07.02 Texas Higher Education Fair Lending Practices

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Policy Statement

The Texas Higher Education Fair Lending Practices policy sets out operational and conflict of interest standards to be observed in the conduct of student financial aid programs.

Reason for Policy

The Texas Higher Education Fair Lending Practices policy will aid in establishing a heightened awareness of the potential for conflicts of interest in the conduct of financial aid programs.

Procedures and Responsibilities

The president of each System university shall adopt procedures implementing this System policy on Texas Higher Education Fair Lending Practices. These procedures will include, but need not be limited to, the following:

1. DEFINITIONS

1.1 "Employee of an institution of higher education" includes any employee, agent, student financial aid contractor, director, officer, or regent of the institution.

1.2 "Gift" means any discount, favor, gratuity, inducement, loan, stock, or thing of value exceeding $20 in value.

The term includes:

1.2.1 any money, service, loan, entertainment, honoraria, hospitality, lodging costs, meal, registration fee, travel expense, discount, forbearance, or promise;

1.2.2 a gift provided in kind, by purchase of a ticket, through payment in advance, or through reimbursement after expenses have been incurred;

1.2.3 any computer hardware for which the recipient pays a below-market price; or

1.2.4 any printing costs or services.

The term does not include:

1.2.5 a student loan lender's own brochure or promotional literature;

1.2.6 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; or

1.2.7 money from a student loan lender that is given to the institution of higher education, 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:

1.2.7.1 scholarships, grants, work study funds, or similar types of awards that are passed directly on to students;

1.2.7.2 any building, room, facility, or equipment for a department other than the department in which the office of student financial services is located;

1.2.7.3 naming a facility or program in accordance with applicable naming regulations and policies adopted by the institution; or

1.2.7.4 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.

1.3 "Clear and conspicuous" means:

1.3.1 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;

1.3.2 in communications disseminated orally, the message shall be delivered in a volume and cadence sufficient for an ordinary consumer to comprehend it; or

1.3.3 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.

1.4 "High risk student loan agreement" means any agreement between a student loan lender and an institution of higher education 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.

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

1.6 "Higher education expenses" includes:

1.6.1 tuition and fees charged by an institution of higher education; and

1.6.2 costs incurred in connection with attending an institution of higher education for room, board, books, supplies, transportation, and miscellaneous personal expenses.

1.7 "Lender list" means a list of one or more recommended or suggested student loan lenders that an 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.

1.8 "Institution of higher education," "University" or "Institution" means an institution of higher education, as defined by Texas Education Code Section 61.003.

1.9 "Revenue sharing" means any arrangement under which a student loan lender pays an 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.

1.10 "Student loan" means:

1.10.1 any loan that is made, insured, or guaranteed under Title IV, Higher Education Act of 1965 (Pub.L. No. 89-329), as amended;

1.10.2 a high risk student loan; or

1.10.3 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.

1.11 "Student loan lender" means:

1.11.1 any person who is in the business of, independently or through an affiliate:

1.11.1.1 making, brokering, arranging, or accepting applications for student loans; or

1.11.1.2 a combination of activities described by Section 1.11.1.1;

1.11.2 any entity or association of entities that guarantees student loans, except for the Texas Guaranteed Student Loan Corporation or any similarly structured entity; or

1.11.3 any industry, trade, or professional association or other entity that receives money from any entity or association of entities described in Section 1.11.1 or 1.11.2.

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

2. PROHIBITIONS

2.1 Prohibition against solicitation or acceptance of gifts by the institution and the institution's employees.

2.1.1 The institution shall not, directly or indirectly, solicit or accept any gift from or on behalf of a student loan lender.

2.1.2 An employee of the institution 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 shall promptly report to the institution president any instance of a student loan lender attempting to offer or provide a gift to the employee.

2.2 Prohibition against revenue sharing with lender.

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

2.3 Prohibition against acceptance of remuneration by institution employee for service on lender board.

2.3.1 An employee of the institution shall not accept any remuneration or reimbursement of expenses from a Student Loan Lender 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.

2.3.2 An employee of the institution must obtain written authority from the institution 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.

2.4 Prohibition against misleading identification of lender employees and representatives.

2.4.1 The institution 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 institution, 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.

2.5 Prohibition against high risk student loan agreements.

2.5.1 The institution 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.

2.6 Prohibition against directing potential borrowers to certain electronic loan agreements.

2.6.1 The institution 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 institution from directing a potential borrower who has represented that he/she wishes to engage a particular lender to that lender's electronic loan agreements.

2.7 Disclosure of financing options required.

2.7.1 The institution 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 Section.

2.8 Requirements relating to lender lists.

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

2.8.2 If the institution provides or makes available to students or prospective students of the institution a lender list, it must ensure that the list:

2.8.2.1 is the product of a collaborative, objective process which recognizes the students' best interest as the overriding consideration;

2.8.2.2 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;

2.8.2.3 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

2.8.2.4 is reviewed and updated at least annually.

2.8.3 The institution'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 institution maintain a preferred lender list, unless the order of the lenders in the list is a rank order as determined by the process described in Section 2.8.2., the institution 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 institution 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.

2.8.4 The institution 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.

2.8.5 Before including a student loan lender on a lender list, the institution 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 institution 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.

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

2.8.7 A student loan lender may not be placed on any institution lender list or be provided favored placement on any institution 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.

2.8.8 The institution 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.

2.9 Prohibition against stock ownership.

2.9.1 A person employed in the financial aid office of the institution 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.

3. REQUIREMENT

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

Related Statutes, Policies, or Requirements

Texas Education Code, Section 61.003

Title IV, Higher Education Act of 1965 (Pub. L. No. 89-329)

Member Rule Requirements

No rule is required to supplement this policy.

Contact Office

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