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MEMORANDUM

TO: Presidents, Chief Business Officers, Chief Legal Officers, and Vice-Presidents for Student Affairs

FROM: Barry D. Burgdorf
Karen Lundquist

CC: Mark G. Yudof, Chancellor
David B. Prior, Executive Vice Chancellor for Academic Affairs
Kenneth I. Shine, Executive Vice Chancellor for Health Affairs
Barry McBee, Vice Chancellor for Governmental Relations

SUBJECT: Anticipated Questions Under the New DOE Regulations
Governing the Student Loan Industry

The University of Texas System Office of General Counsel has prepared documents that summarize the new federal regulations governing the student loan industry and that compare those regulations with the Texas Higher Education Fair Lending Practices Agreement (AG Agreement) that continues to also govern UT System institutions' interactions with the student loan industry. Institutions will be required to comply with both the federal regulations and the AG Agreement unless compliance with the Agreement would cause the institution to violate a federal regulation. In that case, the institution is relieved of complying with the AG Agreement only to the extent of avoiding such a violation.

To assist institutions in their compliance efforts, we have prepared a list of questions that we anticipate will arise due to coverage of a particular activity by both the federal regulations and the AG Agreement. As more specific questions arise for your institution,

we will be glad to assist you in interpreting and harmonizing the federal regulations and the AG Agreement so that any contemplated activity will be in compliance with both.

Q: Do the federal regulations impose more requirements or restrictions on universities concerning preferred lender lists?

A: Yes. The federal regulations and the AG Agreement contain similar provisions. However, the federal regulations impose the following additional requirements and restrictions.

- The regulations require a lender list to contain at least three lenders that are not affiliated with each other.
- The regulations require universities to provide comparative information to prospective borrowers about interest rates and other benefits offered by lenders on the list.
- In addition to disclosing to prospective borrowers the method and criteria used by the university in selecting a lender, the regulations require the lender list to disclose the relative importance of the criteria used.
- For first-time borrowers, the regulations prohibit universities from assigning, through award packaging or other methods, a borrower's loan to a particular lender.

Q: Is service on advisory boards of lenders permissible?

A: The federal regulations prohibit a lender from soliciting an employee of a university or university-affiliated organization to serve on the lender's advisory board or committee. The regulations also prohibit a lender from paying costs incurred on behalf of an employee of a university or university-affiliated organization to serve on the lender's advisory board or committee. Although the AG Agreement would allow service on lender advisory boards with prior approval from the university president as long as the employee does not accept remuneration or reimbursement of expenses, the federal regulations effectively prohibit that service.

Q: What are the general gift restrictions?

A: The federal regulations prohibit lenders from offering payments or other benefits to a university, any university-affiliated organization, or any individual in exchange for FFEL loan applications, application referrals, or a specified volume or dollar amount of loans made, or placement on a university's lender list. However, the federal regulations permit items of nominal value to universities and university-affiliated organizations that are offered as a form of generalized marketing or advertising, or to create good will.

The AG Agreement prohibits a university or a university employee from soliciting or accepting a gift exceeding \$20 in value from or on behalf of a lender, even if the gift is not given in exchange for specific acts. The AG Agreement permits a lender's own brochure.

Reading the federal regulations and the AG Agreement together, all gifts from lenders given in exchange for an official act are prohibited, regardless of amount. Gifts not given in exchange for an official act may not exceed \$20 in value. A lender's own brochure is permissible.

Q: Are philanthropic gifts from lenders permissible?

A: The federal regulations prohibit lenders from engaging in philanthropic activities, including providing scholarships, grants, restricted gifts, or financial contributions, in exchange for FFEL loan applications or application referrals, or a specified volume or dollar amount of FFEL loans made, or placement on a university's lender list. Philanthropic gifts not made in exchange for those activities are permitted.

The AG Agreement is similar in that it allows philanthropic gifts outside the office of student financial aid if not for the purpose of securing a benefit related to student lending. These gifts include scholarships and similar awards that are passed directly on to students; buildings, rooms, facilities, or equipment for a department other than student financial aid; naming a facility or program; and programs or operations other than those related to the office of student financial services.

Reading the federal regulations and the AG Agreement together, lenders may not make philanthropic gifts in exchange for activities related to student loans and may not make philanthropic gifts for programs, operations, buildings, rooms, facilities or equipment in the office of student financial aid.

Q: Is it permissible for a lender to pay costs related to conferences or training?

A: The federal regulations prohibit lenders from offering to pay conference or training registration, transportation, and lodging costs for a university employee. The regulations specifically allow meals, refreshments, and receptions that are reasonable in cost and scheduled in conjunction with training, meeting, or conference events if those meals, refreshments, or receptions are open to all training, meeting, or conference attendees.

The AG Agreement prohibits a university or university employee from accepting a gift exceeding \$20 in value from a lender, including a registration fee, meals, hospitality, lodging costs, and travel expenses. The AG Agreement specifically allows training or informational material furnished to a school employee as an integral part of a training session that contributes to the professional development of a university employee.

Reading the federal regulations and the AG Agreement together, a lender may not pay conference or training registration fees of any value, and may not pay transportation or lodging costs related to a conference or training. A lender may pay for reasonable meals, refreshments, and receptions scheduled in conjunction with training, meetings, or conferences if they are open to all attendees and do not exceed \$20 in value per attendee. A lender may provide training and may provide informational material as an integral part of a training session.

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Q: Is it permissible for a student loan lender to pay entertainment expenses for a university employee?

A: The federal regulations prohibit lenders from offering to pay entertainment expenses, including expenses for private hospitality suites, tickets to shows or sporting events, meals, alcoholic beverages, and any lodging, rental, transportation, and other gratuities related to lender-sponsored activities, for university employees. Although the AG Agreement would allow a university employee to accept entertainment expenses as long as they did not exceed \$20 in value, under the federal regulations, entertainment expenses of any value are prohibited.