

# Student Lending Accountability, Transparency and Enforcement

The Act prohibits lenders from making gifts, defined as having not more than nominal value, to colleges and universities and their employees, in exchange for any advantage or consideration provided such lenders related to their educational loan activities. The legislation prohibits employees of colleges and universities from soliciting, accepting or receiving gifts from lenders. It prohibits employees of colleges and universities from receiving remuneration for serving as members or participants of lenders' advisory boards, or receiving any reimbursement of expenses for so serving.

The legislation prohibits lenders' employees and agents from being identified as employees or agents of colleges and universities and staffing the financial aid offices of colleges and universities.

This bill requires colleges to disclose to borrowers and potential borrowers who consult a covered institution's financial aid office, all available financing options under federal law; and prohibits lenders and colleges and universities from entering into certain quid pro quo high risk loans that prejudice other borrowers or potential borrowers toward a particular type of loan, in exchange for benefits provided to the college or university or its students in connection with a different type of loan.

This legislation prohibits a covered institution to direct potential borrowers to any electronic master promissory notes or other loan agreements that do not provide a reasonable and convenient alternative for the borrower to complete a master promissory note with any federally approved lending institution offering the relevant loan in this state.

The Act requires a lender, upon request of a college or university, to disclose the default rates, rates of interest charged to borrowers, and number of borrowers receiving those rates from such college or university.

Submitted as:

New York

[Chapter 41 of 2007](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “The Student Lending Accountability,  
2   Transparency and Enforcement Act.”

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4           Section 2. [*Definitions.*] As used in this Act:

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

8           2. “Covered institution” shall mean any college, vocational institution, or approved  
9   program as defined in [insert citation].

10          3. “Covered institution employee” shall mean any employee, agent, contractor, director,  
11   officer or trustee of a covered institution.

12 4. “Educational loan” shall mean any loan that is made, insured, or guaranteed under Part  
13 B of Title IV of the Federal Higher Education Act of 1965, as amended, any high risk loan or any  
14 private loan issued by a lending institution for the purposes of paying for or financing higher  
15 education expenses.

16 5. “Gift” shall mean any discount, favor, gratuity, inducement, loan, stock, thing of value,  
17 or other item having more than nominal value.

18 a. “Gift” shall include, but is not limited to:

19 (1) any money, service, loan, entertainment, honoraria, hospitality, lodging  
20 costs, meals, registration fees, travel expenses, discount, forbearance or promise;

21 (2) gifts provided in kind, by purchase of a ticket, payment in advance, or  
22 reimbursement after expenses have been incurred;

23 (3) any computer hardware for which the recipient pays below-market  
24 prices; and

25 (4) any printing costs or services.

26 b. “Gift” shall not include any of the following:

27 (1) a lending institution’s own brochure or promotional literature; and

28 (2) food, refreshments, training, or informational material furnished to a  
29 covered institution employee as an integral part of a training session, if such training contributes to  
30 the professional development of the covered institution employee.

31 c. Nothing in this Act shall be construed to affect the private philanthropic  
32 activities of banks or other lending institutions that are unrelated to educational loans.

33 6. “High risk loans” shall mean any agreement between a lending institution and a covered  
34 institution that provides for the lending institution to provide loans to students with a poor or no  
35 credit history, who would otherwise not be eligible for educational loans.

36 7. “Higher education expenses” shall include the following:

37 a. tuition and fees;

38 b. costs incurred for books, supplies, transportation, and miscellaneous personal  
39 expenses; and

40 c. room and board costs.

41 8. “Lending institution” shall mean:

42 a. any entity that itself or through an affiliate makes educational loans to pay for or  
43 finance higher education expenses or that securitizes such loans;

44 b. any entity, or association of entities, that guarantees educational loans; or

45 c. any industry, trade or professional association or other entity that receives  
46 money, related to educational loan activities, from any entity described above in paragraphs a and  
47 b of this subdivision.

48 9. “Preferred lender list” shall mean a list of one or more recommended or suggested  
49 lending institutions that a covered institution makes available for use, in print or any other medium  
50 or form, by borrowers, potential borrowers or others.

51 10. “Revenue sharing” shall mean any arrangement whereby a lending institution pays a  
52 covered institution or an affiliated entity or organization of such covered institution a percentage  
53 of the principal of each loan directed towards the lending institution from a borrower at the  
54 covered institution.

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56 Section 3. [*Prohibition of Gifts Made by Lending Institutions to Covered Institutions and*  
57 *their Employees.*]

58 1. A lending institution may not, directly or indirectly, offer or provide any gift to a  
59 covered institution or a covered institution employee, in exchange for any advantage or  
60 consideration provided to such lending institution related to its educational loan activities.

61 2. A lending institution may not engage in revenue sharing with a covered institution.

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63 Section 4. [*Prohibition of Receipt of Gifts by Covered Institutions.*]

64 1. A covered institution may not, directly or indirectly, solicit, accept or receive any gift  
65 from or on behalf of a lending institution, in exchange for any advantage or consideration provided  
66 to such lending institution related to its educational loan activities.

67 2. A covered institution may not engage in revenue sharing with a lending institution.

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69 Section 5. [*Prohibition of Receipt of Gifts by Covered Institution Employees.*]

70 1. A covered institution shall require that no covered institution employee on his or her  
71 own behalf or on behalf of another, directly or indirectly, solicits, accepts or receives any gift from  
72 or on behalf of a lending institution. Nothing in this section shall be construed as prohibiting a  
73 covered institution employee from conducting business with a lending institution, provided that  
74 such business is unrelated in any manner whatsoever to a covered institution.

75 2. A covered institution employee, on his or her own behalf or on behalf of another, shall  
76 not directly or indirectly solicit, accept or receive any gift from or on behalf of a lending  
77 institution. Nothing in this section shall be construed as prohibiting a covered institution  
78 employee from conducting business with any lending institution, provided that such business is  
79 unrelated in any manner whatsoever with the covered institution.

80 3. Covered institution employees shall report to the [department] any instance of a lending  
81 institution attempting to give a gift to such covered institution employees.

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83 Section 6. [*Covered Institution Employee Prohibitions and Reporting Requirements.*]

84 1. A lending institution shall require that no covered institution employee receives any  
85 remuneration for serving as a member or participant of an advisory board of a lending institution  
86 or receives any reimbursement of expenses for so serving.

87 2. A covered institution shall require that no covered institution employee of such covered  
88 institution receives any remuneration for serving as a member or participant of an advisory board  
89 of a lending institution or receives any reimbursement of expenses for so serving.

90 3. Nothing in this section shall be construed as prohibiting:

91 a. a covered institution employee's participation on an advisory board of a lending  
92 institution that is unrelated in any manner whatsoever to educational loans; or

93 b. a covered institution employee, who does not have a direct interest in or does not  
94 benefit from the functions of the covered institution's financial aid office, from serving on a board  
95 of directors of a publicly traded or privately held company.

96 4. Covered institution employees who are directly involved with or benefit from the  
97 functions of the covered institution's financial aid office shall be required to report to the  
98 [department], in a form and manner prescribed by the [department], all participation or financial  
99 interests related to any lending institution.

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101 Section 7. [*Misleading Identification of Lending Institution Employees.*]

102 1. A lending institution shall require that no employee or agent of such lending institution  
103 is identified to borrowers or potential borrowers of a covered institution as an employee,  
104 representative or agent of such covered institution.

105 2. A covered institution shall require that no employee or agent of a lending institution is  
106 identified to borrowers or potential borrowers of such covered institution as an employee,  
107 representative or agent of such covered institution.

108 3. No employee, representative or agent of a lending institution may staff a covered  
109 institution's financial aid offices.

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Section 8. [*Loan Disclosure and Prohibition of Quid Pro Quo High Risk Loans.*]

1. Should a borrower or potential borrower consult a covered institution's financial aid office in connection with obtaining an educational loan to pay for or finance higher education expenses, the covered institution shall inform the borrower or potential borrower of all available financing options under Title IV of the Federal Higher Education Act of 1965, as amended, including information about any terms and conditions of available loans under such title that are more favorable to the borrower, before a lending institution may provide a private educational loan to a borrower attending a covered institution.

2. A lending institution shall not enter into an agreement or otherwise provide any high risk loans, in exchange for the covered institution providing concessions or promises to the lending institution that may prejudice other borrowers or potential borrowers.

3. A covered institution shall not enter into an agreement or otherwise provide any high risk loans, in exchange for the covered institution providing concessions or promises to the lending institution that may prejudice other borrowers or potential borrowers.

Section 9. [*Standards for Preferred Lender Lists.*] A covered institution that provides or makes available a preferred lender list must comply with the following standards:

a. a preferred lender list must disclose the process by which the covered institution selected lending institutions for such preferred lender list, including, but not limited to, the method and criteria used to choose the lending institutions and the relative importance of those criteria;

b. a preferred lender list must state in the same font size and same manner as the predominant text on the document that borrowers have the right and ability to select the education loan provider of their choice, are not required to use any of the lenders on such preferred lender list, and will suffer no penalty for choosing a lender that is not on such preferred lender list;

c. the covered institution's decision to include a lending institution on any preferred lender list and the covered institution's decision as to where on the preferred lender list the lending institution's name appears shall be determined solely by consideration of the best interests of the borrowers who may use such preferred lender list without regard to the pecuniary interests of the covered institution;

d. the contents of any preferred lender list shall be reviewed and updated no less than annually;

e. no lending institution shall be placed on a preferred lender list unless such lending institution provides assurance to the covered institution and to borrowers who take out loans from such lending institution that the advertised benefits upon repayment will continue to inure to the benefit of borrowers regardless of whether the lending institution's loans are sold;

f. no lending institution that, to the covered institution's knowledge after reasonable inquiry, has an agreement to sell its loans to another unaffiliated lending institution shall be included on a preferred lender list unless such agreement is disclosed therein in the same font size and same manner as the predominant text on the document in which the preferred lender list appears;

g. no lending institution shall be placed on a covered institution's preferred lender lists or in favored placement on a covered institution's preferred lender lists for a particular type of loan, in exchange for benefits provided to the covered institution or to the covered institution's students in connection with a different type of loan.

Section 10. [*Proper Execution of Master Promissory Notes.*] A covered institution shall not direct in any manner whatsoever potential borrowers to any electronic master promissory notes or other loan agreements that do not provide a reasonable and convenient alternative for the

159 borrower to complete a master promissory note with any federally approved lending institution  
160 offering the relevant loan in this state.

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162 Section 11. [*Disclosures at Request of Covered Institutions.*] Except for educational loans  
163 made, insured, or guaranteed by the federal government, upon the request of any covered  
164 institution, a lending institution shall disclose to such covered institution, in reasonable detail and  
165 form, the historic default rates of the borrowers from such covered institution, and the rates of  
166 interest charged to borrowers from such covered institution in the year preceding the disclosures  
167 and the number of borrowers obtaining each rate of interest.

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169 Section 12. [*Penalties.*]

170 1. If after providing notice and an opportunity for a hearing the [department] determines  
171 that a covered institution or lending institution has violated any terms or provisions of this Act,  
172 then the covered institution or lending institution may be liable for a civil penalty. Regardless of  
173 the [department's] determination that a covered institution or lending institution is liable for a  
174 single violation or a series of violations under this Act, the maximum penalty shall not exceed  
175 [fifty thousand dollars]. In taking action against a covered institution or lending institution,  
176 consideration shall be given to the nature and severity of violations of this Act.

177 2. If after providing notice and an opportunity for a hearing the [department] determines  
178 that a covered institution employee has violated any terms or provisions of this Act, then the  
179 covered institution employee may be liable for a civil penalty. Regardless of the [department's]  
180 determination that a covered institution employee is liable for a single violation or a series of  
181 violations under this Act, the maximum penalty shall not exceed [seven thousand five hundred  
182 dollars]. In taking action against a covered institution employee, consideration shall be given to  
183 the nature and severity of violations of this Act.

184 3. If after providing notice and an opportunity for a hearing the [department] determines  
185 that a lending institution has violated a term or provision of this Act, such lending institution shall  
186 not be placed or remain on any covered institution's preferred lender list unless notice of such  
187 violation is provided to all potential borrowers of the covered institution.

188 4. Nothing in this section shall prohibit the [department] from reaching a settlement  
189 agreement with a covered institution, covered institution employee or lending institution in order  
190 to effectuate the purposes of this section. Provided, however, if such settlement agreement is  
191 reached with a covered institution or lending institution, the [department] shall provide notice of  
192 such action to all potential borrowers in a form and manner prescribed by the [department].

193 5. The [department] shall deposit the funds generated from this section into a [Student  
194 Lending Education Account], created by [insert citation]. Such funds shall be given to covered  
195 institutions upon application to the [department] for the purposes of:

196 a. educating borrowers and potential borrowers on the educational loan process,  
197 including, but not limited to, available educational loan options, understanding rates and terms of  
198 student loans, managing costs and credit responsibilities, student loan repayment and loan  
199 consolidation; and

200 b. reimbursing borrowers from inflated educational loan prices caused by revenue  
201 sharing agreements between such covered institution and a lending institution.

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203 Section 13. [*Rules and Regulations.*] The [commissioner and the department] shall  
204 promulgate rules and regulations necessary for the implementation of this Act.

206 Section 14. [*Non-Exclusivity of Rights or Remedies.*] Nothing in this Act shall be construed  
207 to limit, in any manner, any rights or remedies otherwise available under law to any person or  
208 entity, including, but not limited to, the [attorney general] of this state.

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210 Section 15. [*Student Lending Education Account.*]

211 1. There is hereby established in the joint custody of the [state comptroller] and the  
212 [commissioner of taxation and finance] an account to be known as the [Student Lending Education  
213 Account].

214 2. Such account shall consist of all revenues generated pursuant to section 12 of this Act.

215 3. Moneys of the account, following appropriation by the [legislature] shall be made  
216 available to the [state education department] for the purposes of:

217 (a) supporting programs that educate students, potential students, and parents of  
218 such students on the educational loan process, including, but not limited to, available educational  
219 loan options, understanding rates and terms of student loans, managing costs and credit  
220 responsibilities, student loan repayment and loan consolidation; and

221 (b) reimbursing students from inflated educational loan prices caused by revenue  
222 sharing agreements between such covered institution and a lending institution.

223 4. Money shall be paid out of the account on the audit and warrant of the [state  
224 comptroller] on vouchers certified or approved by the [state education department].

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226 Section 16. [*Severability.*] [Insert severability clause.]

227

228 Section 17. [*Repealer.*] [Insert repealer clause.]

229

230 Section 18. [*Effective Date.*] [Insert effective date.]