

Dear President:

As you may know, the New York State Attorney General's Office is conducting an ongoing investigation of potential conflicts of interest and illegal conduct in the student loan industry. Because students and their parents are now beginning to negotiate and obtain student loans for the following academic year, I wanted to share with you some preliminary findings of my investigation thus far so that you may consider whether your university or college is currently engaged in such practices.

We are concerned that some relationships between lenders and schools may be tainted by possible conflicts of interest which have the potential to mislead students and compromise their interests. Moreover, we have found the financial arrangements and relationships between lenders and schools, such as revenue sharing and referral fees, to be troubling as a whole and burdened with a strong potential for conflicts of interest. Of particular concern are so-called "preferred lender" programs, some of which may involve deceptive practices.

The following non-exhaustive list describes some of the problematic practices our review has disclosed to date:

- \* Financial arrangements between schools and lenders such as revenue sharing and referral fees;
- \* Agreements between particular lenders and schools for services, benefits, or payments in kind without disclosing the terms to potential borrowers; these include "preferred lender lists" where schools reap various benefits for "steering" student loans to certain lenders; and in such cases, the schools' benefits may be at a cost to the students;
- \* Establishment of preferred lender lists that include lenders that offered or were solicited to offer, financial or other benefits to the school or its borrowers in exchange for inclusion on the list;
- \* Establishment of preferred lender lists without disclosing to students and/or parents the basis for selection, the specific benefits to the students and/or parents of using the preferred lenders (e.g., competitive upfront rates, repayment benefits, service), or whether any of the preferred lenders have agreements with each other to sell the loans or whether they are otherwise related;
- \* Recommendations of a preferred lender without disclosing that advertised repayment benefits may not travel with a loan if the loan is subsequently sold on

the secondary market; and

\* Denials or impediments to a student or parent borrower's choice of lender, including but not limited to misleading prospective borrowers that they are required to use a lender recommended by the school through counseling or other means, unnecessarily delaying certification of a lender not recommended by the school, or other practices that result in a denial of a borrower's access to loans because of the borrower's selection of a particular lender or guaranty agency.

We are not suggesting that there are untoward relationships with lenders at every college or university, or that disclosures at all colleges and universities are insufficient. Nevertheless, we believe it will assist students, as they begin the process of accumulating significant student loan debt, for you to share this information so that students and their parents can make informed choices as they select lenders and negotiate loan terms. Moreover, as noted above, we have found that the overall financial relationship between some lenders and universities is highly problematic.

Given that students and often their parents negotiate and obtain student loans in the Spring, we wanted to describe problematic practices to you so that you could take appropriate action, if necessary, as you guide students and their families through the financial aid process. Any deceptive practices should be halted. Schools should provide students and their parents with complete, impartial and timely information which will enable them to make appropriate decisions about student loans. Schools should ensure that their practices comply with the Higher Education Act, the Truth in Lending Act and other relevant federal law, and that there is no deception or illegality in violation of New York Executive Law § 63(12) and General Business Law §§ 349 and 350 and other relevant state law.

Some suggestions you may wish to consider as this loan season begins include:

- (1) Students and parents should be fully informed of how the school constructed its "preferred lender" list and any financial benefits the school receives for placing a lender on the list.
- (2) Students and parents should be able to comparison shop to obtain loans with the best actual rates and terms (after factoring in repayment terms), without necessarily limiting research to the school's list of preferred lenders.
- (3) Students have the right to the lender of their choice. When completing a Master Promissory Note for a student loan, students and parents therefore are entitled to substitute lenders of their choice for the school's preferred lenders on preprinted documents or electronic menus.
- (4) Students and parents should be able to make certain that "back-end" benefits, such as discounts for a certain number of consecutive timely repayments, remain part of the agreement that travels with the loan if it is sold to another lender. Schools and students should get these commitments in writing from the lenders.

(5) Students and parents should be informed that “signature” loans from a school (“school as lender”)<sup>1</sup> may be repurchased by a lender. Moreover, the school cannot require the student to use the school as his or her Federal Family Education Lending Program (“FFELP”) lender.

As my office’s investigation of the student loan industry continues, I am hopeful that all schools will provide students with appropriate information and funding for their education. In the interim, I hope that these suggestions will prove useful as your students and their families navigate the financial aid process this year.

Please also be aware my office has prepared and posted a pamphlet which provides guidance to students and their parents about information they should seek from schools about student loans – including information about preferred lending – so that they may make informed decisions in their interest. My office is distributing this pamphlet to college guidance counselors around New York State. In addition, this pamphlet is posted on our website, [www.oag.state.ny.us](http://www.oag.state.ny.us).

Thank you for your attention to this important matter.

Andrew Cuomo

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<sup>1</sup>These types of loans occur more often at the graduate than the undergraduate level because of federal restrictions, but some undergraduate “school as lender” programs exist.