



THE STATE UNIVERSITY of NEW YORK

April 3, 2007

Nicholas Rostow
University Counsel and
Vice Chancellor for
Legal Affairs

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MEMORANDUM FOR PRESIDENTS, STATE-OPERATED CAMPUSES

FROM NICHOLAS ROSTOW *NR*

SUBJECT: Agreement with Attorney General on Code of Conduct for Student Lending Practices

Attached is the Agreement with the Attorney General that the Chancellor executed on March 31, 2007. The Agreement requires that SUNY's state-operated campuses comply with a Code of Conduct, which prohibits certain practices relating to development of so-called preferred lender lists and financial relationships with lending institutions. It also requires published disclosures to students and parents about the criteria for creation of the lists and the right of students to use any lender of their choice for educational loans.

The Agreement was entered into against the backdrop of an investigation of five SUNY campuses as well as a large number of other higher education institutions. While the investigation will continue, we have been provided with assurances that the Agreement should resolve the matter with respect to SUNY for all practical purposes. Because the Code of Conduct contains prohibitions which appear to go beyond the current requirements of the NYS Ethics Law (Public Officers Law Sections 73 and 74), we will be providing additional guidance on its scope and application to campus Business Officers and Student Affairs Administrators, as well as Financial Aid Officers. A SUNY-wide policy on development of suggested lender lists is also under discussion.

In the meantime, we will need your support to ensure that there is compliance with the Code as of the effective date of June 1, 2007. Any specific questions about the Code may be directed to your campus counsel or to Assistant Vice Chancellor John Curtice.

Attachment

cc: Chancellor Ryan

Senior Staff

Presidents, Community Colleges

Deans, Statutory Colleges

Chief Business Officers, State-operated Campuses

Chief Student Affairs Administrators, State-operated Campuses

Financial Aid Officers

ATTORNEY GENERAL OF THE STATE OF NEW YORK

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In the Matter of

State University of New York,

Respondent.

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AGREEMENT ON CODE OF CONDUCT

WHEREAS the Office of Attorney General of the State of New York (the "OAG") has commenced an investigation pursuant to Executive Law § 63(12) and General Business Law §§ 349 and 350 into practices related to higher education loans offered to students and parents (the "Investigation");

WHEREAS in the course of the Investigation the OAG reviewed extensive evidence;

WHEREAS the State University of New York (SUNY) and its campuses have cooperated in the Investigation and are voluntarily producing evidence and answering questions relevant to the Investigation;

WHEREAS, as set forth in the findings of fact ("Findings") below, the OAG asserts that its Investigation has revealed that many institutions of higher education and lenders that provide loans to or on behalf of students of those institutions have engaged in certain acts, practices and omissions that violated Executive Law § 63(12) and General Business Law §§ 349 and 350;

WHEREAS, as set forth below in section I(B), the OAG alleges that SUNY has engaged in certain of the practices that violate these statutes;

WHEREAS SUNY does not admit, and expressly denies, that its conduct constituted any violation of law;

WHEREAS SUNY has advised the OAG of its desire to avoid further investigation through this Agreement on Code of Conduct (the "Agreement");

WHEREAS SUNY has agreed to ensure that its practices with respect to education loans adhere to the highest standards and to adopt a Code of Conduct for education loan practices;

NOW THEREFORE, the OAG, based upon the Investigation, makes the following Findings:

I. FINDINGS OF THE ATTORNEY GENERAL

A. Industry-Wide Findings

The Investigation has covered many lenders and institutions of higher education. Based on the Investigation, the OAG makes the following findings as to common practices found throughout the higher education loan industry.

1. Many students and their families are unable to pay all of the expenses appurtenant to higher education. In addition to grants, scholarships and work-study programs, significant numbers of students and their parents turn to loans to cover what they cannot otherwise afford to pay. Higher education loans constitute an \$85 billion per year industry.

2. Higher education loans take several forms. By dollar amount, most loans are borrowed by students themselves and are federally regulated and guaranteed. The federal government has created a program for providing loans, know as "Stafford Loans," to students. The interest rate for Stafford Loans is set by the federal government. Lenders, however, have wide latitude in offering benefits to borrowers, including discounts off of that interest rate.

3. Other federal loans, known as “PLUS Loans” are offered to students’ parents to cover higher education expenses incurred by their children and to graduate students. Like Stafford Loans, the federal government sets the interest rates for PLUS Loans and lenders have wide latitude in offering borrower benefits.

4. In addition to the federal loans described above, parents or students can obtain private “alternative loans” to cover educational expenses not covered by other financial aid. The federal government does not sponsor, subsidize or guarantee alternative loans. Accordingly, the interest rate and other terms of the loans are determined by the borrower’s creditworthiness and market forces.

i. “Preferred Lender” Lists

5. In response to the staggering array of lenders that offer each of the various types of education loans, some institutions of higher education have created lists of recommended lenders. Institutions of higher education that use such lists usually have separate lists for each of the several types of education loans available. In some instances, such lender lists contain dozens of potential lenders that meet certain minimal requirements. In other cases, institutions of higher education use the lists to recommend a handful of lenders, or even a single lender, as “preferred.”

6. The lenders listed on an institution of higher education’s list of preferred lenders typically receive up to 90% of the loans taken out by the institution’s students and their parents. Despite the significant role that these lists play in determining the lenders from which students and parents borrow, many institutions did not inform their student and parent borrowers about the process and criteria used to formulate the lists of recommended or preferred lenders. Nor did they disclose the potential conflicts of interest on the part of their financial aid offices, which

typically compile the preferred lender lists. These conflicts of interest may arise from: lender-funded travel expenses for institutions' financial aid officials to attend meetings and seminars in attractive locations; the appointment of the institutions' financial aid officials to "Boards" or "Committees" sponsored by the lenders; the lenders' provision of staff and services to the institutions; the lenders' provision of "Opportunity Loans;" and revenue sharing. These practices are described below.

ii. Revenue Sharing

7. In the context of the education loan business, revenue sharing refers to an arrangement whereby a lender pays an institution of higher education a percentage of the principal of each loan directed toward the lender from a borrower at the institution, often in exchange for the institution of higher education placing the given lender on the institution of higher education's preferred lender lists. This type of arrangement is prohibited by federal regulation in the context of Stafford Loans, PLUS Loans and other federal loan programs; it occurs only in the alternative loan segment of the industry.

8. The practice of revenue sharing creates a conflict of interest on the part of the institutions of higher education. When and if the institutions direct students to lenders, they should do so based solely on the best interests of the student and parents who may take out loans from the lenders; yet, the institutions have a financial interest in the selection of the lenders by the student and parents. If the student and parents select a lender with which the institution has a revenue sharing contract – even if another lender or other financial aid resource would be more suitable for the student or parents – the institution receives a financial benefit.

iii. *Denial of Choice of Lender*

9. Some institutions of higher education have neglected to make clear that borrowers have a right to select the Stafford Loan and PLUS Loan lender of their choice, irrespective of whether the lender appears on any preferred lender lists. In the most egregious cases, institutions have gone so far as to abrogate this right, by stating or strongly implying that the student and parents were limited to the lenders on the list, or even to a single lender.

iv. *Exclusive Consolidation Loan Marketing Agreements*

10. Former students may wish to combine their various education loans into a single package, called a "consolidation loan." Some institutions of higher education have entered into agreements with the providers of such consolidation loans pursuant to which the institution agrees to encourage its former students to consolidate the former students' loans with a particular lender and no other. In exchange, the institution secures revenue sharing or other benefits that inure directly or indirectly to the institution rather than the borrower. Once again, the institution is in a conflicted position because its advice and encouragement may be influenced by its financial self-interest.

v. *Undisclosed Sales of Loans to Another Lender*

11. In many instances, institutions of higher education place several lenders on the institutions' lists of preferred lenders causing the potential borrower to think that the lender list represents a real choice of options. But, the choice is illusory when, as sometimes occurs, all or a number of the lenders on a lender list have arranged with each other to sell any loans to one of the lenders immediately after one of the other complicit lenders disburses a loan.

vi. *Opportunity Loans*

12. Lenders have entered into undisclosed agreements with institutions of higher education to provide what are referred to as "Opportunity Loans." These agreements provide that the lender will make loans up to a specified aggregate amount to students with poor or no credit history, or international students, who the lender claims would otherwise not be eligible for the lender's alternative loan program. In exchange for the lender's commitment to make such loans, the institution may provide concessions or promises to the lender that may prejudice other borrowers.

B. Findings as to SUNY

13. SUNY is an education corporation, established within the New York State Department of Education.

14. SUNY engaged in the following practices: (a) one SUNY campus entered into an agreement to receive 0.25% of any amounts made in loans totaling over \$1 million with a financial institution making alternative loans for the period July 27, 2005 through March 31, 2006; the agreement was not renewed, was not with a lender on the campus's preferred lender list, and never resulted in the campus's receipt of revenue; nine loans were made under the program with students of the campus; and (b) another SUNY campus stated on its financial aid materials that students must use one of its preferred lenders.

C. Violations

15. The OAG alleges that the acts described in section I(B) on the part of SUNY created a conflict of interest and violated Executive Law § 63(12) and General Business Law §§ 349 and 350.

II. AGREEMENT

WHILE DENYING THAT IT IS AWARE OF ANY conflict of interest or violation of the laws cited in this Agreement, SUNY desires to give assurances to its student borrowers and their families that its campuses adhere to the highest ethical and professional standards in the administration of their student loan programs and cooperate with the OAG and bring the Investigation to a mutually satisfactory conclusion;

SUNY THEREFORE agrees to adopt a Code of Conduct for its campuses including provisions promulgated by the OAG for institutions of higher education involved in providing and servicing education loans or advising students or their parents with respect to education loans;

NOW, THEREFORE, the OAG and the University hereby enter into the Agreement, pursuant to Executive Law § 63(15), as follows:

A. Code of Conduct

i. Prohibition of Certain Remuneration to University Employees

16. SUNY shall require that no officer, trustee, director, employee, or agent of SUNY accepts anything of more than nominal value on his or her own behalf or on behalf of another during any 12 month period from or on behalf of a Lending Institution, except that this provision shall not be construed to prohibit any officer, trustee, director, employee, or agent of SUNY from conducting non-SUNY business with any Lending Institution. This prohibition shall cover acceptance of meals from a Lending Institution at a widely-attended event as defined by the New York Ethics Commission. As used in the preceding sentence and throughout the Agreement, a Lending Institution is defined as:

- (a) Any entity that itself or through an affiliate engages in the business of making loans to students, parents or others for purposes of financing higher education expenses or that secures such loans; or
- (b) Any entity, or association of entities, that guarantees education loans; or
- (c) Any industry, trade or professional association that receives money from any entity described above in subsections a and b.

Nothing in this provision or throughout the Agreement shall prevent SUNY or its campuses from holding membership in any nonprofit professional association.

The prohibition set forth in the previous paragraph shall include, but not be limited to, a ban on any payment or reimbursement by a Lending Institution to a SUNY employee for lodging, meals, or travel to conferences or training seminars.

ii. Limitations on SUNY Employees Participating on Lender Advisory Boards

17. SUNY shall prohibit any officer, trustee, director, employee, or agent of the University from receiving any remuneration for serving as a member or participant of an advisory board of a Lending Institution, or receiving any reimbursement of expenses for so serving, provided, however, that participation on advisory boards and receiving remuneration consistent with New York State Public Officers Law that are unrelated in any way to higher education loans shall not be prohibited by the Agreement.

iii. Prohibition of Certain Remuneration to SUNY

18. SUNY may not accept on its own behalf anything of value from any Lending Institution in exchange for any advantage or consideration provided to the Lending Institution related to its education loan activity. This prohibition shall include, but not be limited to, (i) "revenue sharing" by a Lending Institution with SUNY or one of the SUNY campuses, (ii) SUNY

or one of its campuses receiving from any Lending Institution any computer hardware at a below-market price and (iii) printing costs or services. Notwithstanding anything else in this paragraph, SUNY may accept other assistance as contemplated in 34 CFR 682.200(b)(definition of "Lender")(5)(i).

iv. Preferred Lender List

19. In the event that SUNY or one of its campuses promulgates a list of preferred or recommended lenders or similar ranking or designation ("Preferred Lender List"), then

- (a) Every brochure, web page or other document that sets forth a Preferred Lender List must clearly disclose the process by which SUNY or the SUNY campus selected lenders for said Preferred Lender List, including but not limited to the criteria used in compiling said list and the relative importance of those criteria; and
- (b) Every brochure, web page or other document that sets forth a Preferred Lender List or identifies any lender as being on said Preferred lender List shall state in the same font and same manner as the predominant text on the document that students and their parents have the right and ability to select the education loan provider of their choice, are not required to use any of the lenders on said Preferred Lender List, and will suffer no penalty for choosing a lender that is not on said Preferred Lender List.
- (c) SUNY's or a SUNY campus' decision to include a Lending Institution on any such list and SUNY's or a SUNY campus' decision as to where on the list the Lending Institution's name appears shall be determined solely by

consideration of the best interests of the students or parents who may use said list without regard to the pecuniary interests of the University;

(d) SUNY or the SUNY campus issuing any Preferred Lender List shall review such list no less frequently than annually;

(e) No Lending Institution shall be placed on any Preferred Lender List unless the said lender provides assurance to SUNY or a SUNY campus and to student and parent borrowers who take out loans from said Lending Institution that the advertised benefits upon repayment will continue to inure to the benefit of student and parent borrowers in the event the Lending Institution's loans are sold;

(f) No Lending Institution that has an agreement to sell its loans to another unaffiliated Lending Institution shall be included on any Preferred Lender List unless such agreement is disclosed therein in the same font 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 any one of SUNY's or a SUNY campus' Preferred Lender Lists or in favored placement on any one of such Preferred Lender Lists for a particular type of loan, in exchange for benefits provided to SUNY, a SUNY campus, or SUNY students in connection with a different type of loan;

v. *Prohibition of Lending Institutions' Staffing of University Financial Aid Offices*

20. SUNY agrees allow that no employee or other agent of a Lending Institution shall be identified to students or prospective SUNY students or their parents as a SUNY employee or

agent. No employee or other agent of a Lending Institution may staff a SUNY financial aid office at any time.

vi. Proper Execution of Master Promissory Notes

21. Neither SUNY nor a SUNY campus shall link or otherwise direct potential borrowers to any electronic Master Promissory Notes or other loan agreements that do not allow students to enter the lender code or name for any lender offering the relevant loan. SUNY's or a SUNY campus' link or direction referred to in the prior sentence shall comply with paragraphs 19(a) and 19(b) herein.

vii. School as Lender

22. If SUNY participates in the "School as Lender" program under 20 U.S.C. § 1085(d)(1)(E), SUNY may not treat School As Lender loans any differently than if the loans originated directly from another lender; all sections of the Agreement apply equally to such School as Lender loans as if the loans were provided by another lender.

viii. Prohibition of Opportunity Loans

23. SUNY shall not arrange with a Lending Institution to provide any Opportunity Loans as defined above in section I(A)(vi), if the provision of such Opportunity Loans prejudices any other borrower.

B. Scope of the Agreement

24. SUNY shall continue to cooperate fully and promptly with the OAG with regard to the Investigation and any related proceedings and actions. SUNY shall use its best efforts to ensure that all of its officers, directors, employees and agents also fully and promptly cooperate with the OAG in the Investigation and any related proceedings and actions, subject to their individual rights and privileges.

25. Cooperation in connection with the Investigation shall include without limitation:

- (a) Production, voluntarily and without service of subpoena, by SUNY of any information and all documents or other tangible evidence related to education loan practices reasonably requested by the OAG, and any compilations or summaries of information or data that the OAG reasonably requests be prepared, subject to recognized privileges and protections for confidential information;
- (b) Using SUNY's best efforts to cause SUNY's officers, directors, employees and agents to attend any proceedings at which the presence of any such persons is requested by the OAG and having such persons answer any and all inquiries that may be put by the OAG to any of them at any proceedings or otherwise ("proceedings" include but are not limited to any meetings, interviews, depositions, hearings, grand jury hearing, trial or other proceedings) voluntarily, and without service of a subpoena, subject to their individual rights and privileges; and
- (c) Fully, fairly and truthfully disclosing all information and producing all records and other evidence in its possession relevant to all inquiries made by the OAG in connection with this Investigation concerning any alleged fraudulent or criminal conduct by anyone whatsoever about which SUNY, its officers, trustees, directors, employees and agents may have any knowledge or information, subject to recognized privileges and protections for confidential information.

26. In the event any document otherwise required to be provided under the terms of the Agreement is withheld or redacted on grounds of privilege, work-product or other legal doctrine, a statement shall be submitted in writing by SUNY indicating: the type of document;

the date of the document; the author and recipient of the document; the general subject matter of the document; the reason for withholding the document; and the Bates number or range of the withheld document. The OAG may challenge such claim in any forum of its choice and may, without limitation, rely on all documents or communications theretofore produced or the contents of which have been described by SUNY, its officers, directors, employees, or agents.

27. SUNY shall not jeopardize the confidentiality of any aspect of the Investigation, including sharing or disclosing evidence, documents, or other information with others during the course of the investigation without the consent of the OAG. Nothing herein shall prevent SUNY from conferring with counsel or consultants, issuing public statements, or providing such evidence or information to other regulators as otherwise required by law.

E. Miscellaneous Provisions

28. Pursuant to Executive Law § 63(15), the Agreement serves as an assurance of discontinuance. As such, evidence of a violation of the Agreement by SUNY shall constitute prima facie proof of a violation of Executive Law § 63(12) and General Business Law §§ 349 and 350 in any civil action or proceeding subsequently commenced by the OAG.

29. If SUNY breaches any of the obligations described herein, the OAG may in its sole discretion terminate the Agreement upon written notice to SUNY. In such event, any statute of limitations or other time-related defense applicable to the subject of the Agreement and any claims arising from or relating thereto are tolled from and after the last execution date of the Agreement and the Agreement shall in no way bar or otherwise preclude the OAG from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Investigation, against SUNY or from using in any way any statements, documents or other materials produced or provided by SUNY after commencement

of the Investigation, including, without limitation, any statements, documents or other materials provided for purposes of settlement negotiations.

30. The Agreement and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

31. No failure or delay by the OAG in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided herein shall be cumulative.

32. SUNY enters into the Agreement voluntarily, and represents that no threats, offers, promises or inducements of any kind have been made by the OAG or any member, officer, employee, agent or representative of the OAG to induce the University to enter into the Agreement other than as described herein.

33. The Agreement may be changed, amended or modified only by a writing signed by all parties hereto.

34. The Agreement constitutes the entire agreement between the OAG and SUNY and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of the Agreement.

35. The Agreement and its provisions shall be effective on the date that it is signed by an authorized representative of the OAG, except for the provisions contained in sections II(A)(iv) and II(A)(vi) which shall become effective on June 1, 2007.

36. The Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one instrument.

37. Nothing contained herein shall be construed as relieving SUNY of its obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of the Agreement be deemed permission to engage in any act or practice prohibited by such laws, regulations or rules.

38. The acceptance of the Agreement by the OAG shall not be deemed approval by the Attorney General of any of SUNY's business practices, and SUNY shall make no representation to the contrary. SUNY's execution of the Agreement is not an admission of liability.

39. Unless otherwise provided, all notices as required by the Agreement shall be provided as follows:

To the OAG:

Melvin Goldberg, Assistant Attorney General
Office of the New York State Attorney General
Bureau of Consumer Frauds & Protection
120 Broadway, 3rd Floor
New York, New York 10271
tel. (212) 416-8296
fax. (212) 416-6003

To SUNY:

Nicholas Rostow
University Counsel and Vice Chancellor for Legal Affairs
SUNY Plaza
Albany, New York 12246
tel. (518) 443-5400
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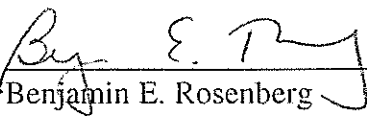
40. Nothing in the Agreement shall be construed to prevent any individual from pursuing any right or remedy at law which any consumer may have against SUNY.

41. SUNY shall submit to the Attorney General, on or before August 15, 2007, an affidavit, subscribed to by an officer of SUNY authorized to bind SUNY, setting forth its compliance with the provisions of the Agreement.

WHEREFORE, the signatures evidencing assent to this agreement have been affixed hereto on the dates set forth below.

Dated: March 31, 2007

ANDREW M. CUOMO
Attorney General of the State of New York

By: 
Benjamin E. Rosenberg
Chief Trial Counsel

STATE UNIVERSITY OF NEW YORK

By: John R. Ryan
John R. Ryan
Chancellor, State University of New York

ACKNOWLEDGMENT

STATE OF NEW YORK)
):s.s.
COUNTY OF Westchester)

On this 3/ day of March, 2007, before me personally came John R. Ryan, known to me, who, being duly sworn by me, did depose and say that he is Chancellor of the State University of New York and is duly authorized to execute this document on behalf of the State University of New York and that she/he signed her/his name by like authorization.

Bernard T. Costello
Notary Public

BERNARD T. COSTELLO
Notary Public, State of New York
No. 4837624
Qualified in Westchester County
Commission Expires Dec. 31, 18 2009