



August 13, 2007

Ms. Gail McLarnon
U.S. Department of Education
1990 K Street, NW
Room 8026
Washington, DC 20006-8542

Re: Comments, Docket ID ED-2007-OPE-0133

Dear Ms. McLarnon:

As a relatively new lender in the Federal Family Education Loan (“FFEL”) and private student loan market, MyRichUncle Student Loans has a fresh perspective on how the market works or more accurately, how it does not work, for the students it is supposed to serve. We are accordingly pleased to offer our comments on the aspects of the Department of Education (“ED”)’s Proposed Rule (“PR”)¹ that seek to address some of the problems that have come to light regarding student loans.

MyRichUncle has long been a vocal critic of practices by school financial aid offices and other lenders that clearly cross ethical and legal lines, and most importantly, hamper students’ efforts to get the best terms for loans. Succinctly, there is corruption, malfeasance and incompetence in the preference of lenders, and in the resulting actions taken by many financial aid offices to steer students toward particular lenders. These practices include publishing preferred lender lists and the provision of other marketing services on behalf of lenders alongside other administrative, procedural and structural measures to ensure certain lenders receive market share. Coupled with incredible instances of inducements paid by lenders to schools and school officials, we now have a situation in which students are being denied their choice of lender in blatant violation of current law, and where the vast majority of borrowers (90% by some estimates) pay the maximum legal interest rate on their FFEL loans even though these loans are guaranteed by the federal government and lenders are free to charge lower rates. There could not be more clear indications that the current system is broken. Yet, when our company began to publicly challenge these practices, we were (and continue to be) vilified by the financial aid community and lenders alike.

Now that the need for reform can no longer be denied, proposals have been made at multiple levels to help clean up the system. Unfortunately, the Department’s proposed rule falls far short of the necessary measures that will be required to bring unfettered freedom of choice and competition to the student loan market. Moreover, any regulation adopted by the Department will be meaningless if the Department continues on its present path of lax oversight and non-existent enforcement. And, unfortunately, there is no indication that the Department has realistically considered whether it would have the resources to police the regime it proposes even if it did attempt to fulfill its enforcement responsibilities.

¹ 72 Fed. Reg. 32,410 (June 12, 2007).

We will begin our comments with general observations regarding the Proposed Rule and then follow with more specific comments about particular provisions of the proposal.

General Observations

It has become abundantly clear that allowing schools to have influence over students' choice of lender is at the root of much of what is wrong with the student loan market today. Preferred Lender Lists ("PLLs") are a large part of the problem. The importance to lenders of getting on a school's PLL was crystallized by New York Attorney General Andrew Cuomo's investigation, which concluded that 90% of a school's borrowers use a lender from their school's list.² With that degree of reliance, once a lender gets on the list, they need do little else other than sit back and process applications. They certainly have no incentive to continue to compete to offer students the best deals on interest rates or repayment benefits. The only real competition is to get on the lists. And to do that, lenders have curried favor with, and offered perks, treats and inducements, to those who do the choosing – schools and financial aid officers – rather than competing for the business of the students, who are the real customers. It is for this reason that PLLs must be banned. They form the very foundation for the conflicts of interest that shocked the public and garnered so much recent media attention. And because PLLs are the key to unlocking the door to a flood of easy loan volume from a school, as long as PLLs exist, lenders will do whatever they can to get on them, exploiting every loophole in any regulatory regime that is less than airtight.

MyRichUncle is certainly not the only one with this view of PLLs. The problem that PLLs create was discussed by Senator Byron Dorgan during the U.S. Senate's debate on the reauthorization of the Higher Education Act. Senator Dorgan explained that preferred lender lists ought to be abolished because they foster conflicts of interest.³ To emphasize how incredibly blatant those conflicts had become, Senator Dorgan read two of the e-mails that had been uncovered in a Senate committee's investigation of the industry. As Senator Dorgan described,

“A Bank of America employee noted in an e-mail that Larry Burt, former Director of the University of Texas Office of Student Financial Aid, had requirements to get on the UT-preferred lender list. Again, it is very important to get on these lists for these companies that want to have lending opportunities to students. So here is someone who ran the University of Texas Student Financial Aid Office. This is a quote. ‘Happy hour with UT loan department staff, staff luncheons, lunch and/or dinner with Larry Burt, parties for Larry’s family— birthdays, et cetera—invitations to golf

² See, e.g., Press Release, “Attorney General Cuomo Announces First Legal Action in College Loan Industry Investigation,” Office of the Attorney General of the State of New York (Mar. 22, 2007), at 1 (“Approximately 90% of students choose their lenders from their school’s preferred lender lists.”), [available at www.oag.state.ny.us/press/2007/mar/mar22b_07.html](http://www.oag.state.ny.us/press/2007/mar/mar22b_07.html).

³ 153 Cong. Rec. S9724 (daily ed. July 23, 2007) (statement of Sen. Dorgan).

tournaments—expenses paid by lender—and free tickets to sports events. Larry loves tequila and wine—since becoming director at UT Austin, he has not had to buy any tequila or wine—lenders provide this to him on a regular basis.”

Senator Dorgan then cited another example:

“Student Loan Xpress, another major lender, paid \$21,000-plus for the chief financial aid officer at Johns Hopkins University to attend an executive doctorate program at the University of Pennsylvania after the financial aid officer sent the following lender an email. This is the e-mail that went around from the financial aid officer at Johns Hopkins. ‘I have been accepted to a doctoral program at Penn that begins in August. I am searching for 1/2 tuition support—know of any good scholarship programs?? I already know where to get loans—or, why don’t you put me on retainer to EdLending.’ This is an e-mail from Dr. Ellen Frishberg, former Johns Hopkins University financial aid director.⁴ Once again, I think this is important information discovered by the HELP Committee.”

As long as preferred lender lists exist, Senator Dorgan pointed out, lenders will do whatever they can to get on them, no matter how the government regulates them, because, in the Senator’s words, “the stakes are too high.”

We agree, and Senator Dorgan’s comments illustrate the need to strike at the heart of the problem. The Department’s PR, on the other hand, which seeks to strengthen the limitations on prohibited inducements while continuing to allow PLLs, does not squarely address the source of the problem and, accordingly, will not even come close to fixing the problem.

Some have contended that PLLs are a “service” to students and parents, and that without financial aid offices playing the role of go-between, lenders would engage in direct marketing practices that would put students at risk of over-borrowing or paying too much in interest and fees. However, the federal program has numerous safeguards that alleviate both of these purported concerns. First, FFEL borrowers may only borrow once per academic year; it is not possible to secure any additional loans beyond what is allowed. Second, the amount a student may borrow is capped based on a student’s academic year, and that capped amount may even be reduced, based on a government formula. Finally, the amount a student may borrow must be certified by the financial aid office; it is not possible to borrow beyond the amount that is certified. As for overpaying, the Stafford Loan program is set up such that a lender cannot

⁴ As an indication of just how deep-seated the culture of conflicting interests has become in the student loan community, Ms. Frishberg was among those invited by the Department to serve on the negotiated rulemaking panel that preceded issuance of this PR, and was among the most vehement in denying during the rulemaking that there was anything wrong with the present system.

charge higher than the maximum statutorily set rate of interest, currently 6.8%; thus, it is not possible to charge a borrower a higher rate. As noted, unfortunately, almost all borrowers already pay the maximum so it is the current system – not a change to end PLLs – that results in students paying too much for their loans. The Stafford Loan program also has caps on the origination fee, so that it is not possible for a lender to charge more than what is allowed. And the Stafford Loan program is set up such that the terms of the loan are set. Other than reducing rates or fees, it is not possible for a lender to change any of the terms of the loan contract.

While PLUS and Graduate PLUS loans have a different structure in terms of amounts borrowed and the rates and fees associated with them, similar safeguards against over-borrowing and over-payment apply to these Federal loans as well.

The bottom line is that the federal loan programs have protections in place to assist students. PLLs, then, only serve to stop competition to reduce rates and hurt, rather than help, students.

And as for the private loans market, it is difficult to see how the status quo is any better than a scenario in which there are no PLLs. Students are currently being led to believe that financial aid offices have struck the best loan deals on their behalf when, in truth, they have instead struck the best deal for the school or for the aid officers' own personal benefit. And even putting conflicts of interest aside, many of the financial aid offices simply have not, or cannot, do a thorough job of researching, shopping around, and negotiating the best deal.⁵ Moreover, there are the schools that steer students to particular lenders because those lenders use a loan processing system or guarantor favored by the school – in short, they favor a lender because it lightens the financial aid office's workload, not because the lender offers students the best loan deals. Students are already being misled, and it is costing them in the form of paying higher interest rates than they need to on their loans. With the legislative measures that are likely to be adopted to ensure that private lenders do not encourage borrowing private loans in lieu of federal loans, how do students benefit from financial aid officers deciding which lenders students should borrow from?

In sum, financial aid offices have wrongly expanded their roles into lender selection without the necessary skills to truly evaluate loan options or the resources to stay on top of all options available to students. While they should play a critical role in educating students about loans and financing an education, that does not require the preference of a particular lender.

⁵ Lack of knowledge on the part of some financial aid officers also adversely affects students in the FFEL program. Witness the message posted on a financial aid officers' listserv by a financial aid director at a sizable public university who was not even aware that the 6.8% interest rate on federal loans is a maximum, and that students can get loans for less. See email posted on the FINAID-L ListServ from a director of financial aid at the University of Wisconsin-Parkside (suggesting that MyRichUncle must be engaging in deceptive advertising for promoting a 5.8% interest rate for federal loans), appended hereto as Exhibit 1. We are also aware of several instances of financial aid office websites mis-communicating loan details to consumers, such as stating that all lenders charge the same interest rates and fees.

Borrowers in this market need to be informed and empowered to select a lender just as they do in every other consumer credit context. It is for these reasons that the Senate adopted Senator Dorgan's proposal to require the Department to establish information clearinghouses on student loans so that students have some source of objective, reliable information about the options available to them.

Importantly, we note that the Department does not have to wait until completion of Congressional action on the Higher Education Act to establish student loan information clearinghouses consistent with Senator Dorgan's amendment. The Department can establish the clearinghouses now by regulation. Under the authority it currently possesses pursuant to 20 U.S.C. § 1092(d), which authorizes the Department to facilitate the dissemination of various types of information to students regarding financial aid and loans, the clearinghouses can be set up consistent with the provisions in the Dorgan amendment by incorporating that provision into the Proposed Rule. The Department can then also direct schools to make information about the clearinghouses available to students.

Our second general observation pertains to enforcement. It matters little what restrictions are passed by Congress or what regulations the Department adopts if they are not enforced. The Department cannot deny that its oversight and enforcement efforts to date have been completely inadequate. The Government Accountability Office ("GAO")'s recent study of ED's oversight of the student loan program found that the Department has "no oversight tools" to detect improper inducements or determine whether schools are improperly limiting students' choice of lender.⁶ This report has led members of the House committee with jurisdiction over the Department to declare that the Department has "defaulted" on its responsibility to ensure the program's integrity.⁷ Worse, the GAO concluded that the Department's failure to oversee the program "may have resulted in some students taking loans with higher interest rates or fewer borrower benefits."⁸ Indeed, the GAO found that the Department's most recent attempt at enforcement action was in 1995 – more than a decade ago.⁹ The situation could not be more bleak for students and parents. Abusive lenders and financial aid offices will not simply reform themselves. The Department must take action.

The Department's handling of complaints concerning problems with schools delaying or refusing to certify federal loans is a prime example of its oversight failures. The Department is

⁶ United States Government Accountability Office, "Federal Family Education Loan Program: Increased Department of Education Oversight of Lender and School Activities Needed to Help Ensure Program Compliance," GAO-07-750 (July 2007) ("GAO Oversight Report").

⁷ Press Release, U.S. House of Representatives Committee on Education and Labor, "New GAO Report Underscores Administration's Failures to Safeguard Federal Student Loan Program," (Aug. 1, 2007) (quoting House Education and Labor Committee Chairman George Miller).

⁸ GAO Oversight Report at 39.

⁹ See *id.* at 2.

well aware that schools can use their monopoly power over the process of certifying federal loans to limit students' access to lenders other than those on the schools' PLLs, which in turn, deprives students of their right to shop around for the best loan deal. In December 2006, MyRichUncle reported several hundred instances of refused and delayed certifications to the Department. In one of the more egregious cases, for example, the parent's selection of MyRichUncle as lender on the Master Promissory Note was changed by the financial aid office, without the parent's prior knowledge or permission, to a lender on the school's PLL and the school then certified that loan.

Although the PR acknowledges that "some . . . schools have significantly delayed or declined to provide the necessary loan eligibility certification to a lender for a student or parent borrower because the lender was not on the school's preferred lender list," the Department states only that it has "investigated and addressed" complaints on a "case-by-case basis, and reminded the school of its legal responsibilities." (72 Fed. Reg. at 32426). Moreover, it appears from the GAO Oversight Report that the Department has never initiated enforcement action against a school for violation of the certification law.¹⁰

When it is clear, as is the case here, that schools believe they can disregard the law with such impunity that they simply refuse to certify a loan from non-PLL lenders or even change a borrower's lender selection, the Department must take swift and preventative action. A friendly "reminder" to comply with the law is inadequate and highlights the Department's unwillingness to actively enforce the law. The lack of action relegates parents and students to second class participants in a program that was ultimately created for them. The GAO Oversight Report recognized this fact when it observed that ED had not assessed the effectiveness of such "reminders" compared to sanctions and other types of enforcement action, and suggested that the Department "establish a protocol" for determining the appropriate level of enforcement response for different cases of non-compliance.¹¹ To put it more plainly, the Department must do more than send "reminder" letters to schools that violate the law requiring them not to discriminate based on lender choice. It must adopt an enforcement protocol that includes meaningful sanctions – fines, suspensions, and terminations – for schools that choose to flout the certification law.

We anticipate that with a new certification season having begun this month, the Department will be provided with ample opportunities to put teeth in its enforcement of the certification law. In the past, a number of financial aid officers, upset about MyRichUncle's criticism of the industry, have told officials from our company that they will absolutely refuse to certify loans from MyRichUncle and they do not care whether federal law requires them to do so; students have also been told by schools that the schools will not certify MyRichUncle loans. Financial aid offices have also informed MyRichUncle that because it does not utilize whatever electronic processing mechanism the school uses, or does not use a particular guarantor, they will not process students' applications for MyRichUncle loans or will put them "at the bottom of the

¹⁰ See id. at 2 (reporting that ED has only sanctioned or attempted to sanction a party twice, each time for prohibited inducements).

¹¹ Id. at 39.

pile,” which often causes the student to worry that they will not receive funding in time. Then those students give up and accept a loan from one of the school’s preferred lenders at a higher interest rate.

For the Fall 2007 season, MyRichUncle is currently pursuing school certifications on behalf of FFEL applicants at over 300 institutions across the country. In the past ten days we have seen an acceleration of certification problems for students trying to get loans to pay their tuition bills. To provide the Department and the public with an idea of the difficulties financial aid offices can create for borrowers desiring certification of loans from lenders not on the PLL, following are some of the most egregious examples:

- The financial aid office at Eastfield College in Dallas flatly refused to certify a MyRichUncle FFEL Loan.
- The financial aid office at the University of North Texas informed a MyRichUncle representative and the parent who was on the phone with him that the office will not certify her son’s loan because it did not follow their internal process.
- We have learned that the University of Louisville in Kentucky actively tries to dissuade its students and parents from using MyRichUncle (and perhaps other lenders) for their FFEL Loans. Two families seeking loans for this fall have confirmed to us that they were asked to come in for “special counseling” during which time a financial aid officer tried to persuade the student or parent to choose the school’s preferred lender, TSLP. Parents have also informed us that this special counselor’s only job is to meet with families that have chosen a lender not on the financial aid office’s preferred lender list. One parent even told us that the special counselor tried to arrange a meeting with her son outside the parent’s presence in hopes of convincing him to drop his choice of MyRichUncle for a FFEL loan.
- There are three families with students attending the multi-campus State University of New York (“SUNY”) System (at Cortland, Oswego, and New Paltz) whose loan applications remain uncertified due to the financial aid office’s insistence that these families go through the New York State Guarantee Agency, HESC. In one instance, the Financial Aid Director at SUNY-Cortland informed MyRichUncle that he will get to the certifications “when he gets to them,” in spite of the fact that tuition bills are due next week. He added that “This is not Burger King” where you get your food in a few minutes.
- The financial aid office at Metro State College of Denver informed us that MyRichUncle’s FFEL applicants will need to contact their office for additional forms that these applicants will need to complete because of their choice of a “non-consortium” lender, i.e., a non-preferred lender.

- Stetson University in Florida appears to be giving MyRichUncle applicants misinformation. We discovered that the financial aid office deleted three requests for loan certification presented electronically by MyRichUncle to Stetson for the upcoming school year. When we asked the affected students and parents if Stetson told them about the deletions, they said no and that when they had tried to follow up with Stetson on the status of their loan applications, they were told that MyRichUncle never presented any certification requests. Stetson’s financial aid office “recommends” on its website that all FFEL borrowers apply through Sallie Mae’s loan application system, OpenNet.
- We have more than twenty-two students who are unable to get their loans certified at various campuses owned by the University of Phoenix despite active involvement by their own legal counsel.
- A financial aid officer from Georgia Middle College called MyRichUncle last week asking to withdraw a student’s FFEL loan application. When we asked him for what reason, and if the applicant was informed, he said (and we quote) “you don’t need to know that.” When MyRichUncle refused to withdraw the application without the applicant’s consent, he commented “no wonder all the schools hate you” and hung up.
- We have a student at Georgia Highlands College whose parent nearly gave up on getting her son’s MyRichUncle Loan certified because of resistance by the financial aid office. She spent almost a month in e-mail debates with the financial aid office pleading with them to get the certification done. It took a multi-party call involving the college president, the financial aid director, and MyRichUncle’s legal counsel to finally get the school to certify the loan.

All of this violates the law, and continued failure by the Department to enforce the law will mean another year of students “taking loans with higher interest rates or fewer borrower benefits” than they should, as the GAO found. This would be simply inexcusable.

We also note that the Department has taken no action whatsoever against lenders who have violated the prohibited inducement law already on the books. Student Loan Xpress, for example, has been cited in numerous state and federal investigations for activities such as providing financial aid officers with stock, consulting fees, and treats in exchange for a spot on a PLL. Other lenders have plied schools with revenue sharing deals or “opportunity pools” to induce them to recommend the lender, in some cases even inducing schools to leave the government’s direct lending program. Yet, the Department has apparently reported to the GAO that it has “not yet investigated” the improper arrangements already identified by these state and federal investigations. The Department cannot use the excuse here that prohibited inducement arrangements are too difficult for it to prove.¹² The groundwork has already been done. A

¹² See 72 Fed. Reg. at 32424 (“As the Department pointed out during the negotiated rulemaking discussion, violations of the prohibited inducement provisions are difficult for the Department to enforce. It is virtually impossible for the Department to prove the relationship

failure to initiate enforcement action in these cases will only do more harm to students and show all that lenders really have nothing to fear if they choose to offer or provide prohibited inducements.

Finally, we are concerned that no meaningful consideration has been given to whether the Department would have the resources to police the regime it proposes, even if it does decide to ramp up enforcement efforts. In its 2006 meeting with the Department, MyRichUncle was informed that not one full-time person had been assigned to review complaints regarding delayed and/or denied certifications of loans.¹³ The Department now proposes rules to govern inducements, PLLs, and certification processes that often will require close attention and judgment calls by the Department. We believe that the resources needed to effectively police this proposed system are greater than what the Department will commit at this time. Accordingly, a more practical approach is to simplify the proposed regulation as recommended below by, for example, eliminating PLLs and the loopholes in the inducements provisions, to provide a more realistic chance of effective enforcement.

Specific Comments on Provisions of the PR

MyRichUncle's specific comments on the PR relate to the provisions addressing prohibited inducements (§§682.200 and 682.401) and PLLs (§§682.212 and 682.401).

Prohibited Inducements

While MyRichUncle agrees that the rules regarding prohibited inducements need to be fleshed out and strengthened to proscribe the types of inappropriate relationships and activities that have recently been exposed, the PR still leaves too many loopholes. Given the high stakes involved in securing a spot on a preferred lender list, lenders who are so inclined will be able to slip quite comfortably through these loopholes and continue to provide schools and financial aid offices with incentives to give themselves entrée to the financial aid office and cast themselves in a very favorable light to susceptible officials. Among these loopholes are:

- No explicit rule governing financial aid officers serving on lender advisory boards or having consulting relationships with lenders – such activities would apparently continue to be allowed even though there are several documented instances of lenders paying school employees considerable fees, and paying for travel, lodging, entertainment and other expenses associated with advisory board and consulting activities. Such relationships should be prohibited, as

between the parties when the documentation is under the control of the two parties and the Department cannot issue subpoenas to compel testimony.”).

¹³ While the Department has reported to GAO that as of October 2006 it has a “workgroup” to review complaints and inquiries concerning prohibited inducements, GAO Oversight Report at 27, it remains unclear whether the Department has devoted any full-time resources to addressing these problems.

they all too easily breed conflicts of interest. The current proposal's prohibition on lenders paying travel costs or entertainment expenses simply will not go far enough to clean up the conflicts;

- Allowing lender payments to schools as long as it is not “in exchange for” FFEL loan applications, referrals, volume or PLL placement (§ 682.200(b)(1)(5)(i)(8)). This leaves a gaping loophole. All a lender and school need to do is say the gift is not associated with the FFEL program. The simplest way to close this loophole is to prohibit schools from accepting any payment or other things of value from lenders on their PLL or those with a significant volume of the school's FFEL loans, for example 20%. If lenders' motives are actually philanthropic, they should continue to contribute – but in the future it will be to schools where they are not on PLLs and do not provide most loans;
- Allowing lenders and guaranty agencies to continue sponsoring “meals, refreshments, and receptions to school officials or employees that are reasonable in cost” in connection with meetings or conferences (§ 682.200(b)(1)(5)(ii)(C) and (§ 682.401(e)(2)(iv)). This loophole only allows some of the most insidious abuses to continue. Moreover, the parameters are undefined and will invite abuse; how will the ED define what is a “reasonable” cost for a meal? Can a lender provide attendees a lobster sandwich at a conference in Boston but not a lobster dinner? And how will the term “reception” be defined? Can it include lenders wining and dining college officials at the Rainbow Room, one of New York's City's most exclusive restaurants, as has been reported in the past?¹⁴ Again, the simplest way to avoid the slippery slope is to prohibit such activities;
- Allowing guaranty agencies to pay school employees' travel and lodging costs to facilitate attendance at training sessions or “facility service tours” that “staff would otherwise be unable to attend” (§ 682.401(e)(2)(iv) [sic]). Although the PR purports to stop lenders from paying school employees' travel costs, allowing guaranty agencies to do it instead merely invites guaranty agencies to figure out ways to make this loophole work to the benefit of their lender partners and the detriment of others. Expenses that are legitimately associated with guaranty agencies' fulfillment of their training responsibilities under the Higher Education Act are sufficiently covered by subsection (iii) of this proposed rule. There is no need to create this additional loophole for “training sessions” or “tours” of an unspecified nature;

Finally, the Department seeks specific comments on how it should define the type of “emergency” circumstances in which a lender would be allowed to provide staffing services to a school. (72 Fed. Reg. at 32423). The Department's suggestion that an “emergency” should be

¹⁴ See David Armstrong and Daniel Golden, “Trade Group Saw Possible Conflicts in Student Loans,” WALL STREET JOURNAL (Apr. 11, 2007) at A1.

limited to a state- or federally-declared natural disaster makes the most sense. Such situations fit the true definition of an emergency and are clearly circumstances that are outside the school's control. Only in such cases should schools be excused from their obligation under the participation agreements to be administratively capable of participating in the Title IV programs. Schools that are unprepared to deal circumstances such as worker absenteeism, busy season application volume and the like are not complying with their program participation obligations and should not be able to rely on lenders to meet those responsibilities.

Preferred Lender Lists

As previously discussed, MyRichUncle believes that PLLs should be banned. However, should they continue to be allowed, the Department's proposed regulation of them still does too little to blunt the anti-competitive effects of such lists:

- Significantly, there is no substantive component to the PLL regulation, that is, there is no requirement that the lenders on the list be selected based on the students' best interests, even though Secretary Spellings has publicly discussed the need for schools to act on that basis.¹⁵ This substantive requirement is a part of the New York Code of Conduct as well as Congress's Student Loan Sunshine Act. While it appears to be obvious that students' best interests, including, first and foremost, the lowest interest rates, should be the sole guiding factor in recommending lenders, countless schools have amply demonstrated that they need to be told to do this. Accordingly, the PR should require that lenders be recommended based solely on students' best interests;
- The requirement of a minimum of three preferred lenders (§682.212(h)(1)(ii)) is simply too few. With more than 3000 lenders presently available, schools should readily be capable of compiling a list of more than three lenders. A minimum on the order of 10-12 lenders is more appropriate. In addition, the Department should clarify that the minimum applies on a per-PLL basis. Some schools have several PLLs (e.g., one for FFEL, one for private loans, one for graduate or professional loans, etc.). Omission of this clarification means that a school could circumvent a three lender minimum, for example, by putting one lender on each of its PLLs, perpetuating situations where schools have "exclusive" lender deals;
- Furthermore, the PR requires that financial aid offices develop and disclose the criteria used to select preferred lenders (§682.212(h)(2)). The regulation should require that all lenders meeting the criteria be placed on the PLL. There is no justifiable reason for financial aid offices to omit lenders that meet the criteria. This will allow students to choose from potentially many more

¹⁵ August 7, 2007 "Dear Colleague" Letter from Department of Education to colleges and universities, at 1.

than 10-12 lenders, giving the benefit of substantial competition. This requirement will also help prevent financial aid offices from steering students away from lenders for inappropriate and irrelevant reasons such as the aid officer's personal preferences;

- The requirement that lenders simply certify that they are unaffiliated is weak and meaningless unless there is a penalty here for lender misrepresentation (see § 682.212(h)(1)(ii) and 72 Fed. Reg. at 32427). The Department's rule should provide for a monetary penalty of \$25,000 per loan issued during the time the misrepresentation persists, the same dollar amount provided for in the compliance and enforcement section of the Student Loan Sunshine Act passed by the House of Representatives.¹⁶ The misrepresenting lender and its affiliate should also be deleted from the PLL;
- In addition to certifying their affiliations, lenders should also be required to disclose whether they sell their loans to another lender. Sales of loans are done so routinely by some lenders that a loan from them is practically guaranteed to be sold to another lender. Such information should be made available to prospective borrowers to enable them to make a fully informed choice in selecting a particular lender;
- With respect to the draft form that ED will create for schools to report comparative information about PLL rates and terms (72 Fed. Reg. at 32427), the Department should require that interest rates reflected on any such form be reported in compliance with the Federal Trade Commission's annual percentage rate ("APR") requirements. By utilizing the APR method, all of a lender's various fees will be accounted for, enabling students to compare loans in an apples-to-apples fashion.
- Finally, the PR adds an explicit provision stating that schools may not cause "unnecessary certification delays" for borrowers who use lenders other than ones on the school's PLL (§682.212(h)(2)(vi)). The provision should clarify the meaning of "unnecessary" delay by specifying that a refusal to process or intentional delay in processing an application because a lender does not participate in the electronic processing system that school uses, or does not use a particular guaranty agency, is impermissible. As discussed above, MyRichUncle has encountered numerous instances of such conduct, including a financial aid officer who defiantly stated that she put MyRichUncle applications at the "bottom of the pile" for processing. Another financial aid office delayed a certification for weeks with no explanation and then finally admitted, after much prodding from MyRichUncle and the borrower, that it did nothing because its staff had no idea how to process a paper certification. MyRichUncle has taken considerable steps in expanding its FFEL

¹⁶ See Student Loan Sunshine Act, H.R. 890, 110th Cong. § 2 (2007) (which would add a new Section 156 to Title I of the Higher Education Act of 1965).

infrastructure and is able to transmit certification requests on multiple platforms and multiple guarantors. We are also able to transmit funds electronically. Despite our efforts, a financial aid officer misrepresented to a borrower that funds from MyRichUncle would not arrive on time when, in fact, the school set the disbursement date upon certification and funds would have been electronically transferred automatically on the disbursement date. Such delays cause students and parents to become understandably anxious that their loan will not be disbursed in time to pay the tuition bill, and they often give up on their initial lender choice and accept a loan from a PLL lender, which accomplishes the school's goal of not having to process a loan using a non-preferred method. This erodes, rather than promotes, borrower choice. Moreover, a school that is incapable of using any but one electronic processing system cannot be considered administratively capable of participating in the Title IV programs as required by its program participation agreement. The PR should therefore specify that schools cannot delay a certification because of the processing system or guarantor used by the lender.

Conclusion

By leaving schools in the driver's seat when it comes to student lending, the Department's proposed rule takes the wrong approach. The goal should be to bring freedom of choice and competition to the student loan market for the benefit of students and parents. Not only is the overall approach insufficient, the prohibited inducement and preferred lender list proposals leave numerous loopholes that can easily be exploited by lenders and willing financial aid offices. At a minimum, those loopholes should be eliminated as we recommend. And, in any event, any regulation adopted by the Department will be meaningless if the Department continues on its present path of lax oversight and non-existent enforcement. The Department must take swift, meaningful enforcement action to address violations of current law that are already well documented, or its future efforts will be ignored, to the detriment of the nation's student borrowers.

Respectfully submitted,



Raza Khan, Co-founder and President

EXHIBIT 1

An email from the FINAID-L ListServ from a director of financial aid at the University of Wisconsin-Parkside.

From: ADMINISTRATION of USA Financial Aid Offices [FINAID-L@lists.psu.edu] on behalf of Randall L. McCready [randall.mccready@UWP.EDU]
Sent: Friday, June 15, 2007 10:03 AM
To: FINAID-L@LISTS.PSU.EDU
Subject: MRU 5.8% rate on Federal Student Loans?

Good morning,

one of my staff today brought in a "direct to consumer" marketing piece from My Rich Uncle sent to her daughter that not only says on the envelope in very bold lettering, but also within the letter "Get a 5.8% Rate on your Federal Student Loan".

While this may effectively end up being the benefit to the student (effective at repayment of course....stated in smaller non-bold font), it is a bit deceiving that somehow they can work around federal regulations of the 6.8% rate.

So I guess it is ok to do deceptive advertising direct to students and their families for the sake of growing one's business?

Just shaking my head on this continuing saga.

Randy McCready

Randall L. McCready, Ph.D.
Director of Student Financial Aid
University of Wisconsin-Parkside
900 Wood Road, P.O. Box 2000
Kenosha, WI 53141-2000
phone: (262) 595-2004
fax: (262) 595-2216
e-mail: randall.mccready@uwp.edu

- The financial aid director, Dr. McCready, demonstrates a lack of understanding about the interest rates of Federal student loans.
- The government does not set the interest rate; the government sets the MAXIMUM interest rate, currently 6.8%. This is very important because any lender is free to charge less.
- Dr. McCready is the director of financial aid for an institution that originated over 3,800 Stafford loans in 2006.
- How can billions of dollars of loans be entrusted to financial aid directors who overlook such a basic fact? For years, this oversight has resulted in students paying the maximum rate of interest.