

ATTORNEY GENERAL OF THE STATE OF NEW YORK

-----X

In the Matter of

The University of Pennsylvania,

Respondent.

-----X

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 University of Pennsylvania (the “University”) has cooperated in the Investigation by 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 the University has engaged in one of the practices that violate these statutes;

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

WHEREAS the University has advised the OAG of its desire to resolve the Investigation through this Agreement on Code of Conduct (the “Agreement”);

WHEREAS the University, without admitting the OAG’s Findings and assertions made below or admitting any violation of law and to avoid the costs and expenses of further proceedings, has voluntarily agreed to alter certain of its practices with respect to education loans, refund to the student borrowers the full amount of the fees received by the University and to adopt a Code of Conduct for education loan practices;

NOW THEREFORE, the OAG, based upon the Investigation, makes the following Findings, although not necessarily applicable to the University:

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 nation’s 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, but not always, 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 potential 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.

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 the University

13. The University is an institution of higher education located in Philadelphia, Pennsylvania. The University is a not-for-profit educational corporation organized and chartered under the laws of the Commonwealth of Pennsylvania.

14. During the period 2005-07, the University received \$1,617,580 pursuant to a form of revenue sharing agreement with Citibank, N.A., which was one of the University’s pre-existing recommended lenders. While the funds received by the University were used for financial aid, the fact that the University was to receive these funds was not disclosed to the borrowers.

C. Alleged Violations

15. The OAG asserts that the acts, practices, and omissions set forth in section I(B) above on the part of the University created a conflict of interest and violated Executive Law § 63(12) and General Business Law §§ 349 and 350. The University denies this assertion.

II. AGREEMENT

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. The University shall require and ensure that no officer, trustee, director, employee, or agent of the University 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 the University from conducting non-University business with any Lending Institution. 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 securitizes 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 the University from holding membership in any nonprofit professional association.

17. 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 University

employee for lodging, meals, or travel to conferences or training seminars unless such payment or reimbursement is related solely to non-University business.

ii. Limitations on University Employees Participating on Lender Advisory Boards

18. The University 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 that are unrelated in any way to higher education loans shall not be prohibited by the Agreement. Notwithstanding the above, this paragraph shall not prohibit any officer, trustee, director, employee, or agent of the University, who is uninvolved in the affairs of the University's financial aid office, from serving on a Board of Directors of a publicly traded or privately held company.

iii. Prohibition of Certain Remuneration to the University

19. The University 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 the University, (ii) the University's receipt from any Lending Institution of any computer hardware for which the University pays below-market prices and (iii) printing costs or services. Notwithstanding anything else in this paragraph, the University may accept assistance as contemplated in 34 CFR 682.200(b)(definition of "Lender")(5)(i).

iv. Preferred Lender Lists

20. In the event that the University 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 the University 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) The University's decision to include a Lending Institution on any such list and the University's 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) The constitution of any Preferred Lender List shall be reviewed no less than annually;
- (e) No Lending Institution shall be placed on any Preferred Lender List unless the said lender provides assurance to the University 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 regardless of whether the Lending Institution's loan are sold;

- (f) No Lending Institution that, to the University's knowledge after reasonable inquiry, 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 the University's Preferred Lender Lists or in favored placement on any one of the University's Preferred Lender Lists for a particular type of loan, in exchange for benefits provided to the University or to the University's students in connection with a different type of loan;

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

21. The University may not allow and shall ensure that no employee or other agent of a Lending Institution is ever identified to students or prospective students of the University or their parents as an employee or agent of the University. No employee or other agent of a Lending Institution may staff the University financial aid offices at any time.

vi. *Proper Execution of Master Promissory Notes*

22. The University shall not 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 at that guarantee agency. The University's link or direction referred to in the prior sentence shall comply with paragraphs 20(a) and (b) herein.

vii. *School as Lender*

23. If the University participates in the “School as Lender” program under 20 U.S.C. § 1085(d)(1)(E), the University 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*

24. The University 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. Nothing in the Agreement, however, shall be construed to prevent the University from offering loans to international students, at fair market rates, when those students would be otherwise unable to secure a domestic loan.

B. Borrower Reimbursement Fund

25. The University has voluntarily committed to deposit \$1,617,580 into an interest bearing money market account (the “Borrower Reimbursement Fund”) within 30 days of the effective date of the Agreement.

26. Within 120 days of the effective date of the Agreement, the University or an agent thereof shall, either directly or through modification of current loan agreements with Citibank, N.A., distribute the balance of the Borrower Reimbursement Fund to Qualified Borrowers pro rata based upon the aggregate amount of Applicable Loans each borrower borrowed. For the purposes of the Agreement, “Applicable Loans” are alternative loans borrowed from Citibank, N.A to cover education expenses at the University from 2002-07, not including risk sharing or guaranteed loans. For the purposes of the Agreement, Qualified Borrowers are students or former students of the University or the parents of any such individual who took out Applicable

Loans. The University shall make such distribution by credit to the Qualified Borrower's loan account with the lender, by credit to the Qualified Borrower's account receivable at the University, or by check payable and mailed to the Borrower. In no case shall the University affect a student's financial aid award in any term based upon any payment made pursuant to the Agreement.

27. In the event the University is unable to pay any Qualified Borrowers as contemplated in the Agreement despite using its best efforts to do so, the University shall provide any funds remaining in the Borrower Reimbursement Fund to the OAG, which shall use the funds to create a consumer education program for high school seniors and their parents.

C. Scope of the Agreement

28. Except as provided below, the Agreement precludes any action that the OAG could commence against the University and its respective current and former officers, trustees and employees, with respect to any act, omission, transaction or occurrence based upon, arising from, or in any way related to, the Industry Findings and the University Findings in Section I of the Agreement; provided however, that nothing contained in the Agreement shall be construed to cover claims of any type by any other state agency or any claims that may be brought by the OAG to enforce the University's obligations arising from or relating to the provisions contained in the Agreement. The Agreement shall not prejudice, waive or affect any claims, rights or remedies of the OAG with respect to any person, other than the University and its current and former officers, trustees and employees, all of which claims, rights, and remedies are expressly preserved, nor shall the Agreement create any rights on behalf of persons not parties to the Agreement. The Agreement does not preclude any action that the OAG may take for acts, practices, or omissions not listed in the Findings in Section I of the Agreement.

D. Cooperation

29. The University shall continue to cooperate fully and promptly with the OAG with regard to the Investigation and any related proceedings and actions. The University 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.

30. Cooperation shall include without limitation:

- (a) Production, voluntarily and without service of subpoena, by the University of any information and all documents or other tangible evidence related to education loan practices reasonably requested by the OAG, and material to the investigation, subject to recognized privileges and protections for confidential information;
- (b) Using the University's best efforts to cause the University's officers, directors, employees and agents attend any proceedings at which the presence of any such persons is reasonably requested by the OAG, and materially related to the investigation, and having such persons answer any and all inquiries that reasonably 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 and material to all reasonable

inquiries made by the OAG in connection with this Investigation concerning any alleged fraudulent or criminal conduct by anyone whatsoever about which the University, its officers, trustees, directors, employees and agents may have any knowledge or information, subject to recognized privileges and protections for confidential information.

31. 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 the University 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 the University, its officers, directors, employees, or agents.

32. The University shall not knowingly jeopardize the confidentiality of any non-public 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 the University from conferring with counsel or consultants, issuing public statements, or providing such evidence or information to other regulators or as otherwise required by law.

E. Miscellaneous Provisions

33. Pursuant to Executive Law § 63(15), the Agreement serves as an assurance of discontinuance. As such, evidence of a violation of the Agreement by the University 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.

34. If the University breaches any of the obligations described herein, the OAG may in its sole discretion terminate the Agreement upon written notice to the University. 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 the University or from using in any way any statements, documents or other materials produced or provided by the University after commencement of the Investigation, including, without limitation, any statements, documents or other materials provided for purposes of settlement negotiations.

35. 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.

36. 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.

37. The University enters into the Agreement voluntarily and represents that no 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.

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

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

40. The Agreement shall be binding upon the University and its successors, assigns, and/or purchasers of all or substantially all its assets.

41. 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. However, the University shall have until November 1, 2007, to change its printed materials.

42. 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.

43. Nothing contained herein shall be construed as relieving the University 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.

44. In the event of any inconsistency between the terms of this Agreement and federal, state or local statute, rules, regulations, or guidelines (“Authorities”), the provisions of the Authorities shall prevail.

45. The acceptance of the Agreement by the OAG shall not be deemed approval by the Attorney General of any of the University’s business practices, and the University shall make

no representation to the contrary. The University's execution of the Agreement is not an admission of liability.

46. 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 the University:

Wendy S. White, General Counsel
The University of Pennsylvania
133 S. 36th Street, Suite 300
Philadelphia, Pennsylvania 19104
tel. (215) 746-5240
fax. (215) 746-5301

47. 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 the University.

48. The University shall submit to the Attorney General, on or before August 15, 2007, an affidavit, subscribed to by an officer of the University authorized to bind the University, 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 ____, 2007

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

By: _____
Benjamin E. Rosenberg
Chief Trial Counsel

