

Student Loan Protection

This Act addresses conflicts of interest between colleges and representatives of financial entities which lend money to students to attend college. For example, under the Act, a lending institution must prohibit an employee or agent of the lending institution from being identified to borrowers or prospective borrowers as a college or university employee. The Act prohibits lending institution employees from staffing the financial aid or financial call center of colleges and universities. The Act also stipulates how colleges and universities list in their financial aid material institutions which offer financial aid.

Submitted as:

Iowa

HF 2690 (Enrolled version)

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Protect Students and
2 Parents from Conflicts of Interest Involving Student Loans.”
3

4 Section 2. [*Definitions.*] As used in this Act, unless otherwise specified:

5 (1) “Borrower” means a student attending a covered institution in this state, or a parent
6 or person in parental relation to such student, who obtains an educational loan from a lending
7 institution to pay for or finance a student's higher education expenses.

8 (2) “Covered institution” means any educational institution that offers a postsecondary
9 educational degree, certificate, or program of study and receives any Title IV funds under the
10 federal Higher Education Act of 1965, as amended, or state funding or assistance. “Covered
11 institution” includes an authorized agent of the educational institution, including an alumni
12 association, booster club, or other organization directly or indirectly associated with or
13 authorized by the institution or an employee of the institution.

14 (3) “Covered institution employee” means any employee, agent, contract employee,
15 director, officer, or trustee of a covered institution.

16 (4) “Educational loan” means any loan that is made, insured, or guaranteed under Title
17 IV of the federal Higher Education Act of 1965, as amended, directly to a borrower solely for
18 educational purposes, or any private educational loan.

19 (5) “Gift” means any gratuity, favor, discount, entertainment, hospitality, loan, or other
20 item having a monetary value of more than a de minimus amount. “Gift” includes a gift of
21 services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket,
22 payment in advance, or reimbursement after the expense has been incurred. “Gift” does not
23 include any of the following:

24 (a) Standard material, activities, or programs on issues related to a loan, default
25 aversion, default prevention, or financial literacy.

26 (b) Food or refreshments furnished to an officer, employee, or agent of an
27 institution as an integral part of a training session or conference that is designed to contribute to
28 the professional development of the officer, employee, or agent of the institution.

29 (c) Favorable terms, conditions, and borrower benefits on an educational loan
30 provided to a borrower employed by the covered institution if such terms, conditions, or benefits
31 are comparable to those provided to all students of the institution.

32 (d) Philanthropic contributions to a covered institution from a lender, guarantor,
33 or servicer of educational loans that are unrelated to educational loans provided, as applicable,
34 that the contributions are disclosed pursuant to section 6 (F) of this Act.

35 (e) State education grants, scholarships, or financial aid funds administered under
36 [insert citation].

37 (f) Toll-free telephone numbers for use by covered institutions or other toll-free
38 telephone numbers open to the public to obtain information about loans available under Title IV
39 of the federal Higher Education Act of 1965, as amended, or private educational loans, or free
40 data transmission service for use by a covered institution to electronically submit applicant loan
41 processing information or student status confirmation data for loans available under Title IV of
42 the federal Higher Education Act of 1965.

43 (g) A reduced origination fee.

44 (h) A reduced interest rate.

45 (i) Payment of federal default fees.

46 (j) Purchase of a loan made by another lender at a premium.

47 (k) Other benefits to a borrower under a repayment incentive program that
48 requires, at a minimum, one or more scheduled payments to receive or retain the benefit or under
49 a loan forgiveness program for public service or other targeted purposes approved by the
50 attorney general, provided these benefits are not marketed to secure loan applications or loan
51 guarantees.

52 (l) Items of nominal value to a covered institution, covered institution employee,
53 covered institution-affiliated organization, or borrower that are offered as a form of generalized
54 marketing or advertising, or to create goodwill.

55 (m) Items of value which are offered to a borrower or to a covered institution
56 employee that are also offered to the general public.

57 (n) Other services as identified and approved by the [attorney general] through a
58 public announcement, such as a notice on the [attorney general's] web site.

59 (6) "Lender" or "lending institution" means a creditor as defined in section 103 of the
60 federal Truth in Lending Act, 15 U.S.C. § 1602.

61 (7) "Postsecondary educational expenses" means any of the expenses that are included as
62 part of a student's cost of attendance as defined in Title IV, part F, of the federal Higher
63 Education Act of 1965, as amended.

64 (8) "Preferred lender arrangement" means an arrangement or agreement between a lender
65 and a covered institution under which the lender provides or otherwise issues educational loans
66 to borrowers and which relates to the covered institution recommending, promoting, or endorsing
67 the educational loan product of the lender. "Preferred lender arrangement" does not include
68 arrangements or agreements with respect to loans under part D or E of Title IV of the federal
69 Higher Education Act of 1965, as amended.

70 (9) "Preferred lender list" means a list of at least [three] recommended or suggested,
71 unaffiliated lending institutions that a covered institution makes available for use, in print or any
72 other medium or form, by borrowers, prospective borrowers, or others.

73 (10) "Private educational loan" means a private loan provided by a lender that is not
74 made, insured, or guaranteed under Title IV of the federal Higher Education Act of 1965, as
75 amended, and is issued by a lender solely for postsecondary educational expenses to a borrower,
76 regardless of whether the loan involves enrollment certification by the educational institution that

77 the student for which the loan is made attends. “Private educational loan” does not include a
78 private educational loan secured by a dwelling or under an open-end credit plan. For purposes of
79 this subsection, “dwelling” and “open-end credit plan” have the meanings given such terms in
80 section 103 of the federal Truth in Lending Act, 15 U.S.C. § 1602.

81 (11) “Revenue sharing arrangement” means an arrangement between a covered institution
82 and a lender in which the lender provides or issues educational loans to persons attending the
83 institution or on behalf of persons attending the institution and the covered institution
84 recommends the lender or the educational loan products of the lender, in exchange for which the
85 lender pays a fee or provides other material benefits, including revenue or profit sharing, to the
86 institution or officers, employees, or agents of the institution. “Revenue sharing arrangement”
87 does not include arrangements related solely to products which are not educational loans.

88
89 Section 4. [*Code of Conduct.*]

90 (A) A covered institution shall do the following:

91 (1) Develop, in consultation with the [college student aid commission], a code of
92 conduct governing educational loan activities with which the covered institution's officers,
93 employees, and agents shall comply.

94 (2) Publish the code of conduct developed in accordance with paragraph (A)
95 prominently on its Internet site.

96 (3) Administer and enforce the code of conduct developed in accordance with
97 paragraph (A).

98 (B) The [college student aid commission] shall provide to covered institutions assistance
99 and guidance relating to the development, administration, and monitoring of a code of conduct
100 governing educational loan activities.

101 (C) Except as provided in this section, the [college student aid commission] is not subject
102 to the duties, restrictions, prohibitions, and penalties of this Act.

103
104 Section 5. [*Educational Loans: Prohibitions.*]

105 (A) No officer, employee, or agent of a covered institution who is employed in the
106 financial aid office of the institution, or who otherwise has direct responsibilities with respect to
107 educational loans, shall solicit or accept any gift from a lender, guarantor, or servicer of
108 educational loans. The [attorney general] shall investigate any reported violation of this
109 subsection and shall [annually] submit a report to the [general assembly] by [January 15]
110 identifying all substantiated violations of this subsection, including the lenders and covered
111 institutions involved in each such violation, for the preceding year.

112 (B) For purposes of this section, a gift to a family member of an officer, employee, or
113 agent of a covered institution, or a gift to any other individual based on that individual's
114 relationship with the officer, employee, or agent, shall be considered a gift to the officer,
115 employee, or agent if either of the following applies:

116 (1) The gift is given with the knowledge and acquiescence of the officer,
117 employee, or agent.

118 (2) The officer, employee, or agent has reason to believe the gift was given
119 because of the official position of the officer, employee, or agent.

120 (C) An officer, employee, or agent who is employed in the financial aid office of a
121 covered institution, or who otherwise has direct responsibilities with respect to educational loans,
122 shall not accept from any lender or affiliate of any lender any fee, payment, or other financial
123 benefit including but not limited to the opportunity to purchase stock on other than free market

124 terms, as compensation for any type of consulting arrangement or other contract to provide
125 services to a lender or on behalf of a lender.

126 (D) A covered institution shall not enter into any revenue sharing arrangement with any
127 lender.

128 (E) A covered institution shall not request or accept from any lender any offer of funds,
129 including any opportunity pool, to be used for private educational loans to borrowers in
130 exchange for the covered institution providing concessions or promises to the lender with respect
131 to such institution providing the lender with a specified number of loans, a specified loan
132 volume, or a preferred lender arrangement for any loan made, insured, or guaranteed under Title
133 IV of the federal Higher Education Act of 1965, as amended, and a lender shall not make any
134 such offer. For purposes of this subsection, "opportunity pool" means an educational loan made
135 by a private lender to a borrower that is in any manner guaranteed by a covered institution, or
136 that involves a payment, directly or indirectly, by such an institution of points, premiums,
137 payments, additional interest, or other financial support to the lender for the purpose of that
138 lender extending credit to the borrower.

139 (F) An officer, employee, or agent who is employed in the financial aid office of a
140 covered institution, or who otherwise has direct responsibilities with respect to educational loans,
141 shall not serve on or otherwise participate with advisory councils of lenders or affiliates of
142 lenders. Nothing in this subsection shall prohibit lenders from seeking advice from covered
143 institutions or groups of covered institutions, including through telephonic or electronic means,
144 or a meeting, in order to improve products and services for borrowers, provided there are no gifts
145 or compensation including but not limited to transportation, lodging, or related expenses,
146 provided by lenders in connection with seeking such advice from the institutions. Nothing in this
147 subsection shall prohibit an officer, employee, or agent of a covered institution from serving on
148 the board of directors of a lender if required by law.

149 (G) (1) Nothing in this section shall be construed as prohibiting any of the following:

150 (a) An officer, employee, or agent of a covered institution who is not
151 employed in the institution's financial aid office, or who does not otherwise have direct
152 responsibilities with respect to educational loans, from paid or unpaid service on a board of
153 directors of a lender, guarantor, or servicer of educational loans.

154 (b) An officer, employee, or agent of a covered institution who is not
155 employed in the financial aid office but who has direct responsibility with respect to educational
156 loans as a result of a position held at the covered institution, from paid or unpaid service on a
157 board of directors of a lender, guarantor, or servicer of educational loans, provided that the
158 covered institution has a written conflict of interest policy that clearly sets forth that such an
159 officer, employee, or agent must be recused from participating in any decision of the board with
160 respect to any transaction regarding educational loans.

161 (c) An officer, employee, or agent of a lender, guarantor, or servicer of
162 educational loans from serving on a board of directors or serving as a trustee of a covered
163 institution, provided that the covered institution has a written conflict of interest policy that
164 clearly sets forth the procedures to be followed in instances where such a board member's or
165 trustee's personal or business interests with respect to educational loans may be advanced by an
166 action of the board of directors or trustees, including a provision that such a board member or
167 trustee may not participate in any decision to approve any transaction where such conflicting
168 interests may be advanced.

169 (2) Nothing in this Act shall be construed to prohibit a covered institution from
170 lowering educational loan costs for borrowers, including payments made by the covered
171 institution to lending institutions on behalf of borrowers.

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Section 6. [*Misleading Identification, Covered Institution, Lending Institutions' Employees.*]

(A) A lending institution shall prohibit an employee or agent of the lending institution from being identified to borrowers or prospective borrowers of a covered institution as an employee, representative, or agent of the covered institution.

(B) A covered institution shall prohibit an employee or agent of a lending institution from being identified as an employee, representative, or agent of the covered institution.

(C) An employee, representative, or agent of a lending institution included on a covered institution's preferred lending list shall not staff a covered institution's financial aid offices or call center and shall not prepare any of the covered institution's materials related to educational loans.

(D) A covered institution that has entered into a preferred lender arrangement with a lender regarding private educational loans shall not agree to the lender's use of the name, emblem, mascot, or logo of the institution, or other words, pictures, or symbols readily identified with the institution, in the marketing of private educational loans to the students attending the institution in any way that implies that the institution endorses the private educational loans offered by the lender. However, the covered institution may allow the use of its name if it is part of the lending institution's legal name.

(E) Nothing in this section shall prohibit a covered institution from requesting or accepting the following assistance from a lender related to any of the following:

(1) 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.

(2) 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 attorney general.

(F) The [attorney general] shall adopt rules providing for the disclosure, for lenders with a preferred lender arrangement, of philanthropic contributions made as specified in section Section 2(4)(d) of this Act.

Section 7. [*Loan Disclosure and Loan Bundling: Prohibitions.*]

(A) A covered institution that has entered into a preferred lender arrangement with a lender regarding private educational loans shall inform the borrower or prospective borrower of all available state education financing options, and financing options under Title IV of the federal Higher Education Act of 1965, as amended, including information on any terms and conditions of available loans under such title that are more favorable to the borrower.

(B) A covered institution shall prohibit the bundling of private educational loans in financial aid packages, unless the borrower is ineligible for financing, is not eligible for any additional funding, or has exhausted the limits of loan eligibility, under Title IV of the federal Higher Education Act of 1965, as amended, or has not filled out a free application for federal student aid, and the bundling of the private educational loans is clearly and conspicuously disclosed to the borrower prior to acceptance of the package by the borrower. The provisions of this subsection shall not apply if the borrower does not desire or refuses to apply for a loan under Title IV of the federal Higher Education Act of 1965.

(C) A lending institution included on a covered institution's preferred lender list shall disclose, clearly and conspicuously, in any application for a private educational loan, all of the following:

- 220 (1) The rate of interest or the potential range of rates of interest applicable to the
221 loan and whether such rates are fixed or variable.
- 222 (2) Limitations, if any, on interest rate adjustments, both in terms of frequency
223 and amount, or lack thereof.
- 224 (3) Co-borrower requirements, including changes in interest rates.
- 225 (4) Any fees associated with the loan.
- 226 (5) The repayment terms available on the loan.
- 227 (6) The opportunity for deferment or forbearance in repayment of the loan,
228 including whether the loan payments can be deferred if the borrower is in school.
- 229 (7) Any additional terms and conditions applied to the loan, including any
230 benefits that are contingent on the repayment behavior of the borrower.
- 231 (8) Information comparing federal and private educational loans.
- 232 (9) An example of the total cost of the educational loan over the life of the loan
233 which shall be calculated using the following:
- 234 (a) A principal amount and the maximum rate of interest actually offered
235 by the lender, or, if there is no maximum rate provided under the terms of the loan agreement or
236 applicable state or federal law, a statement to that effect.
- 237 (b) Both with and without capitalization of interest, if that is an option for
238 postponing interest payments.
- 239 (10) The consequences for the borrower of defaulting on a loan, including any
240 limitations on the discharge of an educational loan in bankruptcy.
- 241 (11) Contact information for the lender.
- 242 (D) Not later than [January 31, 2009], the [attorney general] shall develop and make
243 available to lenders a model disclosure form that is based on the requirements of subsection (C).
244 Use of the model disclosure form by a lending institution in a manner consistent with this Act
245 shall constitute compliance with subsection (C).

246

247 Section 8. [*Standards for Preferred Lender Lists.*]

248 (A) A covered institution may make available a list of preferred lenders, in print or any
249 other medium or form, for use by the covered institution's students or their parents, provided the
250 list meets the following conditions:

- 251 (1) The list is not used to deny or otherwise impede a borrower's choice of lender.
- 252 (2) The list contains at least [three] lenders that are not affiliated and will make
253 loans to borrowers or students attending the school. For the purposes of this paragraph, a lender
254 is affiliated with another lender if any of the following applies:
- 255 (a) The lenders are under the ownership or control of the same entity or
256 individuals.
- 257 (b) The lenders are wholly or partly owned subsidiaries of the same parent
258 company.
- 259 (c) The directors, trustees, or general partners, or individuals exercising
260 similar functions, of one of the lenders constitute a majority of the persons holding similar
261 positions with the other lender.
- 262 (3) The list does not include lenders that have offered, or have offered in response
263 to a solicitation by the covered institution, financial or other benefits to the covered institution in
264 exchange for inclusion on the list or any promise that a certain number of loan applications will
265 be sent to the lender by the covered institution or its students.

266 (B) A covered institution that provides or makes available a preferred lender list shall do
267 the following:

268 (1) Disclose to prospective borrowers, as part of the list, the method and criteria
269 used by the covered institution in selecting any lender that it recommends or suggests.

270 (2) Provide comparative information to prospective borrowers about interest rates
271 and other benefits offered by the lenders.

272 (3) Include a prominent statement in any information related to its preferred
273 lender list advising prospective borrowers that the borrowers are not required to use one of the
274 covered institution's recommended or suggested lenders.

275 (4) For first-time borrowers, refrain from assigning, through award packaging or
276 other methods, a borrower's loan to a particular lender.

277 (5) Not cause unnecessary certification delays for borrowers who use a lender that
278 is not included on the covered institution's preferred lender list.

279 (6) Update the preferred lender list and any information accompanying the list at
280 least [annually].

281 (C) If the servicer of a private educational loan is changed by a lending institution, the
282 lending institution shall disclose the change to the affected borrower.

283 (D) A lending institution shall not be placed on a covered institution's preferred lender
284 list or in favored placement on a covered institution's preferred lender list for a particular type of
285 loan, in exchange for benefits provided to the covered institution or to the covered institution's
286 students in connection with a different type of loan.

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288 Section 9. [*Disclosure Requirements.*] Except for educational loans made, insured, or
289 guaranteed by the federal government, a lending institution included on a covered institution's
290 preferred lender list shall, upon receiving a request from a borrower, covered institution, or
291 government entity, disclose to the requester in reasonable detail and form, the terms of private
292 educational loans made to borrowers by that lending institution and the rates of interest charged
293 to borrowers for private educational loans in the year preceding the disclosures.

294
295 Section 10. [*Penalties.*]

296 (A) If after providing notice and an opportunity for a hearing the [attorney general]
297 determines that a covered institution or lending institution has violated a provision of this
298 chapter, the covered institution or lending institution may be liable for a civil penalty of up to
299 five thousand dollars per violation. In taking action against a covered institution or lending
300 institution, consideration shall be given to the nature and severity of a violation of this Act.

301 (B) If after providing notice and an opportunity for a hearing the [attorney general]
302 determines that a covered institution employee has violated a provision of this Act, the covered
303 institution employee may be liable for a civil penalty of up to [two thousand five hundred
304 dollars] per violation. In taking action against a covered institution employee, consideration shall
305 be given to the nature and severity of a violation of this Act.

306 (C) If after providing notice and an opportunity for a hearing the [attorney general]
307 determines that a lending institution has violated a provision of this Act, such lending institution
308 shall not be placed or remain on any covered institution's preferred lender list unless notice of
309 such violation is provided to all potential borrowers of the covered institution. However,
310 consideration shall be given to the nature and severity of a violation of this Act in determining
311 whether and for how long to ban a lender from a preferred lender list.

312 (D) Nothing in this section shall prohibit the [attorney general] from reaching a
313 settlement agreement with a covered institution, covered institution employee, or lending
314 institution in order to effectuate the purposes of this section. Provided, however, if such
315 settlement agreement is reached with a covered institution or lending institution, the [attorney

316 general] shall provide notice of such action to the borrowers in a form and manner prescribed by
317 the [attorney general].

318 (E) The [attorney general] shall deposit the funds generated pursuant to this section into
319 the Student Lending Education Fund, created in section 12 of this Act.

320 (F) Each individual incident of a violation of this Act shall be considered a separate
321 violation for the purpose of imposing civil penalties.

322

323 Section 11. [*Rules, Investigation Authority, Enforcement.*]

324 (A) The [attorney general] shall administer this Act and promulgate rules, pursuant to
325 [insert citation], necessary for the implementation of this Act.

326 (B) The [attorney general] is authorized to conduct an investigation to determine whether
327 to initiate proceedings pursuant to this Act to the same extent as the investigation authority
328 granted the [attorney general] under [insert citation].

329

330 Section 12. [*Student Lending Education Fund.*]

331 (A) There is established in the [state treasury] a [Student Lending Education Fund].

332 (B) The fund shall consist of all revenues generated pursuant to section 10 of this Act and
333 all other moneys credited or transferred to the fund from any other fund or source pursuant to
334 law.

335 (C) Moneys in the fund shall be made available to the [attorney general] for the purpose
336 of enforcing this Act.

337

338 Section 13. [*Effect on Other Laws or Regulations.*] This Act shall not be interpreted to
339 affect the liability of any person, covered institution, or lending institution under any other state
340 statute or rule.

341

342 Section 14. [*Student Loan Secondary Market Investigation Report.*]

343 (A) The [attorney general] shall submit the findings and recommendations resulting from
344 the investigation of the student loan secondary market and the state [student loan liquidity
345 corporation] to the [general assembly] by [January 15, 2009].

346 (B) The [attorney general] shall present the findings and recommendations resulting from
347 the investigation of the student loan secondary market and the state [student loan liquidity
348 corporation] to the [legislative government oversight committee] on [insert date].

349

350 Section 15. [*Severability.*] [Insert severability clause.]

351

352 Section 16. [*Repealer.*] [Insert repealer clause.]

353

354 Section 17. [*Effective Date.*] [Insert effective date.]