



# THE STATE UNIVERSITY *of* NEW YORK

May 25, 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: Revised Agreement on Code of Conduct with Attorney General

On April 3, 2007, I advised of the execution by the Chancellor, on behalf of the State-operated campuses of the State University, of an Agreement on Code of Conduct committing to restrictions on financial practices and relationships with lenders in the student loan area. The purpose of this memorandum is to transmit a newly signed Revised Agreement that was entered into between the University and the Attorney General's Office on May 22, 2007 based upon changes made in the course of the AG's negotiations with other institutions. The most significant changes are the following: 1) the effective date for compliance with the Code of Conduct is now extended to November 1, 2007 for changes to printed materials only (paragraph 35). The rest of the Code was effective on execution of the Agreement with the exception of the Preferred Lender List requirements and Master Promissory Note requirements which are effective June 1, 2007. I would urge you to achieve compliance as close to that date as possible with respect to printed materials as well; 2) the agreement contains a statement (new paragraph 38) that in the event of inconsistency between the Agreement and federal or state law, the latter legal authorities will prevail. This means that the new Student Loan Accountability, Transparency and Enforcement Act (SLATE), when it is signed by the Governor, will prevail where its terms are in direct conflict with the terms of the attached Agreement. We are currently in discussions with AG as to which terms of the Agreement are covered by this provision.

As always, please feel free to contact Counsel's Office with any questions about this matter. We appreciate the efforts that have already been made to come into compliance.

#### Attachment

cc: Presidents, Community Colleges, for information only  
Chancellor Ryan  
Senior Staff  
Chief Business Officers  
Directors of Financial Aid  
Mr. Curtice  
Mr. Sheppard

**ATTORNEY GENERAL OF THE STATE OF NEW YORK**

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**In the Matter of**  
**State University of New York,**

**Respondent.**

-----X

**REVISED 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, 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 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, although not necessarily applicable to SUNY:

#### **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, known 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 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. SUNY denies this assertion.

## **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 SUNY 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 unless such payment or reimbursement is related solely to non-SUNY business.

*ii. Limitations on SUNY Employees Participating on Lender Advisory Boards*

17. SUNY shall prohibit any officer, trustee, director, employee, or agent of SUNY 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. Notwithstanding the above, this paragraph shall not prohibit any officer, trustee, director, employee or agent of SUNY who is uninvolved in the affairs of SUNY financial aid offices from serving on a Board of Directors of a publicly traded or privately held company.

*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 SUNY;
- (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, to SUNY'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 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 shall ensure that no employee or other agent of a Lending Institution is ever 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. Nothing in the Agreement, however, shall be construed to prevent SUNY

from offering loans to international students, at far market rates, when those students would be otherwise unable to secure a domestic loan.

**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 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 material to the Investigation, subject to recognized privileges and protections for confidential information;
- (b) Using SUNY's best efforts to cause SUNY's officers, directors, employees and agents attend any proceedings at which the presence of any such persons is requested by the OAG, and materially related to the Investigation, 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 and material 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 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 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 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 SUNY 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. However, SUNY shall have until November 1, 2007, to change its printed materials.

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

39. 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.

40. 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  
fax. (212) 221-8004

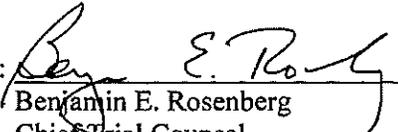
41. Nothing in the Agreement shall be construed to prevent any individual from pursuing any right or remedy at law which any consumer may have against SUNY.

42. 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: May 22, 2007

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

By:   
Benjamin E. Rosenberg  
Chief Trial Counsel

Dated: May 14, 2007

**STATE UNIVERSITY OF NEW YORK**

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

