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# Loan Notes

Courtesy of American Education Services

## “RED FLAG” RULES

**Financial institutions and creditors, including schools, are required to develop and implement a written identity theft prevention program** to detect, prevent, and respond to patterns, practices, or specific activities that may indicate identity theft. **Indicators of a possible risk of identity theft are known as “Red Flags”**. The rules and guidelines with regard to identity theft “Red Flags” were issued by the Federal Trade Commission (FTC) in conjunction with the U.S. Department of the Treasury, Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), and the Federal Reserve System in Volume 72, No. 217 of the *Federal Register*, published on November 9, 2007.

The “Red Flag” Rules and guidelines, which became effective on January 1, 2008, had a mandatory compliance date of November 1, 2008. However, **on October 22, 2008 the FTC announced its suspension of the new “Red Flag” Rules until May 1, 2009 in order to provide additional time for the affected institutions to develop and implement written identity theft prevention programs**. The other regulatory agencies, i.e. the U.S. Department of the Treasury, FDIC, NCUA, and the Federal Reserve System, are retaining the original November 1, 2008 compliance date. Since the applicable regulatory agency for schools is the FTC, the compliance date for schools is now May 1, 2009.

The **U.S. Department of Education (ED)** in an electronic announcement dated October 14, 2008 **advised that the “Red Flag” Rules (1) apply to schools that participate in the Federal Perkins Loan Program and (2) may apply to other credit programs administered by a school**. For example, schools that operate as a school as lender, offer institutional loans or payment plans to students and their families, or report/request information to or from a Consumer Reporting Agency may be impacted by the “Red Flag” Rules and guidelines. Schools are therefore strongly encouraged to seek advice from legal counsel regarding compliance with the “Red Flag” Rules and guidelines.

If the school is subject to the “Red Flag” Rules, the school must undertake the following:

- **Develop and implement** a written identity theft prevention Program.
- **Obtain approval** of the initial written Program from the school’s Board of Directors or an appropriate committee of the Board of Directors.
- **Ensure oversight** of the development, implementation, and administration of the Program.
- Train staff and oversee service provider arrangements to **ensure compliance** with the Program.

**In addition**, the Program must be updated periodically to reflect changes in identity theft risks.

## THE HIGHER EDUCATION OPPORTUNITY ACT (HEOA)

**A summary of the provisions of the Higher Education Opportunity Act (HEOA)**, which reauthorized the Higher Education Act of 1965, as amended (HEA), will be covered in this and the next several issues of Loan Notes. The first article, which follows, addresses statutory changes to Institutional or School Eligibility, in terms of the Program Participation Agreement (PPA), which became **effective on August 14, 2008**:

### Code of Conduct

A school that participates in a Title IV loan program **must adopt a code of conduct with respect to such loans with which the school’s officers, employees, and agents must comply**. The code of conduct shall prohibit a conflict of interest between the responsibilities of an officer, employee, or agent of the school and financial institutions with respect to such loans and at a minimum, include the following provisions:

- **Ban on revenue-sharing arrangements** – A school shall not enter into a revenue-sharing arrangement which is defined as an arrangement between a school and a lender under which the lender pays a fee or provides other material benefits, including revenue or profit sharing to the school, an officer or employee of the school, or an agent and in exchange, the school recommends the lender or the lender’s loan products and the lender makes Title IV loans to the students and parents of the students attending the school.



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- **Gift ban** – Any officer or school employee who is employed in the financial aid office or who has responsibilities with respect to student loans or any agent who has responsibilities with respect to student loans is prohibited from soliciting or accepting any gift from a lender, guarantor, or servicer of education loans.
  - **A gift is defined as** any gratuity, favor, discount, entertainment, hospitality, loan, or other item *having a monetary value of more than a de minimus amount.*
  - **Exceptions: A gift does not include any of the following:**
    - Materials, activities, or programs related to loan issues, default aversion, default prevention or financial literacy, such as a brochure, a workshop, or training.
    - Food, refreshments, training, or informational material furnished to an officer or employee of the school or to an agent as a part of a training session designed to improve the service of a lender, guarantor, or servicer of education loans to the school if such training contributes to the professional development of the school's staff.
    - Favorable terms, conditions, and borrower benefits on an education loan provided to a student employed by the school if the same terms, conditions, or benefits are comparable to those provided to all students at the school.
    - Entrance and exit counseling as long as the school's staff is in control of the counseling (whether in person or via electronic capabilities) and the counseling does not promote the products or services of any specific lender.
    - Philanthropic contributions to a school from a lender, servicer, or guarantor that are unrelated to education loans and not made in exchange for any advantage related to education loans.
    - Education grants, scholarships or financial aid administered by or on behalf of a State.
  - A gift to a family member of an officer or employee of a school or an agent or to any other individual based on that individual's relationship with the officer, employee, or agent shall be considered a gift if the officer, employee, or agent knew about the gift and had reason to believe that the gift was given based on the official position of the officer, employee, or agent.
  - **The Office of the Inspector General of the U.S. Department of Education shall annually submit and publish, on the Department's website, a report identifying all schools that violated, in the preceding year, the gift ban provisions within the school's code of conduct.**
- **Contracting arrangements are Prohibited** – An officer or employee of the financial aid office or who has responsibilities with respect to education loans or an agent who has responsibilities with respect to education loans shall not accept any fee, payment, or other financial benefit (including the opportunity to purchase stock) as compensation from any lender or affiliate for any type of consulting arrangement or other contract to provide services to the lender or on behalf of the lender with regard to education loans.
  - **Exceptions:**
    - Paid or unpaid service on a Board of Directors of a lender, guarantor, or servicer of education loans by an officer or employee of a school who is not employed in the financial aid office and who does not have responsibilities with respect to education loans or an agent who does not have responsibilities with respect to education loans.
    - Paid or unpaid service on a Board of Directors of a lender, guarantor, or servicer of education loans by an officer or employee of a school who is not employed in the financial aid office but who does have responsibilities with respect to education loans as a result of a position held at the school or an agent who has responsibilities with respect to education loans if the school has a written conflict of interest policy that clearly sets forth the requirement that officers, employees, or agents must recuse themselves from participating in any decision of the Board with regard to education loans at the school.
    - Service by an officer, employee, or contractor of a lender, guarantor, or servicer of education loans on a Board of Directors or as a trustee of a school if the school has a written conflict of interest policy that the Board member or trustee must recuse himself/herself from any decision with regard to education loans at the school.
- **Prohibition on offers of funds for private loans** – The school shall not request or accept funds from any lender for private education loans including funds for an opportunity pool loan to its students in exchange for the school providing concessions or promises to the lender regarding the number or volume of Title IV loans or a preferred lender arrangement.
  - **An opportunity pool loan is defined as** a private education loan made by a lender to a student or the family of a student attending the school that involves a payment, directly or indirectly, by the school of points, premiums, additional interest, or financial support to the lender for the lender's extension of credit to the student or family.
- **For any first-time borrower**, the school must not assign, through award packaging or other methods, the borrower's loan to a particular lender or refuse to certify or delay certification of any loan based on the borrower's selection of a particular lender or guarantor.
- **Ban on staffing assistance**, i.e. a school must not request or accept any assistance from any lender with call center or financial aid office staffing. However, professional development training for financial aid administrators, educational counseling/financial literacy/debt management materials for borrowers that disclose the identification of the lender that assisted in preparing and providing the materials, or staffing services on a short-term, non-recurring basis during State or federally declared natural disasters, federally declared national disasters, and other localized disaster and emergencies identified by ED are not prohibited.
- **Advisory board compensation** – Any school employee, in the financial aid office or with responsibilities regarding education loans or financial aid, who serves on an advisory board, commission, or group established by a lender, guarantor, or group of lenders or guarantors shall be prohibited from receiving anything of value from the lender, guarantor, or group of lenders or guarantors. However, the employee may be reimbursed for reasonable expenses incurred in serving on the advisory board, commission, or group.

**A school's code of conduct must be published prominently on the school's website.** In addition, the school must administer and enforce the code by requiring all of the school's officers, employees, and agents who have loan responsibility to be informed of the code at least annually.

## Preferred Lender Arrangements

**A school that has a preferred lender arrangement must annually compile, maintain, and make available** for students and families of students attending the school a list, in print or other medium, of lenders for Title IV or private education loans that the school recommends, promotes, or endorses in accordance with the arrangement.

- **A preferred lender arrangement means** an arrangement or agreement between a lender and a school or a school affiliated organization under which the lender provides education loans to the students or parents of the students attending the school and the school or school-affiliated organization recommends, promotes, or endorses, the education loan products of the lender.
  - Although the effective date for this provision is August 14th, 2008, the trigger date is subject to negotiated rulemaking.
  - **A school-affiliated organization may include an** alumni organization, athletic organization, foundation, or social, academic, or professional organization.

## Preferred Lender List

- **In preparing a preferred lender list, the school must** fully and clearly disclose the reason for including each lender on the list, particularly with regard to terms and conditions or provisions favorable to the borrower along with a statement that the students and families of students attending the school do not have to borrow from a lender on the list.
  - For FFELP loans, the list must include at least 3 unaffiliated lenders.
  - For private loans, the list must include at least 2 unaffiliated lenders.
- **The list must disclose the affiliation of each lender on the list.** The U.S. Department of Education shall maintain a list of all eligible lenders and their affiliates for the use of schools in the preparation of preferred lender lists. A school shall use the most recent list of lender affiliates provided by ED.
- **Prominently disclose the method and criteria used by the school in selecting lenders with which to enter into preferred lender arrangements to ensure that lenders are selected based on the best interests of the borrowers including:**
  - Payment of origination or other fees on behalf of the borrower.
  - Highly competitive interest rates or other terms, conditions, or provisions for Title IV or private loans.
  - High quality service.
  - Additional benefits beyond the standard terms, conditions, and provisions.
- **Exercise a duty of care and loyalty** to compile the list without prejudice and for the sole benefit of the students or parents of students attending the school.
- **Not deny or otherwise impede a borrower's right to choose a lender not on the list** nor cause unnecessary delay in the certification of a FFELP loan for a borrower who chooses a lender that is not included on the preferred lender list.
- **Comply with federal regulations.**
- ED in coordination with the Board of Governors of the Federal Reserve System and after consultation with the public shall determine the information to be disclosed by schools and school affiliated organizations - participating in preferred lender arrangements - regarding FFELP loans. **ED has 18 months after August 14, 2008 to determine the required information to be disclosed.**

## Self Certification of Private Education Loans

A school will, **upon the request of an applicant for a private education loan**, provide by written or electronic means a Self Certification form and the information required to complete the form. A lender is required under Section (e) (3) of the Truth in Lending Act to collect the subject form. ED is required to develop the form.

## Unauthorized Distribution of Copyrighted Material

**A school must certify that it has developed plans to effectively combat the unauthorized distribution of copyrighted material**, including through the use of a variety of technology-based deterrents. In addition the school must certify that it will, to the extent practicable, offer alternatives to illegal downloading or peer-to-peer distribution of intellectual property, as determined by the school in consultation with the chief technology officer or other designated officer of the school.

## Voter Registration

Electronically transmitting a message containing either a voter registration form acceptable for use in the state in which a school is located or an internet address which allows the student to download a voter registration form **provides compliance with the required good faith effort to distribute voter registration forms to students** at a school, which is located in a state that has not enacted the motor vehicle/voter registration provisions of the National Voter Registration Act.

# SPECIAL ALLOWANCE RATES FOR STAFFORD AND PLUS LOANS FOR THE QUARTER ENDING SEPTEMBER 30, 2008

The **Treasury Bill (T-bill) rate for the quarter ending September 30, 2008 averaged 1.63%**. The categories for which Special Allowance was paid on loans made or purchased with taxable funds are:

Loan Interest Rate	Special Allowance Annual Rate	Special Allowance Quarterly Rate	LaRS (Lender Reporting System) Part III: Special Allowance Category Column E*
3.61%	.22%	.055%	SJ
4.21%	.22%	.055%	SK

**Please note:**

The applicable Special Allowance Rates for Consolidation loans and for loans made or purchased with tax-exempt funds are available at [www.ifap.ed.gov](http://www.ifap.ed.gov).

The **Commercial Paper (CP) Rate for the same quarter averaged 2.87%**. When the special allowance formula results in a negative rate on a loan first disbursed on or after April 1, 2006, the lender must remit the excess interest to the U.S. Department of Education.

Loan Interest Rate	Special Allowance Annual Rate+	Special Allowance Quarterly Rate+	LaRS (Lender Reporting System) Part III: Special Allowance Category Column E*
3.61%	1.00%	0.25%	CA
4.21%	1.00%	0.25%	CB
5.01% (PLUS)	0.50%	0.125%	CD
3.61% 6.80%	1.00% (2.19%)	0.25% (0.5475%)	CE
4.21% 6.80%	1.00% (1.59%)	0.25% (0.3975%)	CF
8.50% (PLUS)	(2.99%)	(0.7475%)	CH
6.00% 6.80%	(1.94%) (2.74%)	(0.485%) (0.685%)	CI
6.00% 6.80%	(1.34%) (2.14%)	(0.335%) (0.535%)	CJ
8.50% (PLUS)	(3.84%)	(0.96%)	CM

\* For a detailed explanation of the Special Allowance codes, please visit the Common Manual at [aesSuccess.org](http://aesSuccess.org). To access the Manual, click on 'Solutions for Lenders' on the left-hand side of the screen. Then click on 'Access financial aid publications' under the heading 'More Lender Solutions,' which is located in the middle column on the screen. Then select the Common Manual. The Special Allowance codes are located in Appendix A, figure A-5.

+ For entities approved as not-for-profit holders, Special Allowance payments will be based on another code that ED sets in their respective demographic profiles. Please see the March/April 2008 Issue of Loan Notes for more information.

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In making an education affordable, we do more than help students go to college. We guarantee the next generation of leaders, thinkers and doers.



**Be Next.**

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