

Preferred Lender List Topic	Higher Education Opportunity Act	November 1, 2007 Final Rules
The school, in compiling, maintaining, and making available a preferred lender list:	<p>In the case of a school that has entered into a preferred lender arrangement, the school will, at least annually, compile, maintain and make available for students attending the institution and the families of such students, a list (in print or other medium) of the specific lenders for loans made, insured or guaranteed under Title IV or private education loans that the school recommends, promotes or endorses in accordance with such preferred lender arrangement. In making such list, the institution shall comply with the requirements of Higher Education Act (HEA) 487(h). [HEA 487(a)(27)]</p>	
	<p>Will clearly and fully disclose not less than the information required to be disclosed under the minimal disclosure requirements found in the HEA section 153(a)(2)(A). [HEA 487(h)(1)(A)(i)]</p>	
	<p>Must not deny or otherwise impede the borrower's choice of a lender. [HEA 487(h)(1)(E)]</p>	<p>Must not be used to deny or otherwise impede a borrower's choice of lender. [34 CFR 682.212(h)(1)(i)]</p>
	<p>Must ensure, through the use of the list of lender affiliates provided by the Department of Education (ED), that there are:</p> <ul style="list-style-type: none"> • Not less than three lenders of Federal Family Education Loan Program (FFELP) loans that are not affiliates of each other included on the preferred lender list. • Not less than two lenders of private education loans that are not affiliates on the preferred lender list if the school recommends, promotes, or endorses private education loans. [HEA 487(h)(1)(B)(i)] <p>And the preferred lender list must:</p> <ul style="list-style-type: none"> • Specifically indicate, for each listed lender, whether the lender is or is not an affiliate of each other on the preferred lender list. • Describe the details of the affiliation if a lender is an affiliate of another lender on the preferred lender list. [HEA 487(h)(1)(B)(ii)(I) and (II)] 	<p>Must not contain fewer than three lenders that are not affiliated with each other and that will make loans to borrowers or students attending the school. [34 CFR 682.212(h)(1)(ii)]</p>
		<p>Does not include lenders that have offered, or have offered in response to a solicitation by the school, financial or other benefits to the school in exchange for inclusion on the list or any promise that a certain number of loan applications will be sent to the lender by the school or its students. [34 CFR 682.212(h)(1)(iii)]</p>

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The school, in compiling, maintaining, and making available a preferred lender list (continued):		<p>A school that chooses not to recommend lenders, or has not been able to identify more than one lender to make loans to its students or parents, is not prohibited from providing (upon the student's or parent's request) the name of lenders that have made loans to the school's students and parents in the past, as long as a lender has not provided prohibited inducements to the school to secure those loans. [Preamble to Federal Register, Vol. 72, No. 211, p. 61987]</p>
	<p>Will comply with such other requirements as ED may prescribe by regulation. [HEA 487(h)(1)(F)]</p>	
A school that provides or makes available a preferred lender list:	<p>Will clearly and fully disclose the reason for including the lender, particularly with respect to terms and conditions or provisions favorable to the borrower. [HEA 487(h)(1)(A)(ii)]</p>	<p>Must disclose to prospective borrowers, as part of the list, the method and criteria used by the school in selecting any lender that it recommends suggests. [34 CFR 682.212(h)(2)(i)]</p>
	<p>Will exercise a duty of care and a duty of loyalty to compile the preferred lender list without prejudice and for the sole benefit of the students attending the institution or the families of such students. [HEA 487(h)(1)(D)]</p>	
	<p>Will prominently disclose the method and criteria used by the school in selecting lenders with which to enter into preferred lender arrangements to ensure that such lenders are selected on the basis of the best interests of the borrowers, including:</p>	<p>Must provide comparative information to prospective borrowers about interest rates and other benefits offered by the lenders. [34 CFR 682.212(h)(2)(ii)]</p>
	<ul style="list-style-type: none"> • Payment of origination or other fees on behalf of the borrower. • Highly competitive interest rates, or other terms and conditions or provisions of loans under Title IV or private education loans. • High-quality servicing for such loans. • Additional benefits beyond the standard terms and conditions or provisions for such loans. [HEA 487(h)(1)(C)(i)-(iv)] 	<p>Must include a prominent statement in any information related to its list of lenders, advising prospective borrowers that they are not required to use one of the school's recommended or suggested lenders. [34 CFR 682.212(h)(2)(iii)]</p>
	<p>Must annually compile, maintain, and make available to students attending the school and the students' families, a list of lenders for Title IV or private loans. [HEA Section 487(a)(27)]</p>	<p>Must update any list of recommended or suggested lenders and any information accompanying such list no less often than annually. [34 CFR 682.212(h)(2)(vi)]</p>

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In certifying loans, a school:	<p>Will not cause unnecessary delay in loan certification for those borrowers who choose a lender that is not included on the preferred lender list. [HEA 487(h)(E)]</p>	<p>Must not assign, through award packaging or other methods, a first-time borrower's loan to a particular lender. [34 CFR 682.212(h)(2)(iv) and 682.603(f)(2)]</p> <p>Must not cause unnecessary certification delays for borrowers who use a lender that has not been recommended or suggested by the school. [34 CFR 682.212(h)(2)(v)]</p>
The definition of affiliated lender, for purposes of preferred lender list:	<p>The term affiliate means a person that controls, is controlled by, or is under common control with another person. [HEA 487(i)(2)]</p> <p>A person controls, is controlled by, or is under common control with another person if the person directly or indirectly, or acting through one or more others, owns, controls or has power to vote five percent or more of any class of voting securities of such other persons. [HEA 487(i)(2)(A)]</p>	<p>A lender is affiliated with another lender if the lenders are under the ownership or control of the same entity or individuals. [34 CFR 682.212(h)(3)(i)]</p>
	<p>A person controls, is controlled by or is under common control with another person if the person controls in any manner, the election of a majority of directors or trustees of such other person. [HEA 487(i)(2)(B)]</p>	<p>A lender is affiliated with another lender if the directors, trustees or general partners (or individuals exercising similar functions) of one of the lenders constitute a majority of the persons holding similar positions with the other lender. [34 CFR 682.212(h)(3)(iii)]</p>
	<p>A person controls, is controlled by or is under common control with another person if ED determines (after notice and opportunity for hearing) that the person directly or indirectly exercises a controlling interest over management or policies of such other person's education loans. [HEA 487(i)(2)(C)]</p>	
		<p>Definition of affiliated lender does not include entities that are involved in post-disbursement activities (forward purchase agreements, loan portfolio sales, post-disbursement loan servicing and secondary market activity), that a school has no ability to monitor or control. [Preamble to Federal Register, Vol. 72, No. 211, p. 61988]</p>

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ED Lender Affiliates List:	ED shall maintain and regularly update a list of lender affiliates of all eligible lenders, and shall provide such list to schools for use. [HEA 487(h)(2)(A)]	
	A school shall use the most recent list of lender affiliates provided by ED. [HEA 487(h)(2)(B)]	

Note: This chart is intended for informational purposes only. Refer to the Higher Education Opportunity Act and the November 1, 2007 final rules for specific information.