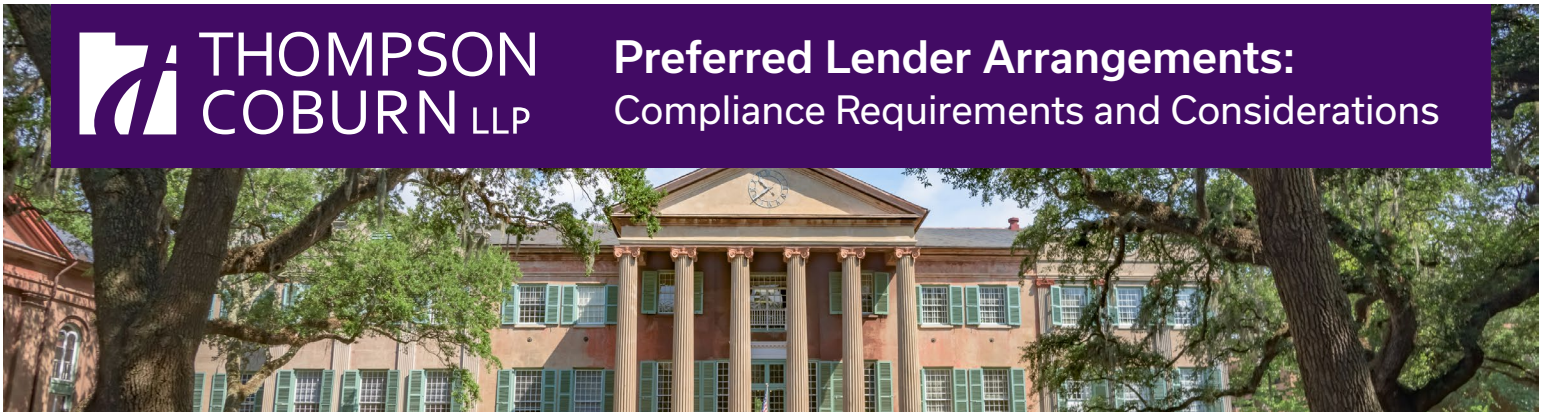



**Last Updated by Thompson Coburn's Higher Ed Team: May 2026**

## The Return of Preferred Lender Arrangements

In 2008, Congress reauthorized the Higher Education Act of 1965 ("HEA"), as amended, and included extensive new provisions relating to preferred lender arrangements and the form and content of preferred lender lists. Shortly thereafter, the U.S. Department of Education (the "Department") issued a set of regulations, effective July 1, 2010 (the "2010 Rules"), which implemented and advanced these changes.

At approximately the same time that these new statutes and regulations were being put into place, several events occurred that dramatically altered the private lending landscape. In 2006, the Direct Graduate PLUS loan program became effective, which made it possible for most graduate students to fund their entire education with federal loans. In 2008, the Great Recession took hold following the collapse of the housing market. And in 2010, the Federal Family Education Loan Program ("FFEL") was terminated, ending the participation of private lenders in the federal student loan marketplace.

In the wake of these events, many private lenders exited the student loan space entirely. At the same time, most institutions of higher education ceased entering into preferred lender arrangements, and instead began simply providing students with a "historical lender list," with the understanding that such a list would not be deemed a preferred lender arrangement and trigger the related compliance requirements.

Due to recent changes in the student loan landscape, many schools are revisiting the viability of preferred lender arrangements. In 2025, Congress passed the One Big Beautiful Bill Act, which, among other things, provides that effective July 1, 2026, the Graduate PLUS loan program will be terminated and new annual and aggregate loan limits will apply to borrowers in undergraduate, graduate, and professional degree programs.[1] These changes have led many institutions of higher education to consider once again entering into arrangements with lenders to provide private education loans to their students on beneficial terms and to create preferred lender lists.

The purpose of this guide is to provide information regarding the various compliance requirements that are triggered when an institution enters into a preferred lender arrangement, including providing students a preferred lender list. We observe that there are certain foundational disclosure requirements that an institution must satisfy if it is providing students with information relating to private education loans, even if it is only providing that information in the form of a historical lender list. We emphasize that this guide does not cover those foundational requirements, which are detailed at 34 C.F.R. § 601.11 (Private education loan disclosures and self-certification form). This guide covers the incremental compliance requirements that result from entering into a preferred lender arrangement.

We also observe that this guide focuses only on the requirements for institutions. It does not cover the similar but separate disclosure requirements that apply to institution-affiliated organizations that enter into preferred lender arrangements.[2]

[1] See Public Law 119-21 (July 4, 2025).

[2] An institution-affiliated organization is any organization that is directly or indirectly related to the institution and may include an institution's alumni, athletic, foundation, social, academic, or professional organizations. An institution-affiliated organization does not include any lender with respect to any education loan secured, made, or extended by such lender. 34 C.F.R. § 601.2(b).

## Determining Whether a Preferred Lender Arrangement Exists

We appreciate that some institutions may be unclear regarding whether they have established a preferred lender arrangement. Pursuant to the HEA, if an institution engages in any activity that "relates to … recommending, promoting, or endorsing" the private education loans of a lender that provides loans to the institution's students, the institution is deemed to have a "preferred lender arrangement."[3] The Department's regulations governing preferred lender arrangements are located at 34 C.F.R. Part 601, and include a definition of the term in Section 601.2 that echoes the statutory definition.

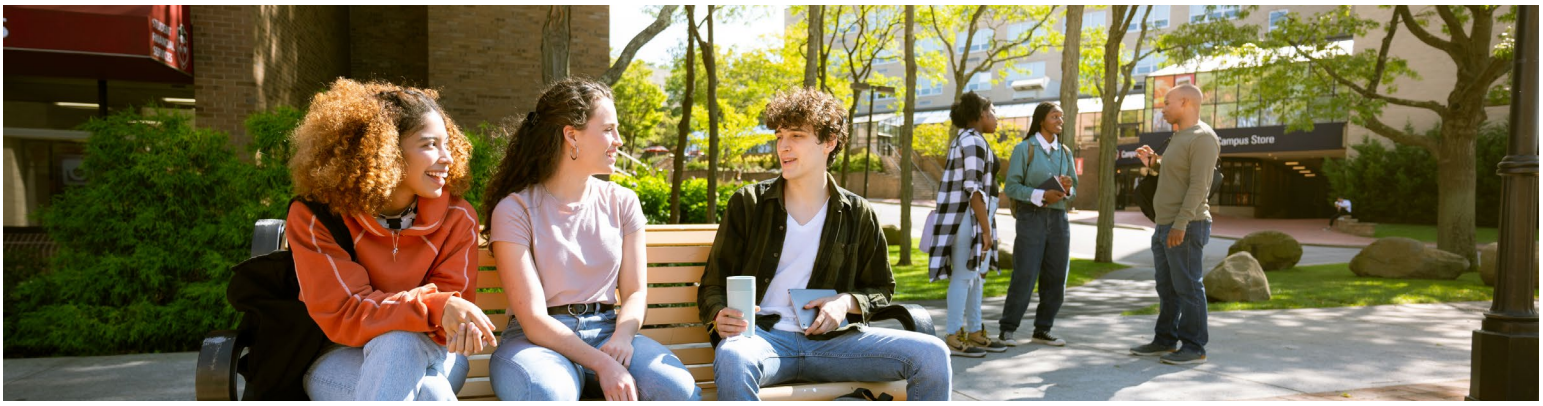
We certainly recommend reviewing the full definition of "preferred lender arrangement" in the regulations. This said, we observe that when proposing the 2010 Rules, the agency made clear that it considers the threshold for establishing a preferred lender arrangement to be a low one. Indeed, the Department specifically noted that the law does not require that any "written or verbal agreement" exist between the parties, and on two separate occasions in the commentary stressed that only two conditions must be satisfied to establish a preferred lender arrangement: "the lender provides or issues education loans [to students at the covered institution] and the covered institution … recommends, promotes, or endorses the education loan products of the lender."[4]

With regard to this latter criterion, the Department went on to indicate in the commentary to the proposed rule that it deems any institution presenting students with the names of private education lenders to be recommending, promoting, or endorsing such lenders unless the institution provides "a neutral, comprehensive list of lenders who have made loans to students at the covered institution within a set period of time, such as three to five years, and the school provides a clear statement on the list that a borrower can choose to use any FFEL lender, not just the lenders identified on the list..."[5]

Leaving no room for doubt, the Department emphasized this point again in the commentary to the final 2010 Rules, observing:

> As noted in the NPRM, if a covered institution includes certain lenders on the list and leaves other lenders off the list, the Department views the covered institution as recommending, promoting, or endorsing the lenders on the list over the lenders that it has chosen to leave off the list regardless of whether the covered institution includes a disclaimer on the list, asserting that the covered institution does not recommend, promote, or endorse the lenders on its list. Unless the list is a neutral, comprehensive list of lenders who lent to students at the school, the list serves to recommend, promote, or endorse the lenders on the list, despite whatever disclaimers the school may attach to the list.[6]

The agency thus went out of its way to make clear that no formal agreement is required to establish a preferred lender arrangement, and that disclaimers have little to no impact. An institution establishes a preferred lender arrangement simply by presenting to its students (1) a lender that makes private education loans to its students (2) in a format that is curated. It is only by providing a historical lender list (i.e., a "neutral, comprehensive list of lenders who have made loans to students" in the past) that the institution avoids the preferred lender arrangement designation.



[3] HEA § 151(8)(A)(ii); 20 U.S.C. § 1019(8)(A)(ii).

[4] 74 Fed. Reg. 37436 (July 28, 2009).

[5] 74 Fed. Reg. 37437 (July 28, 2009).

[6] 74 Fed. Reg. 55630 (Oct. 28, 2009).

## Requirements for Preferred Lender Lists

If an institution determines that it is indeed party to a preferred lender arrangement with a lender of private education loans, it must comply with a host of requirements. Foremost, it must create a preferred lender list that satisfies various specifications. The chart below details these requirements and includes compliance recommendations.

| Requirements for Preferred Lender Lists (PLL) | Citation[7] |
|---|---|
| For any year in which the institution has a preferred lender arrangement, it will at least annually compile, maintain, and make available to its students and the families of its students, a list of the specific private education loan lenders that it recommends, promotes, or endorses. We recommend assigning this responsibility to specific staff members to ensure the annual obligation is met. | 668.14(b)(28) |
| The PLL must be made available in print or other medium to students attending the institution and their families. As a practical matter, we believe most institutions host their PLL on their institutional website. | 668.14(b)(28) |
| When selecting lenders, the institution has a duty of care and loyalty to compile the PLL without prejudice and for the sole benefit of the students attending the institution or their families. The overarching concept is that any lender will be selected on the "basis of the best interests of the borrowers." The method and criteria used by the institution must include: (a) payment of origination or other fees on behalf of the borrower; (b) highly competitive interest rates, or other terms and conditions or provisions of Private Education Loans; (c) high-quality servicing for such loans; or (d) additional benefits beyond the standard terms and conditions or provisions for such loans. | 668.14(b)(28); 601.10(d)(3) |
| As part of the PLL, institutions must prominently disclose the method and criteria they used when selecting the lenders on the list. We suggest that the disclosure not only define the method and criteria, but also explain how the method and criteria ensure lenders are selected on the "basis of the best interests of the borrowers" as described above. | 668.14(b)(28); 601.10(d)(3) |
| Institutions also must disclose on the PLL why they chose to enter into a preferred lender arrangement with each lender on the list, "particularly with respect to terms and conditions or provisions favorable to the borrower." We suggest that institutions articulate how and why each of the preferred lenders satisfied the institution's stated criteria. | 601.10(d)(1)(ii) |
| A PLL must include at least two unaffiliated lenders. This means that if an institution embraces one preferred lender arrangement, it must be willing to embrace at least one more. Keep in mind, this requirement can be satisfied by simply including a second lender that makes private education loans to your students on your PLL. A preferred lender arrangement does not require any "written or verbal agreement" between the parties. | 601.10(d)(2)(i) |
| The PLL must indicate whether each lender on the list is or is not affiliated with any other lender on the list. To the extent affiliations do exist, the PLL must include the details of any such affiliations. | 601.10(d)(2)(ii) |
| Institutions with preferred lender arrangements must disclose that students attending the institution, or the families of such students, do not have to borrow from a lender on the preferred lender list. We recommend making this express disclosure a part of the PLL. | 601.10(d)(1)(iii) |
| Institutions may not deny or impede a borrower's choice of a lender or cause unnecessary delay in loan certification for borrowers who choose a lender that is not included on the PLL. We suggest explicitly stating that the institution will not engage in such behavior on the face of the PLL. We also suggest ensuring that financial aid staff understand this requirement to ensure borrowers are not disadvantaged. | 601.10(d)(5) |

[7] Unless otherwise noted, all citations in this and the other charts in this document are to Title 34 of the Code of Federal Regulations.

## Requirements for the Financial Aid Code of Conduct Covering Private Education Loans

Any institution that participates in a preferred lender arrangement with a private lender also must develop, publish, and enforce a "code of conduct" that covers private education loans and meets the following requirements.[8]

| Code of Conduct Requirements | Citation |
|---|---|
| The code of conduct must expressly prohibit a conflict of interest with the responsibilities of any employee or agent of the institution with respect to private education loans. | 601.21(a)(2)(i)(A) |
| The code of conduct must prohibit revenue-sharing arrangements with any lender. Per the regulation, the term "revenue-sharing arrangement" means an arrangement between an institution and a lender under which (i) a lender provides or issues a private education loan to students attending the institution or to the families of such students; and (ii) the institution recommends the lender or the loan products of the lender and in exchange, the lender pays a fee or provides other material benefits, including revenue or profit sharing, to the institution or an agent of the institution. | 601.21(c)(1) |
| The code of conduct must expressly prohibit the institution from (i) assigning, through award packaging or other methods, any first-time borrower's loan to a particular lender; or (ii) refusing to certify, or delaying certification of, any loan based on a borrower's selection of a particular lender. | 601.21(c)(4) |
| The code of conduct must prohibit the institution from requesting or accepting from any lender any offer of funds to be used for private education loans, including funds for an opportunity pool loan, to students in exchange for the institution providing concessions or promises regarding providing the lender with (i) a specified number of private education loans; (ii) a specified loan volume of such loans; or (iii) a preferred lender arrangement for such loans. | 601.21(c)(5) |
| The code of conduct must prohibit the institution from requesting or accepting from any lender any assistance with call center staffing or financial aid office staffing. The regulation includes examples of services that an institution could accept or request, which institutions may wish to review. | 601.21(c)(6) |
| The code of conduct must prohibit employees of the financial aid office (or agents) from receiving gifts from a lender or loan servicer. The term "gift" means "any gratuity, favor, discount, entertainment, hospitality, loan, or other item having a monetary value of more than a de minimus amount. The term includes a gift of services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred." We note that the regulation includes a number of examples of items that do not constitute a "gift," which institutions may wish to review. | 601.21(c)(2) |
| The code of conduct also must prohibit employees of the financial aid office (or agents) from accepting from any lender or lender affiliate "any fee, payment, or other financial benefit (including the opportunity to purchase stock) 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 private education loans. The regulation includes examples of permitted services, which institutions may wish to review. | 601.21(c)(3) |
| The code of conduct must prohibit employees of the financial aid office, or who otherwise have responsibilities relating to private education loans or student financial aid, and who also serve on an advisory board, commission, or group established by a lender or group of lenders, from receiving anything of value from the lender or group of lenders, except that the employee may be reimbursed for reasonable expenses incurred in serving on such advisory board, commission, or group. | 601.21(c)(7) |
| The institution must publish its code of conduct prominently on its website and provide it each year to all employees and agents with responsibilities concerning private education loans. We recommend requiring all covered employees and agents to acknowledge receipt of the code in writing each year. | 601.21(a)(ii)-(iii) |

[8] Title IV-participating institutions must have a similar code of conduct in place that covers the administration of Title IV loans. Though not strictly required, this code of conduct may already extend to private education loans and lenders.

## Additional Requirements Triggered by Preferred Lender Arrangements

In addition to creating, maintaining, and distributing a preferred lender list and a financial aid code of conduct that covers private education loans, an institution that enters into a preferred lender arrangement with a private education loan lender must make a range of additional disclosures, provide an annual report to the Department, and satisfy other related requirements. The chart below details these additional compliance obligations. Institutions should also be mindful of the broader consumer-protection, fair-lending, privacy, state-licensing, and recordkeeping frameworks that operate alongside Part 601 and may be implicated by their PLL activities.[9]

| Website and Material Disclosures | Citation |
|---|---|
| On its website and in all informational materials that describe or discuss any education loan (including federal and private loans), the institution must disclose the maximum amount of Title IV grant and loan aid available to students in an easy to understand format.[10] | 601.10(a)(1)(i) |
| On its website and in all informational materials that describe or discuss any private education loan, the institution must disclose the information that the Consumer Financial Protection Bureau (CFPB) requires to be disclosed under section 128(e)(11) of the Truth in Lending Act (15 U.S.C. 1638(e)(11)), for each type of private education loan offered pursuant to a preferred lender arrangement of the institution to students of the institution or the families of such students.[11] The disclosures must be provided to students, or the families of such students, as applicable, annually and must be provided in a manner that allows for the students or their families to take such information into account before selecting a lender or applying for an education loan. | 601.10(a)(2)(i) and (c) |
| **Annual Report Submission** | **Citation** |
| The institution must submit an annual report to the Department that includes the information the CFPB requires to be disclosed under section 128(e) (11) of the Truth in Lending Act (15 U.S.C. 1638(e)(11)), for each type of private education loan offered pursuant to a preferred lender arrangement.[12] | 601.10(a)(2)(i); 601.20(a)(1) |
| The annual report to the Department also must include a detailed explanation of why the institution participates in the preferred lender arrangement with the lender, including why the terms, conditions, and provisions of each type of education loan provided pursuant to the preferred lender arrangement are beneficial for students attending the institution or their families, as applicable. | 601.20(a)(2) |
| The annual report must be made available to the public and provided to students attending or planning to attend your institution and the families of such students. | 601.20(b) |
| **Institution and Lender Name Restrictions** | **Citation** |
| In its preferred lender arrangement, the institution may not agree to the lender's use of the name, emblem, mascot, or logo of the institution, or other words, pictures, or symbols readily identified with the institution, in the marketing of the private education loans to students in any way that implies that the loan is offered or made by the institution. | 601.12(a) |
| The institution also must ensure that the name of the lender is displayed in all information and documentation related to the private education loans. | 601.12(b) |

[9] Brokering or arranging loans with a particular source, advising or assisting students to obtain such loans, or participating in the design, operation, or guarantee of a private loan program may implicate the federal Consumer Financial Protection Act of 2010 and analogous state UDAAP/consumer-protection statutes, as well as fair-lending and nondiscrimination laws.

[10] "Informational materials" is defined as publications, mailings, or electronic messages, or materials that (i) are distributed to prospective or current students of a covered institution and families of such students and (ii) describe or discuss the financial aid opportunities available to students at an institution of higher education. 34 C.F.R. § 601.10(b).

[11] To satisfy this obligation, the institution may use the Private Education Loan Application and Solicitation Model Form (H-18) prepared and published by the CFPB.

[12] The Department has not established a specific, recurring date for submission of the annual report. We recommend that institutions strive to provide the report to the Department at the same time each year after receiving the necessary information provided to the institution from those lenders with which the institution has preferred lender arrangements.

## Inquiries and Disclaimer

Institutions with questions regarding the reporting requirements set out above are welcome to contact Scott Goldschmidt (sgoldschmidt@thompsoncoburn.com) or Aaron Lacey (alacey@thompsoncoburn.com). Please note that the purpose of this document is to provide news and information on legal issues and all content provided is for informational purposes only and should not be considered legal advice. The transmission of information from this document does not establish an attorney-client relationship with the reader. If you desire legal advice for a particular situation, you should consult an attorney.

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Thompson Coburn's higher education practice features a group of skilled attorneys who dedicate all (or a majority) of their time to serving institutions of higher education. Our practitioners have extensive experience managing legal and policy matters for postsecondary institutions, and include individuals who have worked in-house at colleges and universities and hold advanced degrees in education. We are fully and intentionally committed to serving higher education, and grateful for the opportunity to do so.

The scope of our higher education practice is broad, and includes corporate, regulatory, and litigation services, among others. These legal services are complimented and further enhanced by our significant lobbying and policy experience in the higher education space. Our attorneys leverage their knowledge and experience to deliver insightful, creative, and efficient legal advice across a wide range of issues, including those involving students, faculty and staff, facilities, academics, governance, and operations. We routinely offer general counsel, compliance, and training services to small and mid-size institutions of higher education, while providing specialized services to large institutions with in-house legal departments. Our clients include public, private non-profit, and proprietary institutions of higher education. We also periodically represent organizations that provide academic, financial, or operational services to postsecondary institutions.

In addition to providing legal services, our attorneys regularly create complimentary higher education resources for the postsecondary community. These resources include posts from our higher education blog (REGucation), as well as advisories, desk guides, whitepapers, and webinars designed specifically to assist our institutional clients with navigating the complexities of the postsecondary regulatory and policy environment. To access our Higher Education Resources page, please scan the QR Code below.

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