

HEOA Code of conduct requirements

The school's code of conduct must prohibit a conflict of interest with the responsibilities of an officer, employee, or agent of a school regarding Title IV loans. The school must publish the code "prominently" on its Web site; and it must annually inform all of the school's officers, employees, and agents with Title IV loan responsibilities of the provisions of the code of conduct. The code must include the following items:

- Ban on revenue-sharing arrangements, which means that the school must not enter into any revenue-sharing arrangement with any lender. The term "revenue-sharing arrangement" means an arrangement between a school and a lender under which a lender provides or issues a Title IV loan to the school's students or the families of its students; and in exchange the school recommends the lender or its loan products, or the lender pays a fee or provides other material benefits, including revenue or profit sharing, to the school, a school officer or employee, or an agent of the school.
- Ban on gifts, meaning that an officer or employee of the school's financial aid office — or any employee or agent of the school whose responsibilities are related to education loans — must not solicit or accept any gift from a lender, guarantor, or servicer. Note that the language of the HEOA in certain areas is different than the language of the currently-enacted regulations regarding prohibited inducements.

A "gift" is defined as any gratuity, favor, discount, entertainment, hospitality, loan, or other item having a monetary value of more than a de minimis amount. A gift also includes a gift of services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after an expense has been incurred.

However, the HEOA does not prohibit a school from accepting certain items and services that are specifically exempt from the definition of "gift":

- Standard material, activities, or programs on issues related to a loan, default aversion, default prevention, or financial literacy, such as a brochure, a workshop, or training.
- Food, refreshments, training, or informational material furnished to an officer, employee, or agent of the school, as an integral part of a training session that is designed to improve the service of a lender, guarantor, or servicer of education loans to the school, if such training contributes to the professional development of the school's officer, employee, or agent.
- Favorable terms, conditions, and borrower benefits on an education loan provided to a student employed by the school if those terms, conditions, or benefits are comparable to those provided to all students at the school.
- Entrance and exit counseling services provided to borrowers, as long as the school's staff is in control of the counseling (whether in person or via electronic capabilities), and the counseling does not promote the products or services of any specific lender.
- Philanthropic contributions to a school from a lender, servicer, or guarantor of education loans that are unrelated to education loans, or any contribution from a lender, guarantor, or servicer that is not made in exchange for any advantage related to education loans. Note that under the current prohibited inducements regulations, it is incumbent upon the lender or servicer to prove, if necessary, that a philanthropic contribution was not made in exchange for FFELP loan applications or application referrals, or a specified volume or dollar amount of FFELP loans made or guaranteed, or placement on a school's list of recommended or suggested lenders. Also note that certain schools or lenders may have entered into agreements which differ from the HEOA language, or may be subject to state laws which provide a different standard.
- State education grants, scholarships, or financial aid funds administered by or on behalf of a state.

What is de minimis? Just as ED did not assign a dollar value to the term "nominal value" in the regulations regarding prohibited inducement, Congress declined to assign a dollar value threshold to the gift ban in establishing a de minimis standard. We recommend that a school discuss this provision with its legal counsel to determine what might or might not constitute a de minimis amount.

Also note that under this provision, a gift to a family member of an officer, employee, or agent of a school, or any other individual based on the family member's relationship with that officer, employee, or agent, is considered a gift to the officer, employee, or agent if the gift is given with the knowledge and acquiescence of the officer, employee, or agent; and the officer, employee, or agent has reason to

believe the gift was given because of the officer, employee, or agent's official position. Gifts to family members given under those circumstances are therefore prohibited, just as if they were given to the officer, employee, or agent.

- Prohibition on contracting arrangements, which means that the school's officers, employees, and agents with education loan responsibilities must not accept any fee, payment, or other financial benefit (including the opportunity to purchase stock) from a lender as compensation for any type of consulting arrangement or other contract to provide services to a lender or on behalf of a lender relating to education loans.

Note that there are some exceptions to this rule:

- An officer or employee of a school who is not employed in the school's financial aid office and who does not have responsibilities related to education loans, or an agent who does not have responsibilities related to education loans, may perform paid or unpaid service on a board of directors of a lender, guarantor, or servicer of education loans;
 - An officer or employee of the school who is not employed in the school's financial aid office but who does have responsibility related to education loans, or an agent who has responsibility related to education loans, may perform paid or unpaid service on a board of directors of a lender, guarantor, or servicer of education loans, if the school has a written conflict of interest policy that clearly states that officers, employees, or agents must recuse themselves from participating in any decision of the board regarding education loans at the school;
 - An officer, employee, or contractor of a lender, guarantor, or servicer of education loans may serve on a board of directors, or serve as a trustee, of a school, if the school has a written conflict of interest policy that states the board member or trustee must be recused from any decision regarding education loans at the school.
- Rules for interaction with borrowers, which prohibit a school from assigning, through award packaging or other methods, a first-time borrower's loan to a particular lender; or refusing to certify, or delaying certification of, any loan based on the borrower's selection of a particular lender or guarantor.
 - Prohibition on offers of funds for private loans, meaning that the school must not request or accept from any lender any offer of funds to be used for private education loans, including funds for an opportunity pool loan, in exchange for the school providing concessions or promises of a specified number or volume of Title IV loans, or a preferred lender arrangement for Title IV loans.

What is an opportunity pool loan? In this context, the term means a private education loan made by a lender to a student or the family member of a student that involves the school's direct or indirect payment of points, premiums, additional interest, or financial support to the lender, for the purpose of the lender extending credit to the student or the family.

- Ban on staffing assistance, meaning that the school must not request or accept from any lender any assistance with call center or financial aid office staffing. However, a school is permitted to request or accept certain types of assistance, including professional development training for financial aid administrators; educational counseling, financial literacy, or debt management materials for borrowers, provided that such materials disclose to borrowers the identification of any lender that assisted in preparing or providing the materials; and staffing services on a short-term, nonrecurring basis to assist the school with financial aid-related functions during emergencies, including state- or federally-declared national disasters, and other localized disasters and emergencies identified by ED.
- Rules for advisory board compensation, which state that any employee in the school's financial aid office, or who otherwise has responsibilities related to education loans or other student financial aid of the school, and who serves on an advisory board, commission, or group established by a lender, guarantor, or group of lenders or guarantors, shall be prohibited from receiving anything of value from the lender, guarantor, or group of lenders or guarantors. However, the employee may be reimbursed for reasonable expenses incurred in serving on the advisory board, commission, or group.