offering borrower benefits.

3. In addition to the federal loans described above, parents or students can obtain private "alternative loans" to cover educational expenses not covered by other financial aid. The federal government does not sponsor, subsidize or guarantee alternative loans. Accordingly, the interest rate and other terms of the loans are determined by the borrower's creditworthiness and market forces.

4. In response to the numerous array of lenders that offer each of the various types of education loans, some institutions of higher education have created lists of recommended lenders. Institutions of higher education using such lists usually have separate lists for each of the several types

of education loans available. In some instances, such lender lists contain dozens of potential lenders that meet certain minimal requirements. In other cases, institutions of higher education use the lists to recommend a handful of lenders, or even a single lender, as “preferred.”

5. Some lenders, in order to be placed on a “preferred” or “recommended” lenders list, have provided gifts to financial aid employees of higher education institutions, have provided stock advice to financial aid employees of higher education institutions, or have entered into revenue sharing agreements with higher education institutions.

6. The lenders listed on an institution of higher education’s list of preferred lenders typically receive a high percentage of the loans taken out by the institution’s students and their parents. Despite the significant role that these lists play in determining the lenders from which students and parents borrow, many institutions have not adequately informed their student and parent borrowers about the process and criteria used to formulate the lists of recommended or preferred lenders. Some institutions appear to have not properly disclosed potential conflicts of interest on the part of their financial aid offices, which typically compile the preferred lender lists.

IV. AGREEMENT

The University, while it denies the existence of any conflict of interest or violation of any laws, desires to address any OAG concerns and adopt rules to ensure that its student lending program is beyond reproach. Therefore, the University agrees to accept, adopt, and implement the “Texas Higher Education Fair Lending Practices” set forth in this agreement within sixty (60) days from the effective date of this agreement.

A. TEXAS HIGHER EDUCATION FAIR LENDING PRACTICES

The “Texas Higher Education Fair Lending Practices Agreement” provides that the University shall accept, adopt, and implement the following:

1. PROHIBITION AGAINST SOLICITATION OR ACCEPTANCE OF GIFTS

BY INSTITUTION: The University shall not, directly or indirectly, solicit or accept any gift from or on behalf of a student loan lender.

2. PROHIBITION AGAINST SOLICITATION OR ACCEPTANCE OF GIFTS

BY INSTITUTION EMPLOYEE: An employee of the University shall not, on the employee's own behalf or on behalf of another person, directly or indirectly, solicit or accept any gift from or on behalf of a student loan lender. An employee of the University shall promptly report to the University President any instance of a student loan lender attempting to offer or provide a gift to the employee.

3. PROHIBITION AGAINST REVENUE SHARING WITH LENDER:

The University shall not engage in revenue sharing with a student loan lender.

4. PROHIBITION AGAINST ACCEPTANCE OF REMUNERATION BY

INSTITUTION EMPLOYEE FOR SERVICE ON LENDER BOARD: An employee of the University shall not accept any remuneration or reimbursement of expenses for serving as a member of, or otherwise participating in, an advisory board, or board of directors or any other board or management council of a student loan lender. Any employee of the University must obtain written authority from the University President to serve as a member or otherwise participate in an advisory board, board of directors or any other board or management council of a student loan lender before becoming such a member or participant.

5. **PROHIBITION AGAINST MISLEADING IDENTIFICATION OF LENDER EMPLOYEES AND REPRESENTATIVES:** The University shall not identify an employee, representative, or agent of a student loan lender to borrowers or prospective borrowers as an employee, representative, or agent of the institution, nor shall the University, subject to its good faith efforts, authorize an employee, representative or agent of a student loan lender to represent, explicitly or implicitly, that he/she is an employee, representative or agent of the institution.

6. **PROHIBITION AGAINST HIGH RISK STUDENT LOAN AGREEMENTS:** The University shall not enter into a high risk student loan agreement with a student loan lender under which the institution provides concessions or promises to the student loan lender that may prejudice borrowers or prospective borrowers.

7. **PROHIBITION AGAINST DIRECTING POTENTIAL BORROWERS TO CERTAIN ELECTRONIC LOAN AGREEMENTS:** The University shall not direct in any manner a potential borrower who attends or has indicated an intent to attend the institution to an electronic master promissory note or other loan agreement that does not allow the borrower to enter the lender code or name for any student loan lender offering the relevant loan. This provision does not prohibit the University from directing a potential borrower who has represented that he/she wishes to engage a particular lender to that lender's electronic loan agreements.

8. **DISCLOSURE OF FINANCING OPTIONS REQUIRED:** The University shall make available to a borrower, a borrower's parents, or a prospective borrower clear and conspicuous disclosure of information relating to available financing options under Title IV, Higher Education Act of 1965 (Pub. L. No. 89-329), including information on any terms and conditions of available loans under that title that are more favorable to the borrower than terms available through "preferred

lenders.” The University’s conspicuous posting of this information on a website available to borrowers, borrowers’ parents and prospective borrowers will satisfy its duties under this paragraph.

9. **REQUIREMENTS RELATING TO LENDER LISTS:**

A. Lenders cannot pay to be included on the lender list of a higher education institution.

B. If the University provides or makes available to students or prospective students of the University a lender list, it must ensure that the list:

- i. is the product of a collaborative, objective process which recognizes the students’ best interest as the overriding consideration;
- ii. discloses clearly and conspicuously to borrowers and prospective borrowers the process and defined set of objective criteria by which the institution has selected student loan lenders for inclusion in the list, including the methods and criteria used to choose the lenders and the relative importance of the criteria;
- iii. states, clearly and conspicuously to borrowers and prospective borrowers that a borrower has the right and ability to select the student loan lender of the borrower's choice, is not required to use any of the lenders on the list, and will not be penalized for selecting a lender that is not on the list; and
- iv. is reviewed and updated at least annually.

C. The University’s decision to include a student loan lender on a lender list and the institution's decision regarding where on the lender list the student loan lender's name appears must be determined solely by consideration of the best interests of the borrowers or prospective borrowers who may use the list, without regard to the pecuniary interests of the institution. Should the University maintain a preferred lender list, unless the order of the lenders in said list is a rank

order as determined by the process described in paragraph 9B, the University shall periodically sort the list so entities on the list are shifted in their position. If the order of the lenders on the list is not a rank order, then the University shall clearly and conspicuously disclose that although each lender has been chosen based on the objective criteria described in the Texas Higher Education Fair Lending Practices, no lender within the list is preferred over another.

D. The University may include a student loan lender on the institution's lender list only if the lender provides assurance to the institution and to borrowers of the lender that the advertised benefits on loan repayment will continue to benefit the borrowers regardless of whether the lender's loans are sold.

E. Before including a student loan lender on a lender list, the University shall make a reasonable inquiry regarding whether the lender has an agreement to sell its loans to another unaffiliated lender. If, after making reasonable inquiry, the University has knowledge of such an agreement, the institution may include the lender on the institution's preferred lender list only if the existence and general nature of the agreement are disclosed clearly and conspicuously on the preferred lender list.

F. Before compiling a lender list, the University shall make a reasonable inquiry as to the availability of zero-interest loan providers and non-profit loan providers.

G. A student loan lender may not be placed on any University lender list or be provided favored placement on any University lender list for a particular type of loan in exchange for benefits provided to the institution or to students of the institution in connection with a different type of loan.

H. The University shall not place a student loan lender on a lender list for a period of at least one year if the student loan lender has violated the Texas Higher Education Fair Lending Practices.

10. **PROHIBITION AGAINST STOCK OWNERSHIP:** A person employed in the financial aid office of the University shall not own stock or hold another ownership interest in a student loan lender, other than through ownership of shares in a publicly traded mutual fund or similar investment vehicle in which the person does not exercise any discretion regarding the investment of the assets of the fund or other investment vehicle.

11. **TRAINING:** On a yearly basis every employee of the financial aid office of the University shall receive training concerning the Texas Higher Education Fair Lending Practices and Texas ethics laws relating to their state employment.

B. COOPERATION

The University shall continue to cooperate fully and promptly with the OAG with regard to its investigation and any related proceedings and actions.

C. MISCELLANEOUS PROVISIONS

1. This Agreement may be changed, amended, or modified only by a writing signed by all parties hereto.

2. Nothing contained herein shall be construed as relieving the University of its obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of the Agreement be deemed permission to engage in any act or practice prohibited by such laws, regulations or rules.

3. This agreement shall be deemed effective the day it is signed by both parties. In the event that compliance with this Agreement would cause the University to breach a provision of any

federal, state or local statute, rule, regulation or guideline, the University will be relieved of complying with the Agreement only to the extent of avoiding such a breach. In such a case, the University shall give prompt notice to the OAG of its inability to comply with the Agreement. In addition, the parties will make good faith efforts to negotiate appropriate revisions to this Agreement in the light of any subsequent changes in the governing law.

4. The acceptance of the Agreement by the OAG shall not be deemed approval by same of any of the University's business practices, and the University shall make no representation to the contrary. Nothing contained herein shall be construed as any waiver or release by the OAG of its ability to pursue claims or charges against individual University employees. The University's execution of this Agreement is not an admission of liability.

5. Nothing in this Agreement shall be construed to prevent any individual from pursuing any right or remedy at law which any consumer may have against the University.

ENTERED INTO AS FOLLOWS:
May 18, 2007

For the University of Texas at Austin



WILLIAM C. POWERS, JR.
President, University of Texas at Austin

For the Office of the Attorney General of Texas

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

JEFF L. ROSE
Deputy First Assistant Attorney General

PAUL D. CARMONA
Chief, Consumer Protection and Public Health Division



LEELA R. FIRESIDE
State Bar No. 07038750
NANETTE M. DINUNZIO
State Bar No. 24036484

Assistant Attorneys General
Consumer Protection and Public Health Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711
512-463-2185
(Fax) 512-473-8301