LEGAL UPDATES

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Following the Rules While Minding the Funding Gap: Private Student Lending and Preferred Lender Arrangement Requirements

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The One Big Beautiful Bill Act has dramatically reshaped the higher education funding landscape by scrapping the Graduate PLUS program, capping annual borrowing for students and parents, and imposing a lifetime limit for student borrowers, among other significant changes. For many students, these limits will result in a gap between available funds and the total cost of attendance. Students who fall into these funding gaps will need to look elsewhere to pay for higher education, and institutions are facing an influx of borrower calls for help in navigating this new environment.

For many, elsewhere means turning to private student loans to cover costs. Institutions should be prepared for an increase in the presence of private student loans, and the lenders issuing them, on campuses. With private lending volume climbing, we anticipate heightened federal and state regulatory scrutiny of colleges' and universities' interactions with private lenders and their borrowers.

These changes begin this summer. Now is the time to get ahead of them.

Truth in Lending Act: The Starting Line

The foundational federal requirements for private education loans are found within the Truth in Lending Act (TILA), as implemented by federal regulations commonly known as "Regulation Z". Whether a particular product qualifies as a regulated "private education loan" under Regulation Z's framework will vary depending on applicable finance charges, interest applied, and the product's repayment structure. Certain institutional tuition payment plans, institutional

loans, and other alternative financing products each require independent analysis. This may even include "education-for-work scholarships" in which a student agrees to work for an institution or its affiliate after graduation to avoid repayment obligations.

When Regulation Z applies, lenders must provide various disclosures based on the type of product offered. TILA also applies administrative requirements for originating a loan, including but not limited to:

A three-business-day cooling-off period for borrowers to cancel the agreement without penalties before the loan is consummated.

Restrictions on a lender's ability to change the terms of the loan or payment plan after approval (bait-and-switch tactics).

Limits on certain co-branding and marketing practices.

Private Loans and Preferred Lender Arrangements: Subtle Suggestions with Compliance Consequences

All institutions participating in Title IV Federal Student Aid programs are already required to publish a code of conduct prohibiting conflicts of interest with respect to private education loans, including revenue-sharing agreements with lenders, receiving gifts from lenders, and providing financial benefits to lenders. They must also provide private loan disclosures. With further scrutiny of private lending options, institutions should consider reviewing applicable policies and ensure compliance.

When an institution recommends or promotes one or more private lenders, the agreement with the lender likely qualifies as a Preferred Lender Arrangement (PLA) covered by the Higher Education Act. The regulatory definition is deliberately broad: extending to any school-affiliated entity that directly or indirectly steers students toward particular lenders, whether through a formal agreement or a routine recommendation. These arrangements extend far beyond a paper contract—a handshake counts, and a nod may too.

PLAs carry additional compliance baggage, including annual disclosures explaining how and why lenders were selected, and confirming that students remain free to choose any lender. In fact, if an institution has a PLA with any lender, it must ensure that at least two unaffiliated lenders appear on a required preferred lender list.

In the past, the U.S. Department of Education has permitted institutions without PLAs to post a comprehensive, neutral list of past lenders to the institutions' students or parents without additional information on the lenders. *See* GEN-08-09, *School Use of a Preferred Lender List in the FFEL*

Program (May 9, 2008). In 2009, the Department issued guidance to institutions that a broad, third-party list of private education lenders will not amount to a PLA if:

The list does not endorse or recommend lenders

Lenders do not pay the institution to appear on the list

Lenders do not pay the institution a fee based on loan volume from the program, and

The institution did not retain the third party to develop a customized list. *See* 74 Fed. Reg, 55626 (Oct. 28, 2009).

Finally, federal regulations prohibit institutions from co-branding private lending products in any way that utilizes a school's name, logos, mascots, or other identifying marks in ways that could reasonably suggest the loan is offered or endorsed by the institution itself. If your mascot is moonlighting on a lender's marketing materials, consider whether it is time to take a closer look.

Due Diligence: Don't "Set It and Forget It"

Building a preferred lender list calls for ongoing attention. As a best practice, selections should be made in the best interests of students after a genuine periodic evaluation of each lender—examining total borrower cost, terms and disclosures, repayment flexibility, approval and processing timelines, and customer service track record (such as records of complaints listed on the Consumer Financial Protection Bureau's Consumer Complaint Database).

State Law: The Wild Card

Federal rules are only a part of the puzzle—a growing number of states have enacted their own student lending laws with licensing requirements and "Student Loan Bill of Rights" statutes. Applicable rules can vary significantly depending on where a borrower resides or enrolls. Institutions serving students across multiple states or through online programs should consider tracking applicable state requirements and updating institutional policies accordingly.

What this means to you

The private student lending market is entering a period of significant growth, and the regulatory obligations that accompany it are highly fact specific. From TILA to the Higher Education Act's preferred lender rules, the student loan market is becoming even more complicated. As institutions work to help students bridge funding gaps, baking compliance into private lender relationships and institutional private lending programs from the outset is a solid step toward mitigating potential regulatory scrutiny, reducing liability exposure, and maintaining clarity for students. Here's the ***good***

news: dedicating time to establishing complaint policies and well-researched resources for students and staff pave the pathway for efficient compliance going forward.

Contact us

For assistance with changes related to the passing of the One Big Beautiful Bill Act, compliance or other student funding matters, please contact Annie Cartwright, Abby Felter, Ryan Spraker, or your Husch Blackwell attorney.