United States Senate
HEALTH, EDUCATION, LABOR AND PENSIONS COMMITTEE
Edward M. Kennedy, Chairman

Report on Marketing Practices in the Federal Family Education Loan Program

June 14, 2007

TABLE OF CONTENTS

I. Executive Summary

This report was prepared by the Chairman's Staff of the Senate Health, Education, Labor and Pensions Committee ("Committee") setting forth the findings of an investigation into marketing practices in the Federal Family Education Loan program ("FFEL"). The report addresses a discrete set of marketing practices including:

- **Some FFEL lenders provided compensation to schools with the expectation, and in some cases an explicit agreement, that the school will give the lenders preferential treatment, including placement on the school's preferred lender list.**
- **Other FFEL lenders spent large sums on travel and accommodation expenses for meetings of Advisory Boards comprised of school officials, and often expected these benefits to yield increased loan volume, or other preferential treatment, at Board members' schools.**
- **School officials held financial interests, including stock and options to purchase stock, in FFEL lenders which are on the preferred lender list or are otherwise recommended to students.**
- **School officials received payments for consulting and other services from FFEL lenders which are on the preferred lender list or are otherwise recommended to students.**

II. Background

This report is the first in a series setting forth the findings of the Chairman's investigation into marketing practices in the student loan industry. The Chairman initiated the investigation in response to information obtained by his office indicating that lenders participating in the FFEL program had engaged in conduct that violated section 435(d)(5) of the Higher Education Act, which prohibits lenders from offering compensation to schools in exchange for preferential treatment concerning FFEL loans. The information indicated that lenders had both offered and provided financial and in-kind compensation to schools with the understanding that schools would give preferential treatment to the lenders in return.

In response, the Chairman moved forward on both legislative and investigative fronts, introducing the Student Loan Sunshine Act in the Senate on February 1, 2007 and initiating an investigation to determine the extent and nature of these practices. The Chairman sent document requests to sixteen FFEL lenders requesting information on compensation, favors or benefits offered or provided to schools in exchange for preferential treatment, including placement on so-called "preferred lender" lists.[1]

Many FFEL lenders have cooperated fully with the Chairman's investigation. Such cooperation is the model corporate response to a Congressional inquiry of this kind.

A. *Brief Overview: Federal Higher Education Loan Programs*

Federal involvement in the financing of higher education is a topic worthy of book-length treatment. This report will not attempt to examine in detail the dynamics of federal higher education loan programs, but will outline the programs in broad terms and focus on features particularly relevant to industry marketing practices.

The Federal government operates two federally subsidized loan programs: the Federal Family Education Loan program ("FFEL") and the William D. Ford Direct Loan ("DL") program. Both programs are authorized by Title IV of the Higher Education Act. A recent report by the Congressional Research Service summarizes the features of the two programs:[2]

---

[1] A list of the FFEL lenders who were sent the Document Request, as well as a sample copy of the Request, is included at Exhibit 1.

[2] CRS Report for Congress, "The Administration of the Federal Family Education Loan and William D. Ford Direct Loan Programs: Background and Provisions," September 29, 2006, Adam Stoll, Congressional Research Service, p.1.

> Under the FFEL program, loan capital is provided by private lenders, and the federal government guarantees lenders against loss through borrower default, death, permanent disability, or in limited instances, bankruptcy. FFEL program loans are originated by private lenders. That is, private lenders work directly with students and families to initiate the loan. Private lenders also are responsible for billing borrowers and collecting loan payments. State and nonprofit guaranty agencies receive federal funds to play the lead role in administering many aspects of the FFEL program. In particular, the guaranty agencies provide many of the administrative services related to the loan guarantee, including providing technical assistance and training to schools on loan certification and to lenders on loan procedures, providing credit and loan rehabilitation counseling to borrowers, reimbursing lenders when loans are placed in default, and initiating collections work.
>
> Under the DL program, the federal government provides the loans to students and their families, using federal capital (i.e., funds from the U.S. Treasury), and owns the loans. Under the DL program, schools may serve as loan originators, or the loans may be originated by contractors working for the U.S. Department of Education (ED). ED hires contractors to service the loans: i.e., to monitor student enrollment and loan repayment status, process loan payments, and initiate collections work for delinquent and defaulted loans.

Private lenders participating in the FFEL program receive several subsidies from the federal government, the most important of which are the Special Allowance Payment and federal default insurance. The Special Allowance Payment is an interest subsidy paid by the government that effectively guarantees lenders a rate of return on student loans. The payment makes up the difference between the statutorily fixed interest rate that student borrowers pay and a rate of return that, in the judgment of Congress, provides a profit margin sufficient to keep FFEL lenders in the program. The government also insures FFEL lenders against borrower default, rendering student loans a virtually riskless proposition for these lenders. For lenders designated as "exceptional performers,"[3] the government reimburses 99% of unpaid principal and accrued interest at the time of default. For lenders not so designated, the insurance rate is 97%.

B. *The Inducement Prohibition*

1. The Law

Section 435(d)(5) of the Higher Education Act makes it unlawful for any FFEL lender to

> (A) offer, directly or indirectly, points, premiums, payments, or other inducements, to any educational institution or individual in order to secure applicants for loans under this part;
> (B) conduct unsolicited mailings to students of student loan application forms, except to students who have previously received loans under this part from such lender;

[3] A FFEL lender applies for this designation, and the Secretary may approve the application if the Secretary finds that the lender has a "97% or greater compliance with due diligence requirements" in collecting on defaulted loans. 20 U.S.C. 1078-9.

(C) offer, directly or indirectly, loans under this part as an inducement to a prospective borrower to purchase a policy of insurance or other product; or
(D) engage in fraudulent or misleading advertising. 20 U.S.C. 1085(d)(5).[4]

2. Department Guidance

A 1995 Department "Dear Colleague" letter articulates the rationale for the inducement prohibition:

> Loan decisions by students may affect their entire lives significantly, and such decisions should be based on the merits of the loans and not on extraneous factors, particularly not on monetary benefits given to the schools on which students often rely in such matters. In this respect it does not matter whether the lender offers the monetary benefit to the school directly or simply arranges for the school to receive the benefit from a third party…the Secretary will look at the substance of any arrangements rather than merely the form. DCL 95-G-278.

Dear Colleague Letter 89-L-129 also sets forth the Secretary's analysis of the law's intent: "...these provisions were broadly intended to prohibit the direct or indirect offering or payment of any kind of financial incentive by a lender to any entity or person to secure applicants for Part B loans, by a guarantee agency to a school or affiliated entities or individuals for that purpose, regardless of the form of the incentive or its mode of payment."

Also in the 1989 letter, the Secretary listed numerous "examples of prohibited inducements:"

1. A lender employs a student at a school to act as the lender's representative for the purpose of persuading individual prospective borrowers to apply for a loan with the lender.
2. A lender employs a loan solicitor or sales representative who visits schools for the purpose of persuading individual prospective borrowers to apply for a loan with the lender.
3. A lender pays another lender a "referral" or "finder's" fee for loan applications referred to the paying lender, ostensibly to compensate the referring lender for administrative costs incurred in processing the applications and in advertising the availability of loans through the payee lender. The portion of the fee that exceeds reasonable compensation for the referring lender's processing of loan applications and advertising constitutes a prohibited inducement.
4. A lender pays a "processing" fee to another lender, but only if the applicant actually obtains a loan.

---

[4] Regulations promulgated by the Secretary prohibit similar conduct by schools receiving Title IV funding: "(a) No points, premiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to--
(1) Secure funds for making loans; or
(2) Induce a lender to make loans to either the students or the parents of students of a particular school or particular category of students or their parents." 34 CFR §682.212.

5. A guarantee agency provides computers to a school, or a lender provides computers or computer software to a school, at below market rental or cost.
6. A lender's promotional activities include providing borrowers the chance to win prizes if they apply for loans.
7. A lender prints and distributes school catalogs for a school at reduced cost, in order to induce the school to refer loan applications to the lender.
8. A guarantee agency provides payments to a school or its affiliates to induce the school to participate in the agency's program or to increase the number of applications submitted to the agency.
9. A lender or guarantee agency performs, without appropriate compensation, functions that the school is required to perform under the Part B Program, or pays the school to perform such functions.

The same letter also provided examples of practices that would not violate the inducement ban:

1. A lender purchases a loan made by another lender at a premium. This is not a transaction involving the securing of applicants, but rather the acquisition of loans already made. A purchasing lender may also act as the agent of a selling lender on a loan to be purchased for purposes of originating and disbursing the loan, and purchase the loan at a premium immediately following disbursement. The funds used to make the loan would be deemed to have been advanced to the seller by the purchaser and subsequently repaid from the sale proceeds.
2. A lender declines to collect all or a part of the origination fee chargeable to the borrower. See 8438(c)(2) of the Act.
3. A lender charges a borrower an interest rate that is lower than the statutory maximums. See 8427A(f) of the Act.
4. A lender or guarantee agency establishes a toll-free telephone number for use by schools or others in obtaining information regarding Part B loans.
5. A guarantee agency provides training on the administration of the Stafford Loan Program to a school's employees free of charge, or provides written instructions or computer software to a school, to assist the school in completing forms required for the issuance of a Part B loan or otherwise transmitting the data required from a student, borrower, and/or school for that purpose. This type of activity is consistent with the agency's established role as the principal administrator of its program; it would not be considered a part of a lender's established role, which primarily involves completion of the lender portion of the application and the exercise of due diligence in making, disbursing, servicing, and collecting loans. Thus, a lender may, for example, speed up its processing of loan applications, perform additional loan-making or collection activities, or offer graduated repayment schedules, without violating the anti-inducement rules.
6. A lender or guarantee agency provides a school, free of charge, with counseling materials designed to provide a borrower with more comprehensive and detailed counseling than that required to be provided by the school.

7. A lender or guarantee agency establishes a toll-free number for use by schools in electronically transmitting application or student status confirmation data to the lender or agency.
8. A lender or guarantee agency sponsors a luncheon for a recognized organization of schools or a school trade association, provides free pens with the lender's or agency's name inscribed thereon, or provides some other item of nominal value as a form of advertising or creation of good will, rather than as a quid pro quo for loan referrals.

In 1998, the Higher Education Act was amended specifically to exempt from the inducement prohibition practices that constitute "assistance to schools comparable to the kinds of assistance provided by the Secretary to schools under, or in furtherance of, the Federal Direct Loan Program." 34 CFR § 682.200. An August 10, 1999 Notice of Proposed Rulemaking discussed this exception in greater detail. In that notice, the Secretary stated that

> [t]he 1998 Amendments did not change the general prohibition that lenders cannot provide services, at less than market value, to a school in order to secure applications. In general, we believe that most goods and services that a lender provides to a school at less than their fair market value are, by definition, an inducement. If those goods and services are provided by the lender to secure applicants for loans, the inducement would be prohibited. This is especially true with regard to goods and services provided by a lender that are used by the school to meet its Title IV program responsibilities under the law and the regulations. The Secretary believes that it is not necessary for the lender to specifically tie the goods and services to loan applications for certain activities to be considered improper inducements.

The Secretary's commentary lists the following practices as falling within the exception:

- Counseling: A lender may support schools in meeting their responsibilities to provide borrowers with initial counseling, exit counseling, and general debt counseling. In providing this support, lenders may:
    - Assist in the development, production, and distribution of materials used by schools in counseling activities.
    - Develop, and offer to schools, electronic products and services, including web-based processes, that can be used to meet counseling requirements.
    - Participate in counseling sessions offered by a school, provided that the school maintains control of these events and school staff members are present.
    - Participate in initial counseling, provided that the lender's activities reinforce the student's right to choose a lender.
- Outreach: A lender may support schools in activities to inform the public or students of the availability of student aid, including student loans. Lender participation might include such activities as:
    - Providing publicity for outreach events;

    - Preparing, producing, and distributing materials;
    - Providing light refreshment;
    - And providing staff to assist the school in the presentation.
    - Permissible outreach activities also include those that are undertaken by a lender in conjunction with a guaranty agency.
- Computer Support: A lender may provide computer software, technical support, and training-- but not computer hardware-- that support the technological processes used by the lender in its administration of the FFEL Program.
- Training: A lender may provide specialized training to schools in support of their FFEL Program processes. This training may be provided in person, either on or off campus, or through the use of technology. A lender may not provide school staff additional services or goods (other than items of nominal value) in connection with the training, and it may not pay expenses incurred by school staff for the training. 64 FR 43428-01, *43429-30 (August 10, 1999).

3. The Intent of the Inducement Prohibition

As the 1995 Dear Colleague letter stated, Congress enacted the inducement prohibition to ensure that schools' negotiations with lenders over loan terms, and school officials' advice to students about how to borrow, are "based on the merits of the loans and not on extraneous factors, particularly not on monetary benefits given to the schools on which students often rely in such matters." The inducement prohibition is a crucial part of the Higher Education Act precisely because it is impossible for policymakers, regulators and borrowers to monitor each bargaining process between schools and lenders to ensure that students' interests are properly defended—regulators cannot be present at every discussion to ensure that schools are reaching a sound bargain on behalf of their students.

Congress addressed this monitoring problem by enacting the inducement provision, which prohibits the negotiating parties from considering any benefit offered to a school that would tempt officials not to negotiate the best possible bargain on students' loan terms. Therefore, when the inducement prohibition is violated, it is no defense to claim that "no students were harmed" by the violation, since making that determination is an impossible task. It is impossible to reconstruct, after the fact, the exact bargaining dynamic that existed between schools and lenders at the time the inducement was offered and what loan terms the school would have bargained for had an improper inducement not been provided. In enacting the inducement prohibition, Congress determined that, once an inappropriate inducement is introduced into a negotiation between lenders and schools, the risk that students' interests will be harmed is too high, and thus the bargaining process is irrevocably tainted. This is why the provision prohibits not merely a consummated quid pro quo deal, but the mere *offer* of such a deal.

In addition to protecting students against back-room, "sweetheart" dealing between schools and lenders, the inducement prohibition serves a vital role in preserving students' and parents' trust in the integrity of the bargaining process. If a lender provides an unrelated benefit to a school as part of the negotiation over FFEL loan terms, *whether or not an explicit quid pro quo arrangement exists*, students will inevitably question whether school officials reached the best possible bargain, or pulled their punches in order to obtain benefits unrelated to loan terms.

4. Preferred Lender Lists

Throughout this report, reference is made to "preferred lender lists." As has been pointed out by many industry observers, financial aid offices typically maintain a list of "preferred lenders" to provide guidance to students facing the daunting task of choosing from the constellation of FFEL lenders. Reasonably assuming that such a list represents the distilled wisdom of the financial aid office, students typically borrow from lenders on the list. As the New York Attorney General has noted, the "lenders listed on an institution of higher education's Preferred Lender Lists typically receive in aggregate up to 90% of the loans taken out by the institution's students and their parents."[5]

When such a list is properly formulated, students can rely upon it as the end product of (a) a vigorous, arms'-length bargaining process between lenders and financial aid officers over loan terms, and (b) financial aid officers' careful evaluation of an array of final lender offers, arriving at a list of recommended lenders who offer the most favorable loan terms. Students expect lenders on the preferred list to have run the gauntlet of an unforgiving, merit-based competitive process in which financial aid officers achieve the best possible bargain. A preferred lender list, when properly maintained, creates valuable efficiencies – it filters the vast array of lender options into a manageable set of options for students, and it obviates the necessity for students to consult in person with often overburdened financial aid staff about their options.

[5] New York Attorney General "Assurance of Discontinuance" In the matter of SLM Corporation, April 11,2007, p.4

III. Benefits and Compensation Provided to Financial Aid Offices and Schools

The investigation uncovered cases of a lender offering, or officials soliciting, compensation for placement on an FFEL lender list. The Chairman's investigation has uncovered an example of this type of violation involving cash payments by Texas Tech University. In a March 29, 2005 letter, Texas Tech notified certain FFEL lenders that they had been "selected preferred lenders for the 2005-2006 academic year" using "several criteria as determined by the Financial Aid Office." The letter notes that the lender "will automatically be listed as a preferred lender on TGSLC's [Texas Guaranteed Student Loan Corporation] Loans by Web system," but it goes on to say that the lender "will have the opportunity to purchase space as a preferred lender on the TTU Financial Aid website….[t]he cost to be listed as a preferred lender for next year will be $500. Please allow this letter to serve as an invoice." Exhibit 2. Northstar expense records reflect that the company paid the fee in April 2005. Exhibit 3.

Schools and financial aid offices also often solicit, and lenders provide, various types of in-kind compensation – compensation that could otherwise be used to reduce students' loan burden. Internal documents from student lenders indicate that the companies spend large sums each year on an array of marketing activities directed at school officials. In many cases, these "favors" are not solicited by financial aid offices and have no apparent impact on the advice that financial aid officers provide. However, the evidence shows that financial aid officers have frequently solicited benefits from lenders. Given the crucial "gatekeeper" role played by financial aid officials, solicitation of any benefit not explicitly permitted by existing law creates an appearance of conflict of interest, undermines students' trust in the process, and magnifies the risk of illegal quid pro quo deals.

A. *"Treats"*

1. The University of Texas

The Chairman's investigation has revealed that, during the tenure of Dr. Lawrence Burt as Director, the University of Texas at Austin Office of Student Financial Services ("OSFS") entered into arrangements with lenders that violated the inducement prohibition, breaking trust with students and damaging the credibility of the office. Evidence collected by the Chairman's investigation and cited in the University's Special Report[6] indicates that OSFS gave its imprimatur to lenders not based solely on the

[6] Given the detailed analysis in the University of Texas's May 14, 2007 "Special Investigative Report," ("UT Report") this analysis will not explore every relevant detail of the circumstances at the University, but only discuss those facts which are most relevant to this report or have not yet been publicly released. When it was publicly disclosed that Dr. Burt had owned shares in Student Loan Xpress, the University of Texas put Dr. Burt on paid administrative leave and initiated an internal investigation directed by the University General Counsel and outside counsel Ken Breen of Paul, Hastings, Janofsky & Walker. The Chairman appreciates the University's prompt and thorough response, and the cooperation shown by other educational institutions, including Johns Hopkins University, Columbia University, Capella University, Widener University, and the University of Southern California.

competitiveness of the lender’s loan terms, but, in significant part, based on the benefits it provided to OSFS staff.[7]

Evidence uncovered by the Chairman’s investigation from sources outside the University strongly indicates that *quid pro quo* arrangements existed between OSFS and lenders. In particular, a former Bank of America employee’s notes of a conversation in late 2004, entitled “Summary of Meeting with Don Davis, Associate Director [of Student Financial Services,] UT Austin,” shows that the office and its leadership prioritized lender treats over competitive pricing and borrower benefits in deciding which lenders would be at the “top of the preferred lender list,” and only allowed lenders access to the top of the list if they provided certain extraordinary personal benefits to the director and his staff.

The purpose of the meeting was to discuss the “most important issues…that UT Austin expects from lenders going into the 2004-2005 academic year.” While Mr. Davis does discuss a few substantive issues related to technical requirements and loan features, most of the meeting was concerned with an extraordinary list of “treats” that the office expected from lenders in exchange for placement on the preferred lender list, such as “happy hour with UT Loan department staff…lunch and/or dinner with Lawrence Burt, parties for Lawrence’s family (birthdays, etc.)…tequila and wine.” The full email states:

Don's response to what Larry Burt will not say but does expect from lenders who are at the top of the preferred lender list. These are the lenders who grow the business 20-30% annually:

1. 10 yearly visits expected by Top lenders - These visits must all include Larry Burt. The top lenders for UT provide UT staff with the following events: happy hour with UT FAO professional staff, happy hour with UT Loan department staff, staff luncheons, lunch and/or dinner with Larry Burt, parties for Larry's family (birthdays, etc.), invitations to golf tournaments (expenses paid by lender), and free tickets to sports events. Larry loves tequila and wine - since becoming director at UT Austin, he has not had to buy any tequila or wine - lenders provide this to him on a regular basis.

Bank of America - while I have increased the number of visits, I am not going to see Larry 10 times yearly. I do not golf, I do not have happy hours, I do not provide sports tickets, and only once have I bought Larry tequila.

2. Visits by Top Lender Management: These lender executives visit @ least twice a year: Access, CLC, Sallie Mae, Student Loan Xpress, University Federal Credit Union and Wells Fargo. These executives usually meet with all the FAO professional staff, not just with Larry and Don Davis- meeting only with Larry Burt is a waste of time. All of these top executives have become friends with Larry Burt - they get personal invitations to meet at Larry's home and many of these executives golf with Larry, Don and other staff members.

Bank of America: Everyone of the professional staff knows that Kathy Cannon is the top executive, but no one really knows Kathy Cannon, Alec Reinstadtler or Rhonda Metz.

3. School Advisory Reprsentation: The following lenders have Larry Burt on their advisory boards: Access Group, A+Med funds, CLC, Chase (for default prevention committee), NelNet, Loan Star Lenders, Student Loan Xpress, Sallie Mae, University Federal Credit Union, & Wells Fargo. Since Larry cannot attend all the meetings, he usually sends one of the other professional staff members as replacements. Most meetings are at exclusive resorts and golf is usually part of these board agendas.

Bank of America - has no school advisory representation

4. Pricing- Stafford/ Plus origination fee reductions

Access Group - offering 0 fees for all UT Austin disciplines

A+ Med Fund - offering 0 fees for all UT Austin graduate programs (Asked Don twice, gave same answer, surprised me)

CLC - offering 0 fees for all UT Austin disciplines

I asked Don Davis, even if a lender does all these things, it still does not explain how a lender is able to grow the business by 20-30%, especially since some of these lenders such as Student Loan Xpress, CLC are not know industry-wide. Don's response to me- some things I am not allowed to share.

Exhibit 4.

[7] “As to the issue of creation and maintenance of lender lists, the process was flawed. Dr. Burt effectively had sole decision-making authority as to which lenders were included on the list. The decision-making process was opaque, and the criteria used did not place primary emphasis on students’ interests.” UT Report, p.5.

In addition, the Bank of America representative's handwritten notes on which this email was based show that the numbers in the email reflect their importance to OSFS—in other words, pricing was the *least important* of factors. The handwritten notes also contain a note to "send food basket to Lawrence Burt. Have it delivered?"

When questioned about this document, Mr. Davis generally could not recall specific examples of the "events" he described in paragraph one. He also could not recall what he meant by the most ominous line in the account: "Don's response to me – some things I am not allowed to share."[8]

OSFS staff, and Dr. Burt in particular, evaluated lenders based on the level of inducements and "treats" they provided. In evaluative documents formulated by OSFS staff, lenders that provided perks to the staff were given a higher "visibility" score, improving their chances of making the preferred lender list. The Special Report discusses this dynamic:

> Sometime earlier in this decade, OSFS adopted a practice of tracking and charting the visits of student lender representatives to OSFS offices, but only when those visits included a food, snack, or entertainment benefit to OSFS staff members. The 'lender treats' list compiled from May 2005 – December 2005 is indicative of the items tracked. OSFS staff members were treated to ice cream, lasagna, barbecue, candy bars, popcorn, happy hours, birthday cakes, cookies, and other personal benefits. UT Report, 13.

A document entitled "050 Grad Lender List" describes the "visibility" score as "based on the number of lunches, breakfasts and extracurricular functions for entire OSFS staff." An attached list of "lender treats 050" lists a variety of meals and other benefits provided to OSFS staff during that year, including "happy hour at cedar door," "BBQ lunch," "fall buckets with goodies," and "Boatyard happy hour." UT Report, Exhibit I.

A March 11, 2005 "Lender Review" memo to Dr. Burt from a staff member describes the data on "visibility" included in attached spreadsheets: "This particular column of information [visibility] has the actual document used to house this information attached. Speaking of that information, it is approximately 90% accurate. Meaning, it does not include every single thing (i.e. candy and/or popcorn baskets) or every meeting." Exhibit 5. The attached "2004 Lender Review" document lists, under "OSFS Staff Lunch/Breakfast" that the University Federal Credit Union provided "massages" on September 9 and that JPMorgan Chase ("Chase"), Bank One,[9] and Sallie Mae participated in "Don's 30 year celebration." Exhibit 6 (presumably "Don" is "Don Davis," Dr. Burt's assistant).

---

[8] Interview with Don C. Davis, Associate Director, University of Texas Office of Student Financial Services, May 31, 2007.
[9] Now a Chase subsidiary.

Bank of America expense records show that the company provided UT staff with tickets to a Dallas Stars game in 2000, ice cream socials in August 2002 and June 2005 (at a cost of more than $350 each) , and "goodie bags" at the ice cream social. Exhibit 7.

The Special Report describes several communications between OSFS staff and lender representatives that juxtapose discussions of positions on preferred lender lists and "treats," creating an "appearance of impropriety that should have been avoided by all parties involved." UT Report, 14.[10] A Bank of America email uncovered by the Chairman's investigation similarly indicates how a culture of providing personal benefits to school officials can raise the uncomfortable appearance of a *quid pro quo*: "Kathy thanked Larry [Burt] for the business and we informed Larry that Alec will join us for ice cream social. Kathy mentioned Alec and Larry should maybe meet for golf game in the future." Exhibit 8.

After regulatory entities began to question the nature of such benefits provided to schools by FFEL lenders, OSFS staff began to be more careful in accepting "treats," as illustrated in a March 29, 2007 email exchange between Dr. Burt and Assistant Miguel Wasielewiski:

From: Burt, Larry [/O=AUSTIN/OU=AUSTIN/CN=RECIPIENTS/CN=BURTLW]
Sent: Thursday, March 29, 2007 6:52 PM
To: Wasielewski, Miguel V
Subject: RE: At some point...

It is not against the law or any regulation or guidance from the feds about having lunch brought in by a lender. Outings of various types are also allowed. Even attendance at advisory boards is acceptable. What is important is to apply judgment correctly about what is legal vs. what you might want to avoid, not because it is wrong but because some may interpret the act as being wrong. Of course if you solicit anything with the idea that a direct benefit will flow to the lender then you are performing an illegal act, no matter how small the dollar value.

Larry

From: Wasielewski, Miguel V
Sent: Thursday, March 29, 2007 12:46 PM
To: Burt, Larry
Subject: At some point...

Larry,

I would like to have a chat with you sometime soon to discuss lender stuff. Specifically, this is what I am concerned about:

1. Should we still accept lunches from lenders for the office?
2. Should we still accept lunches/dinners for select staff?
3. What about advisory boards?

My communications to lenders has been that we need to be more thoughtful about our interactions. Michelle's lunch was already scheduled. For new discussions, it seems like the right thing to do is tell lenders that it is not necessary to provide these benefits. Maybe we can have a chat about this.

Thanks,
Miguel

Exhibit 9.

2. Marketing Expenditures Out of Control

[10] See, *e.g.*, February 7, 2007 email from Access Group's Tom Ramaeker to Dr. Burt's assistant, Don Davis, UT Report, Exhibit J.

A Chase internal spreadsheet gives a sense of the scope and types of lenders' marketing expenditures. Chase's student loan unit spent more than four hundred thousand dollars in marketing expenses in 2005. Chase's expenditures on Bank's "custom school promotional items" between January 1, 2004 and December 31, 2005 include student gifts, University event sponsorship, and free entertainment for university financial service officials. Examples follow:

Date	Amount	Description
2004	$315	Cleveland Indians baseball tickets for clients within Northeast Ohio region.
2004	$656	Backpacks for students
2004	$300	Sponsorship of Eagle Golf Classic at Concordia University
2005	$512	Purchase of 200 "Koozies" and 50 deluxe "tee holders" for golf outing at Michigan Student Financial Aid Association conference
2005	$2,310	Purchase of 4000 yo-yos with logo for high school workshops
2006	$449	27 Jerzees Polos for Biola University
2006	$3,239	Printing costs for DeSales University marketing portfolio
2006	$2,247	500 Tee shirts for Dillard University
2006	$468	Golf towels for event at Florida Junior Community College
2006	$693	148 tee shirts for Grambling University
2006	$1,707	101 64MB USB flash drives for InterAmerica University Law School
2006	$2,147	CD replication at Keystone College
2006	$1,276	Rock climbing carabineers with Chase logo for Morgan State University
2006	$1,741	CD replication for Southeastern Louisiana University
2006	$1,055	200 tee shirts for Texas Southern University
2006	$1,174	405 foldable wallets for Ursuline College

Exhibit 10

Bank of America's marketing and promotional incentive expenditures directed at schools ranged from hundreds to tens of thousands of dollars. Expenditures in 2006 and 2007 include meals for university financial services employees, event sponsorship, and scholarship support. These expenditures include:

Date	Amount	Description
2007	$1,500	Meal for University of Central Florida officials at Outback Steakhouse
2007	$1,200	Meal for Florida International University employees at Texas De Brazil
2006	$5,000	Sponsor of Temple University golf tournament; in return Bank of America was provided "Recognition as Outing Garment Sponsor," "Signage at Garment Hole," and "Full Page Ad in Program."
2006	$11,414	Luncheon on Admitted Students Day at the College of William and Mary.
2006	$21,242	Sponsor of two UCLA "Regents Scholarship Receptions"
2006	$600	Clark Atlanta University's "13th Annual Jazz Under the Stars" concert
2006	$750	Designation as "partner sponsor for New Student Orientation" at Arkansas State; in return Bank of America was "automatically recognize[d]…on the daily agenda distributed to all students and parents and on the [New Student

		Orientation] web page."
2006	$650	To "offset the in-take expenses for incoming Freshman Class" at Hampton University
2006	$200	Donation to "help sponsor 2006 Homecoming Activities" at Southwestern Assemblies of God University
2006	$300	Catered lunch at Arkansas State University Financial Aid Office
2006	$500	Sponsor of Husson College's "Alternative Spring Break"

Exhibit 11

US Bancorp ("US Bank") also spent significant marketing funds on entertainment of school officials and sponsorship of school events. These expenses included the following items:

Date	Amount	Description
2004	$6,280	Support for Washington State University "Future Cougar Days" student recruiting event & purchase of promotional items/giveaways for the regionally televised opening home football game
2004	$800	Sponsorship of golf outing for Lakelands College
2005	$960	Meal for 15 school officials
2005	$475	Meal for five school officials
2006	$15,000	Direct access marketing to incoming students, Washington State University
2006	$1,000	Golf Tournament sponsorship, Mid America Nazarene University
2007	$13,000	Sponsorship for "Cincinnati XI," University of Cincinnati
2007	$2,300	Sponsorship of the "Chemistry Olympics," Southern Utah University
2007	$1,000	Alumni Classic Scholarship Golf Tournament, Utah Valley State College

Exhibit 12

Sales representatives of the College Loan Corporation ("CLC") provided various forms of entertainment to schools, including meals, golf and baseball tickets, and tickets to Cirque du Soleil.

Date	Amount	Description
2006	$504	New England CLC Holiday Party
2006	$275	Golf Tournament Tickets
2006	$494	"Dinner at conference w/key target schools to promote CLC loans"
2006	$644	"Dinner with key target schools" during financial aid administrator conference "to promote CLC"
2006	$450	"Dinner with Wyo[ming] Tech to promote CLC loans"
2006	$400	Holiday Party for Florida Career College
2006	$582	Holiday Party for Florida Career College
2006	$240	Golf outing with Manhattan College
2006	$65	Seattle Mariners game "with client"
2006	$396	Four tickets to Cirque du Soleil at the Bellagio
2006	$939	"[Florida State University] Disbursement"

Exhibit 13

NorthStar's marketing expenditures on schools included trademarked promotional merchandise, meals, and event sponsorship. The following table includes examples of such payments:

Date	Amount	Description
2002	$3,000	Northstar Bookmarks, George Washington Medical School
2003	$450	Global stress yoyos with Northstar logo, Medical College of Ohio
2002-2004	$5,600+	Sweatshirts for exit sessions, St. Louis University School of Medicine
2005	$800+	Lunch for pharmacy class, Lake Erie College of Osteopathic Medicine
2002-2006	$6,400	Taco Nights for new student orientation, New York Medical College

Exhibit 14

Internal documents show that lenders consider these expenditures to be an investment that will pay off in increased market share. For example, a Citizens Financial Group, Inc. ("Citizens") internal presentation describes strategy for increasing market share at International Business College in Indianapolis:

> provide school with all new collateral pieces. Maintain regular visits. Drop of Charter One giveaway items. Make sure that the FA staff is talking to the corporate office about us.[11]

In several situations, marketing investments "paid off" in a *quid pro quo* arrangement between lenders and schools. For example, a Citibank internal sales report, authored by the account manager for Hawaii and California, describes how the Chaminade University financial aid office requested that Citibank host receptions for admitted students in exchange for business:

> Hosted Chaminade Univ Admissions receptions at Citibank branches and [Director of Financial Aid] default vol[ume] to [Citibank subsidiary Student Loan Corporation] based on this support….global loan and admissions receptions to increase guaranteed share. Exhibit 15.

According to Citibank, Chaminade Financial Aid Director Eric Nemoto solicited various benefits from lenders, including expensive print jobs and consultants. At various points, Nemoto asked Citibank to host eight receptions for admitted students at bank branches – the receptions each cost the bank $2,000. The bank acceded to his request with the understanding that Nemoto would "increase [Citibank's] guaranteed share" of the school's loan portfolio. While the deal did not apparently work out in Citibank's favor (its loan volume actually decreased at the school the next year), entering into the quid pro quo agreement clearly violates the inducement prohibition.

---

[11] Citing concerns that the document quoted here contains confidential business information, Citizens has requested that the full document not be included in the appendix. Charter One is a Citizens Bank subsidiary.

Another Citibank student loan representative describes a quid pro quo arrangement between lenders and DeVry University:

> Despite [DeVry's] Corporate direction to move students to its own online comparison charts and remain lender neutral, many [DeVry] campuses act independently and push their own 'favorite' lender and print pieces. This status is typically awarded to those 'reps' that consistently help in the office and/or the lender providing the easiest access to private loan funds. Exhibit 16.

Student Loan Xpress documents indicate that the company maintained a "Great Xpectations rewards program" that rewarded schools for increasing loan volume through the company with "celebrations" for Financial Aid Office staff. For example, a May 4, 2006 email to Johns Hopkins describes the program:

GX-001_0406.pdf (113 KB) Top 1-100 List 06.pdf (12 KB)

Congratulations! You have exceeded our Xpectations for first quarter 2006. We are happy to announce that you and your staff will benefit from our Great Xpectations rewards program. Each quarter, Student Loan Xpress recognizes our top 100 volume producing schools with a special celebration just for you and your staff.

To Xpress our thanks, you and your staff will each receive delicious, hand-decorated cupcakes from Harry and David.

Please see the attached files for details and check to see where your school ranks.

Following are the rewards for the three levels:

Top 1-25: You and your staff will receive a celebration once a month for 3 months in a row. In addition, your dedicated Account Director will give you the opportunity to shop at The X Stop, our online premiums store. Your Account Director will contact you with details.

Top 26-50: You and your staff will receive two celebrations in two months

Top 51-100: You and your staff will receive a once a quarter celebration.

Congratulations again and thank you for your continued support.

Exhibit 17. Dr. Ellen Frishberg, Director of Financial Aid at Johns Hopkins University, received a similar mailing which listed the top 100 schools in Student Loan Xpress volume. Exhibit 18

A solicitation that the University of Southern California School of Dentistry sent to Northstar for donations to support a Student/Alumni Golf Tournament shows the school offering lenders an opportunity for “brand recognition” among students in exchange for sponsorship:

> We are asking USC affiliated vendors to help us by sponsoring holes or donating equipment or product for our raffle. Contributions from such companies have enabled organizers of the tournament to keep the cost for students and faculty at a minimum….Because of the increase in student participation and the large overall school participation, 140 players in each of the past four years, companies have also benefited. By sponsoring holes and/or donating raffle prizes, companies have been able to gain increased brand recognition amongst recent and future graduates of the USC School of Dentistry. Exhibit 19

A notation on the letter from Northstar indicates the solicited donation was “Paid…for $300.”

B. *Value-Added Services*

The Chairman’s investigation has shown that lenders routinely offer, and schools solicit, various services to schools as “sweeteners” in an effort to gain FFEL market share. The term of art within the industry for these benefits is “value-added services.” Many of these services do not fall within any exception to the inducement prohibition. For example, an item in a Request For Information issued by St. Louis University to set the preferred lender list reads “[w]hat other value-added services do you provide directly to schools? Please include discussion about publications, mailings, calling campaigns, attending college events i.e. Open House…training and any other tools you would offer.” Exhibit 20.

An exchange between Northstar and an official at the University of Puget Sound demonstrates the hazards of a school soliciting even basic “favors” from a lender. The University official writes:

> [w]e are hosting the NICBOA [Northwest Independent College Business Officers’ Association] conference at [University of Puget Sound] in March for approximately 80 people. We were wondering if you could donate any T.H.E. pens, pencils, note pads, magnetic clips or post-it notes to add to the ‘care packages’ for our meeting.

A supervisor instructs the sales representative about how to respond:

> You will want to note that the school’s volume was pretty low this past year (just slightly above 250K), but maybe there is ‘opportunity’ for us to get into the school with a presentation (quid pro quo). Exhibit 21

1. Banking Services

Many banks that are FFEL lenders offer schools various commercial banking services in an effort to gain FFEL market share.

For example, a Citizens Bank presentation entitled "Education Finance, Northeast 2007 Strategic Business Plan" describes commercial banking as part of a strategy for gaining market share at a "top prospect," the University of Connecticut: "We've enjoyed a long relationship with a fair amount of Stafford volume…Concern is no other banking relationship."[12]

An internal Chase presentation describes providing banking services to schools as "Strategic Trends:" "cross promote retail banking products including ATMs and bank branches." Exhibit 22. Another strategic discussion of how to capture loan volume counsels: "Leverage student loan business by delivering Bank products and services to targeted schools." Exhibit 23.

The same presentation describes the bank's strategy to gain market share at historically black colleges and universities ("HBCUs"): "HBCU VAS [value-added services] to include development of partnerships with HBCUs to help them generate revenue and increase our loan volume. Deliver banking services to HBCUs." Exhibit 23. Another document describes "[a]dditional strategies" for gaining student loan market share at HBCUs: "identify HBCUs with Chase Banks nearby and deliver banking services to faculty, staff and students" Exhibit 24. FFEL lenders should compete for schools' loan business only on the basis of loan terms – neither helping the school "generate revenue" nor "deliver[ing] banking services" are relevant.

Checkboxes on Chase's "Proposal Request Form," filled out by sales representatives when seeking approval for a certain marketing approach, demonstrates that the bank uses banking services as bargaining leverage with schools. Listed on the form as options for services to be offered to the school are "Retail Banking Products: Affinity Credit Cards, ATMs on Campus, E-funds Card, E-Funds flyer with School logo…" Exhibit 25.

2. Printing Services

Lenders routinely pay for expensive printed materials– known in industry parlance as "collateral" – that financial aid offices distribute to students. Such print pieces include brochures presenting lending options, listing preferred lenders, guides to higher education financing, and advice on managing debt. This widespread industry practice often involves significant expense – for example, Bank of America spent more than $4,500 on a single print job for Bastyr University in February 2004, more than $6,000 on a print job for University of Southern Maine in January 2006, and $8,777 on a print job for Mansfield University in December 2006. Exhibit 26.

When lenders offer printing services as a bargaining tool to gain market share at schools, such services violate the inducement prohibition. For example, in an internal request to Citizens to print Marist College's "Graduate Booklet," a sales representative writes

[12] Citing concerns that the document quoted here contains confidential business information, Citizens has requested that the full document not be included in the appendix.

> please send the school a pdf file when complete. We're trying to get on his PPL [misspelling of "PLL," short for "preferred lender list"] and he asked that we create a mock up of what we could provide his Graduate and Cont. Ed students. Exhibit 27.

A similar entry concerning a print request for SUNY Ulster County Community College states: "This is the first time we have been asked by the school to do a print piece. I am looking to grow the volume with this school as we are a PLL." Exhibit 28. Another Citizens strategy presentation explicitly discusses print services in marketing terms: "Keystone College: Strategy to increase market share: printing both the Stafford and PLUS MPN wrappers." Exhibit 29.

Giving lenders such close involvement in generating materials on which students rely for impartial, unbiased information about loans raises concern. Internal lender documents show that lenders who provide printing services may have their own bottom line at heart, rather than providing unbiased advice to students. Internal notes from a SunTrust student lending employee entitled "April 2003 Volume Decliners" shows how the lender responsible for printing the list can manipulate its contents for its own benefit:

> Tallahassee Community College: BOA [Bank of America] had printed a lender list moving SunTrust to obscurity on it. We just had the list reprinted moving us into the top tier lenders so we should see improvement soon.[13]

An email from a Northstar representative to a school official illustrates an appropriate response to such requests:

> One item you asked me about was 'printing your lender list.' We definitely appreciate you asking but, this is not something THE typically does. Total Higher Education (THE) as a non-profit prefers to direct its resources toward borrower education, debt management, and other pieces to facilitate students making wise borrowing choices. Exhibit 30.

3. Counseling

The Chairman's investigation has also discovered that, in many cases, services provided by lenders that appear to fall within the exception to the inducement prohibition are actually used as an opportunity to market to students. Specifically, schools often "contract out" to FFEL lenders their duties under section 485 of the HEA (20 U.S.C. 1092) to provide exit counseling to student borrowers, and lenders frequently use this opportunity to market loan products to students rather than offering unbiased financial advice as the statute and regulations prescribe. When counseling services provided by lenders include a marketing pitch to the counseled student, such services violate the inducement prohibition.

[13] Citing concerns that the document quoted here contains confidential business information, SunTrust has requested that the full document not be included in the appendix.

A Citibank internal sales report describes marketing during entrance sessions as a part of its “Key Strategies”:

> Key Strategies…Secure strategic entrance sessions (where students select lender)…Early high school out reach thru PTA presentations-FAFSA workshops-Guidance counselor and student credit-budget workshops. Exhibit 15.

A College Loan Corporation strategy presentation describes how marketing to students in entrance sessions paid off in increased loan volume:

> POS [Point-of Sale] Successes…Entrance Sessions: [University of Texas, El Paso] – 90 students in 1 week, [Texas A&M University, Corpus Christi] - $1M in 3 weeks by walking students through the entrance/lender selection. Exhibit 31.

Other College Loan Corporation documents illustrate that the company considers exit and entrance interviews to be important marketing opportunities:

> Wyoming Technical Institute – although the jury is still out, it appears that this will be a huge success with PLUS [Point of Sale]. Parents are presented with a CLC pre-approval form during the student recruiting process. The 3 campuses are pushing our pre-approval form via the financial aid office as well… Exhibit 32.

The same document shows that CLC viewed call center services provided to financial aid officers as an opportunity to market its products to students. CLC made its call center resources available to financial aid offices as a source of ostensibly neutral financial advice to students. For example, the operator’s greeting to students calling the designated line indicated that “your personal loan consultant will assist you with financing your…education.” Exhibit 33. However, a presentation on “POS [Point-of-Sale] Successes” makes clear that CLC intended the call-in line to serve as a marketing opportunity, not a neutral source of advice:

> Fort Hays State University – vanity PLUS ‘800’ number received positive reviews from the FA office even though the volume was lower than anticipated. We have earned the school’s trust to now move from an information/lender counseling tool to an aggressive loan business opportunity for CLC in 2006. Exhibit 32.[14]

A September 2006 Chase presentation also describes online entrance and exit counseling as a marketing opportunity for the bank. A slide discussing the popular internet-based exit counseling products “CollegExit” (Chase’s online entrance and exit counseling

[14] CLC describes the “vanity line” service as providing “assistance to schools from CLC’s existing call center. This assistance may allow CLC call center employees to identify the school a student is calling from and provide assistance that is more focused to that school’s processes.” Letter from CLC to Committee staff, April 25, 2007.

business which has been discontinued) and “Mapping Your Future” (an independent company) states that

> Upon completion of Exit Counseling sessions students will be redirected to chaseconsolidation.com for information on consolidation. Upon completion of Entrance Counseling sessions students will be redirected to a Private Education site for information on supplemental funding.” Exhibit 34.

The “enrollment agreement” form between schools and Collegexit contains the following option for schools which sign the agreement:

> The University will direct students that inquire about student loan consolidation to the Collegiate Funding Services LLC micro site via the school site. Collegexit shall provide the online entrance/exit interview service to the University at no cost during the term of this Agreement. Exhibit 35.[15]

A June 2002 Suntrust internal email shows, at best, financial aid officers standing by while students at a loan workshop are deprived of meaningful lender choice. At worst, the email implies a quid pro quo between the school and lender, in which a captive audience is provided in exchange for conducting a “Loan workshop:”

> …campus has asked me to present at a large Loan workshop later in June. This workshop is required for all new students and some old will be there. This is when applications are handed out and a lender is selected. AMEX did this last year, this is why they had all the volume. Exhibit 36.

4. Other Services

In a March 13, 2003 response to Duquesne University’s solicitation of lenders for a school as lender contract, PNC Bank provided free legal advice as a deal “sweetener.” The letter, a “joint response” with the Pennsylvania Higher Education Assistance Authority, states that “PNC…shall make its Washington. D.C.-based Higher Education Act counsel available independently to the University. Access to this legal counsel will be at no cost to the University…” Exhibit 37. Rather than enjoying free legal services, school officials could have bargained with PNC for the equivalent value to be used to increase borrower benefits for students.

An internal email demonstrates that not all financial aid officers accepted lenders’ offers of services irrelevant to borrower benefits. Emails between marketing reps show that a financial aid officer at Brooklyn Law School –

> expressed serious concern regarding…rep’s attempts to pressure her and her direct report (VP) into increasing their market share. [She] outlined these items to include: insisting that [the lender] do special projects for the school in order to provide the school with better benefits. [Lender] asking why their market share wasn’t growing

[15] Collegiate Funding Services, LLC (“CFS”) is a JPMorgan Chase subsidiary. This document was authored prior to Chase’s acquisition of CFS.

> and what they would do to increase it. [Lender] rep didn't like taking no… Exhibit 38.[16]

An internal Citizens Bank document describing strategies to increase market share at University of Connecticut also demonstrates appropriate resistance by school officials to lender offers of inducements: "Tough to show extra love since they are very strict on inducement laws." Exhibit 39. However, a similar strategy document listing "Recent PLL [Preferred Lender List] Additions" describes the financial aid office at the University of the Arts in the opposite light (as well as showing that the Bank offered advisory board positions as a strategy to increase market share, discussed in a later section of this report): "Chris, DFA [Director of Financial Aid], is all about customer service to his team. We will provide training opportunities. Chris invited to be Advisory Board member." Exhibit 40.

IV. Lender Advisory Boards

Federal law and regulations prohibit lenders in the FFEL program from offering, or school officials from accepting, membership on a lender advisory board in exchange for preferential treatment of that lender, including placement on the school's preferred lender list or heightened ranking on the list. The Chairman's investigation into industry marketing practices has uncovered evidence showing that lenders have offered positions on advisory boards to school officials as a *quid pro quo* for preferential treatment.

A. *Citibank-University of Texas quid pro quo*

Citibank's student lending unit, the Student Loan Corporation ("SLC"), offered membership on its advisory board to Dr. Lawrence Burt, at the time Director of the Office of Student Financial Services at the University of Texas, in exchange for a position on the University's preferred lender list. In an internal Citibank "retail sales update" presentation from 2005, several slides outline "top opportunities for 2006 sales year," one of which is University Texas at Austin. In the "Key Issues" section of that presentation, an account manager writes: "[Citibank] removed from undergraduate lender list for '05-06. DFA demanded activities that were not deemed business appropriate for this industry."[17] Exhibit 41.

Under "Key Strategies/Tactics," the author proposes the following, with an "implementation date" of November 2005:

> Gain lender list inclusion by inviting DFA to become member of Citibank's CEFLC [advisory board]– this will provide some activities that DFA demands in an appropriate manner and actively involves [Citibank student lending unit] senior management. Exhibit 41.

[16] The FFEL lender mentioned disputes this account. After the Committee obtains further information, this situation will be discussed in further detail in a future report.

[17] "DFA" is student loan industry parlance for "Director of Financial Aid." Prior to 2005, Citibank had been on all of the University's preferred lender lists. Interview with Citibank attorney, May 5, 2007.

Citibank acknowledges that it offered Dr. Burt a position on the advisory board, and he accepted.[18] The bank's "Key Strategy" appears to have succeeded: a July 19, 2006 "Territory Sales Strategy Planning Tool" presentation notes that Citibank was "added back to UG [undergraduate] list for 06-07 and included on G/PLUS and Grad PLUS [lists]." Exhibit 42. Citibank appears on the University's undergraduate FFEL, graduate FFEL, graduate PLUS, and private loan preferred lender lists as of March 19, 2007. Exhibit 43. The bank's "investment" in Dr. Burt paid off – Citibank was the 5th largest lender in terms of FFEL volume at the University in 2006.

After the marketing report noted Dr. Burt's inappropriate demands, Citibank not only offered him a spot on its advisory board, but also spent more on his entertainment, including at least four golf outings which cost about $200 per person and several meals at expensive restaurants.[19] Citibank and/or its employees also made several contributions to charities designated by Burt.[20] When interviewed, Burt did not recall asking Citibank for any favors in exchange for placement on the lender list.[21]

Citibank indicated that, while Dr. Burt did not explicitly demand favors in return for preferential treatment, its employees "understood" that lenders had to provide such favors to Dr. Burt if they wanted access to the University's preferred lender list. According to Citibank, Dr. Burt had a "reputation in the industry" as expecting lavish business entertainment.[22] It is not hard to believe that an implicit understanding existed in the industry about Dr. Burt's entertainment expectations, given the account later in this report of the culture at the University of Texas Office of Student Financial Services. However, given that a contemporaneous written record of meetings with Dr. Burt notes that he "demanded activities that were not deemed business appropriate for this industry," it is difficult to credit Citibank's account that Burt did not explicitly request the favors. (emphasis added)

In summary, documents show that (1) sometime prior to the 2005-2006 academic year, Dr. Burt demanded favors that Citibank deemed "not…business appropriate for this industry;" (2) because it did not provide such favors, Dr. Burt dropped Citibank from the University's undergraduate preferred lender list for the 2005-2006 academic year; (3) Citibank sought restoration of its place on the list by inviting Dr. Burt to serve on its advisory board, providing expensive business entertainment, and making contributions to charities of Dr. Burt's choosing; and (4) these efforts were rewarded when Dr. Burt restored Citibank to the undergraduate preferred lender list in 2006.

In addition to his service on the Citibank advisory board, Dr. Burt served on an array of other boards. Dr. Burt was also on an advisory board for Opus Financial (which sold the "A Plus" and MedFunds loan products) through at least 2004. Dr. Burt attended two

---

[18] Interview with Citibank attorney, May 5, 2007.
[19] Interview with Citibank attorney, May 5, 2007. Dr. Burt's assistant Don Davis also occasionally attended the dinners.
[20] Interview with Citibank attorney, May 5, 2007.
[21] Interview with Dr. Lawrence Burt, May 15, 2007.
[22] Interview with Citibank attorney, May 5, 2007.

advisory board trips in connection with the Opus Financial advisory board, one at the Atlantis hotel in the Bahamas in February 2002 and another in Las Vegas at the Venetian Resort Hotel Casino in November 2004.[23] Travel records for the Las Vegas trip were included in the documents collected by the University in its investigation. Exhibit 44.[24] Other documents discovered by the Chairman's investigation show that, in addition the advisory boards listed in the University of Texas Special Report, Dr. Burt served on boards for Access Group, College Loan Corporation, Nelnet, LoanStar, and University Federal Credit Union. Exhibit 44.

B. *Advisory Boards and Industry Events as Marketing Tools*

Internal documents and emails show that lenders view advisory boards as marketing tools to expand market share at board members' schools. Whether or not an explicit quid pro quo exists, when lenders seek to use advisory boards to curry favor with school officials and provide lavish perquisites to those officials, the risk of illegal quid pro quo is high.

For example, in a Citizens Bank "2007 Strategic Business Plan" presentation, an entry on Rutgers University in a section entitled "2007/2008 Top Prospects" notes, under "Strategy," that

> Courtney McAnuff [Rutgers Vice President for Enrollment Management] is an advisory board member. Leverage both Michael and HESAA [New Jersey Higher Education Student Assistance Authority, a nonprofit guaranty agency] relationship. Exhibit 46.

This document indicates that Citizens considered McAnuff's advisory board membership to be an asset in seeking to increase market share at Rutgers.[25]

In a spreadsheet containing information on schools at which Citizens aims to gain market share, an entry concerning Indiana Institute of Technology reads:

> Current State – 2005: DFA is on our advisory board and she has committed to choosing Charter One [Citizens subsidiary] for her students when they do not choose for themselves.
>
> Current State – 2006: School has committed further to give us volume by processing loans through Charter One [Citizens subsidiary] when a students [sic] doesn't choose a lender.
>
> Future State – Strategic Plan: Find ways to gain volume at school. Build on current relationship.

---

[23] Interview with Opus Financial attorney, May 15, 2007.

[24] These travel records also reflect additional advisory board meetings attended by OSFS staff. See *e.g.* Loan Star Committee Meeting (attended by Sam Riley), November 2004; Nelnet Advisory Board Meeting (attended by Sam Riley), January 2004; College Loan Corporation Advisory Board Meeting (attended by Sam Riley), February 2005; Collegiate Funding Services Advisory Board Meeting (attended by Don Davis), November 2003. Exhibit 45.

[25] Citizens advises that it has no FFEL loan volume at Rutgers.

> Action Steps: Addition to the alternative [preferred lender list]. Possible scholarship.[26]

In addition, the mention of "possible scholarship" indicates that the Bank viewed offers of scholarships as a marketing tool – this practice will be addressed in a future report.

A "Michigan Territory Analysis" written for a Midwest Regional Team Meeting in July 2003 describes prospects for gaining loan volume at Eastern Michigan University: "Derrick, Michael and I have worked EMU hard, but to no avail yet. Normally, they are very committed to Sallie Mae but the DFA has expressed interest in MSF. The VP i[s]on our advisory board." Exhibit 47.

While advisory board meetings are frequently described by lenders as forums in which experienced professionals share their views, internal documents show that lenders select school officials as candidates for advisory board positions based, at least in part, on factors having nothing to do with their expertise but everything to do with business opportunity – including the FFEL loan volume to be gained at that school and the importance of that school as a marketing target.

For example, internal documents from Chase's student loan unit show that the opportunity to gain market share is a significant criterion in choosing advisory council members. A chart listing candidates for advisory board membership notes, with regard to Boston College,

> Key School. Just added to M&H list. Mary [McGranahan, Director of Financial Aid] not likely to accept but Assoc[iate Director of Financial Aid] is driver of business here. So if Mary turns us down [for the advisory board], please ask [Associate Director] Melissa Metcalf. Exhibit 48.

For advisory board candidates in the chart, the author notes whether or not Chase is on the preferred lender list at the relevant school. For example, concerning Texas Christian University, it is noted that the school "removed Chase from list…Mike [Scott, financial aid director] declined [advisory board membership offer]." Exhibit 49. Other entries in the list, created in early 2006, indicate that James Madison University is "considering putting us on the list" and that Yale is a "Key target school." Exhibits 48, 49. In September of that year, as described more fully in a later section of this report, Chase also paid James Madison's Associate Vice President of Student Affairs Zebulun R. Davenport $2,000 in consulting fees in September 2006 for work on an "internal sales meeting."[27] Another list of Chase advisory board members contains a column headed "Federal PLL," noting whether or not Chase is on the FFEL preferred lender list ("PLL") at the member's school. Exhibit 50.

---

[26] Citing concerns that the document quoted here contains confidential business information, Citizens has requested that the full document not be included in the appendix.

[27] Summary materials provided by JPMorgan Chase. Dr. Davenport is now at Northern Kentucky University.

Citizens also considers its sponsorships of entertainment at industry conferences, such as meetings of the National Association of Student Financial Aid Administrators, as opportunities to gain market share at attendees' schools. For example, an entry in the "Top Prospects" document concerning St. Bonaventure College in New York states, under the heading "Strategy,"

> Gail Quinn, Financial Aid Counselor handles the front line lender visits. We've also been able to secure meetings with the director Elisabeth Rankin. Both were our guests on the NASFAA dinner cruise. Exhibit 51.

If a lender offers advisory board membership to a school official with the goal of expanding the lender's business at that school, such offer constitutes a violation of the inducement prohibition. While school officials who join advisory boards may have no intention of giving preferential treatment to the lender sponsor, the risk of quid pro quo arrangements, as well as the appearance of a conflict of interest, should deter officials from participating in advisory boards which provide any substantial travel or entertainment benefits.

C. *Advisory Board Expenditures*

Finally, the amount of money lenders spend on lavish advisory group trips raises concerns about waste and creates the appearance of a conflict of interest.

1. Citizens Bank

Citizens Bank held several lavish meetings for advisory board members and, in some cases, their spouses in 2005 and 2006.

- The Bank flew the advisory board to the Sanctuary Resort in Phoenix, Arizona for a three-day meeting from April 27 to 29, 2005. The total cost of the trip was almost $43,000. Guests took a jeep tour at a cost of $450, played golf, for which Citizens paid more than $2,000, and were treated to spa treatments which cost more than $1,500. Citizens spent more than $15,000 on food alone. Exhibit 52.

- In fall 2005, Citizens hosted an advisory board meeting at the Four Seasons Hotel in Philadelphia at a total cost of more than $23,000. The bank paid more than $9,500 in dining expenses, including a meal at the renowned French restaurant Deux Cheminees, and paid for advisory board members to attend a Phillies baseball game in a luxury suite ($2,935). Members also took advantage of spa treatments at the Four Seasons at a cost of $1,986. Exhibit 53.

- Citizens hosted a February 2006 advisory board meeting at Disney World. Costs for the trip totaled $41,645. Citizens paid for board members to tour various Disney parks at a cost of $1,245.16, golf ($464.34), and other gifts ($1,318.22). The company also paid for members to attend a Disney course on customer service standards at a total cost of more than $9,000. The meeting concluded with a dinner at Emeril's Restaurant at a cost of more than $4,100. Exhibit 54.

- Advisory Board members enjoyed luxuries similar to previous meetings at an October 2006 board meeting in Portland, Maine. The total cost of the trip was more than $31,000, and Citizens spent $16,754 on members' dining alone. Citizens covered spa treatments for various board members totaling $1,176. Exhibit 55.

2. Chase

Chase also hosted several expensive outings for its advisory council, including:

- A trip from October 3-5, 2006 to San Diego, CA at a total cost of $45,563. Food and beverage costs alone were almost $18,000. Exhibit 56.

- A trip from November 15-17, 2006 to Phoenix, AZ at a total cost of almost $39,000. Council members stayed at the Caleo Resort and Spa. During more than six hours of "free time in Phoenix" on the second day of the trip, council members chose between a "golf outing" ($952) or a "jeep tour" ($1335). Exhibit 57.

- A trip from May 17-18, 2006 to Dallas at a total cost of $33,463. Exhibit 58.

3. Citibank

Citibank paid for its advisory board members to meet in Charleston, South Carolina, Marco Island, Florida, and La Jolla, California. The total cost of these trips was more than $15,000, $19,000 and almost $23,000, respectively. Joseph Russo, financial aid director of the University of Notre Dame, was an attendee on each trip. Citibank has had more than 51% of Stafford loan volume at Notre Dame since 2001 (rising to 57% recently). Exhibit 59.

4. Nelnet

Nelnet sponsors several advisory councils, including a School Advisory Council, an Alumni Advisory Board comprised of representatives from school alumni associations, the Health Solutions Advisory board, comprised of officials from medical schools nationwide, and the Innovation Council. Members of the Innovation Council are rewarded for their service with a "points" system which can be redeemed for Nelnet contributions to the member's school of choice. A letter to "prospective Nelnet Innovation Council members" asks:

How does Nelnet compensate members for their service on the Council?

- Nelnet may reimburse industry conference fees and expenses for Council members.
- Nelnet grants Council members a right of first refusal on pilot tests of new products and services.
- Nelnet grants Council members rebates for Nelnet products and services.
- Nelnet makes donations to the Council members' alma mater or college / university of choice.
- Council members earn credits for their participation. Credits can be earned for the following activities:
  - Contribution of an idea for a product or service – 25 credits (up to 100/year)
  - Attendance at a Web cast – 50 credits (up to 500/year)
  - Completion of an online survey – 25 credits (up to 100/year)
  - Submission of an industry conference summary - 100 credits (up to 200/year)
- Council members can redeem their credits for a donation to the member's alma mater or college / university of choice. Each credit is good for $1 in donation.

Exhibit 60.

Charitable activities undertaken by FFEL lenders, including donations to institutions, are laudable. Providing donations in exchange for attendance at advisory board meetings, however, raises an unacceptable appearance of conflict of interest, thus violating the spirit of the inducement prohibition. When lenders pay or provide benefits to school officials for service on advisory boards (over and above expense reimbursement), there is a significant risk that students and parents will begin to question whether their school officials are really serving as neutral sources of information and advice for lenders, or whether they are quasi-employees of that lender and are incentivized, through compensation, to market that company's products.

5. Northstar

a) Advisory Board

Northstar accounting records reflect that the company spent more than $350,000 on "advisory board expense categories" for 2005 through 2007. NorthStar's "THE Advisory Committee" traveled from October 12-14, 2005 to the Eldorado Hotel in Santa Fe, New Mexico. Members were treated to dinner in the Presidential Suite of the hotel upon their arrival, a Santa Fe historic walking tour the next afternoon, and "Dinner at the Home of a Prominent Santa Fe Painter" that night. The next afternoon members went on two hour a "Guided Tour of Canyon Road – Art, Artists, Galleries" and were treated to dinner at "The Compound."[28] Exhibit 61. The total cost of the meeting was more than $49,000. Exhibit 62.

NorthStar had a particularly extensive advisory board program, maintaining not only a national advisory committee that met twice a year but also committees in the East, Midwest, South and West regions.

[28] Materials provided to Advisory Board members describe the restaurant: "creating a 'great restaurant in the southwest' and drawing on experiences in kitchens throughout the world, Mark Kiffin's menu combines contemporary American with southwestern and Mediterranean overtones. Superb dining experience." Exhibit 61.

b) “Mentor” Program

NorthStar also maintained a “mentor program” in which school officials on Northstar’s advisory board agreed to promote Northstar to targeted schools. In exchange, the mentors’ schools received a “quid pro quo,” usually consisting of “value-added services” provided by the company. In an August 9, 2006 email entitled “Brain storm around mentor program,” a Northstar employee describes the intent behind the program:

> perhaps a mentor can choose 3 things out of the 5 listed…providing they accomplish the 2 or 3 items chosen by them, they get to choose something from the list below…Things we are willing to provide, need to be a quid pro quo, have value to the school, and match the business resources with ‘reasonable’ cost…Next step is to test this concept out on the national advisory members only…our objective is we have a list of thoughts the National members, many of which are signing up to be mentors, say yes, looks good to me. Exhibit 63.

The email continues, discussing goals of the program and “things we are willing to provide:”

Things we would like to accomplish:

- Case studies by discipline, premier schools
- Explain 4 value pillars to invited schools and what they mean to the mentor school, both pro’s and con’s.
- Determine pre/post use of THE around success metrics, quantitative measures, (errors, phone calls, complaints, etc.)
- Measure THE and other existing lenders being used with the NASFAA how to score a lender document
- Explain how the bonus of THE is working at your school and how to educate students around the “unique” program

Things we are willing to provide (ideas only…..)

- Simple survey using on line web tools for up to 100 students with 10 questions, focused on what a student wants to learn around lenders/loans/debt management. Content is secured for each individual school; we assist setup and question structure for on line tool. (Deb checked this out; our out of pocket cost is zero to use with these criteria per school.)
- Assistance in Web review around best practices, review is limited to our expertise, the current FAOffice web portion of your web site.
- Creation of a configurable lender list web page, you have the ability to modify directly from your desktop, based on user log on security, this is not a THE lender list. Built to hold any lender, not just THE. Uses best practice to educate students on choosing a lender.
- Assistance in creation and/or graphic design of materials to be used around education of students of how to chose a lender, and/or used for “in school” sessions, in addition it existing entrance/exit sessions.
- A “best practice” review around a potential ideal state of how to process loans, and the steps required to achieve this platform design. This is above and beyond our normal operational review. (Example, many of our top schools prefer the advantages to using Scholarnet, how to convert from Elm to Scholarnet, pro’s and con’s of conversion, potential cost savings)

Exhibit 63

Later communications show the mentor program in action. In a September 18, 2006 email entitled "Mentor Program at the Regional Advisory Meeting," a Northstar employee alerts colleagues that

> there will be some new faces present as 'invitees' for this meeting [of the Western Regional Advisory board] only – these folks are not yet being asked to join the advisory group permanently. In addition, current members of the Western Regional Advisory group will be acting as mentors for the invitees. Exhibit 64.

The two new invitees are officials at Yo San University of Chinese Medicine and Harvey Mudd College – their designated mentors are officials from the University of the Pacific and Occidental College, respectively. The author writes about the hopes for the mentor program:

> What we're trying to do is get some new folks in with the desire that they'll want to get to know us better (in the volume sense of the word). Exhibit 64.

In an October 12, 2006 email, a Northstar employee thanks the Financial Aid director of Rush University for "mentoring" another financial aid officer:

Thanks again for offering to mentor [redacted] Executive Director of Student Services, at the University of Nebraska Medical Center. You agreed to share with [redacted] information on the T.H.E. bonus program, how you explain it to students, how you educate students around the unique program, how you incorporate in qualification rates, how you utilize the cost of borrowing charts, and how you help students choose a lender. In addition, you might talk with her some on our value pillars which are:

Savings to Students: Zero Fees, Consistently paying the Bonus
Ease of Processing: Customer Service, Loan Process
Educate Customers: How do you educate your medical students about the best financing options?
Debt Management: How do you educate students/families so they are successful in repayment?

In return, T.H.E. would like to do something for you. Some ideas that we have are:

1) Provide a simple survey using an on line web tool for up to 100 students with 10 questions, focused on what a student wants to learn around lenders/loans/debt management. This survey will be secure and the results will only be shared with Rush University
2) Assistance in creation and/or graphic design of materials to be used around education of students on how to chose a lender, and/or to be used for "in-school" sessions
3) A best practice review around the ideal state on how to process loans and the steps to achieve this platform design. This would include pros and cons of various SBS systems and cost/benefit analysis
4) Assistance with Web review and web site layout for the financial aid office

Exhibit 65

The financial aid director replies: "as far as the offer of help in other areas, right now I'm thinking that the offer to help with a parent application might be the most useful. At the same time I will be asking for some revisions to the student application." Exhibit 66.

Northstar's agreement with its advisory board members requires the members to commit to "engage in a mentor relationship once every three years." Exhibit 67. Followup correspondence sent by Northstar to Advisory Board attendees indicates that the company views the Boards and the mentor program as an opportunity to gain market share at officials' schools:

Subject: T.H.E. Fall 2006 Advisory Meeting Recap

Attachments: Fall 2006 T.H.E. Advisory Meeting Summary.doc
Total Higher Education (T.H.E.) would once again like to thank you for your participation in the fall 2006 Advisory Meetings. As stated during the conclusion of our time together, T.H.E. would like to provide the enclosed comprehensive summary of our discussions.

We highly value your time and all of the input on the issues and/or concerns expressed during all of the Advisory Meetings. Listening to the items which may be preventing schools from achieving their goals, and lining these up with T.H.E.'s value pillars and our mission statement of returning more money to more students, we have identified numerous capabilities to continue improving, as well as a few new ones for the future. The enclosed summary represents our current thoughts as we wrap up another successful round of advisory meetings.

Your school relations rep. will be in contact with you to discuss the next steps in the mentor relationship being established, as well as the next steps you may decide to take as you further evaluate the potential use of T.H.E. as a valued lender to return more money to more students.

Exhibit 68

V. Individual Financial Interests

Some lenders have offered school officials financial interests in the lender in exchange for preferred lender list position, increased market share, or promotion of the lender's products to students. Any link between a school official's personal financial interests and the commercial success of a student loan company presents an appearance of conflict of interest.

A. *Financial Interests In a Lender*

The investigation has revealed that, on several occasions, FFEL lenders have offered school officials financial interests in their companies. In many cases, these lenders appear on the preferred lender list at the school. Much of the public attention directed at the relationship between FFEL lenders and school officials has been prompted by several school officials' ownership of shares of stock of in FFEL lender Student Loan Xpress. Since these transactions have been described publicly in detail, this report will only summarize the historical context of share ownership.

1. Student Loan Xpress

Several school officials held shares in Student Loan Xpress (a subsidiary of CIT) at the same time that the company appeared on their school's preferred lender lists. Other school officials received consulting fees or other compensation from the company when it appeared on their school's preferred lender lists. Several of these officials also participated in marketing activities on the company's behalf.

At the end of 2001, just before assuming the chairmanship of Student Loan Xpress, [29] Fabrizio Balestri acquired privately placed shares in the company's parent[30] and promptly sold them to, among others, Dr. Lawrence Burt, Director of the University of Texas at Austin Office of Student Financial Services,[31] Catherine Thomas, Director of Financial Aid at the University of Southern California, David Charlow, Director of student financial aid for Columbia's undergraduate college and engineering school, and Matteo Fontana, who joined the division of Federal Student Aid at the U.S. Department of Education in November 2002. Dr. Burt sold his shares, purchased for $1 per share from Mr. Balestri, in 2005 at a net profit of approximately $18,050. UT Report, p.16. Dr. Charlow is not cooperating with the Chairman's investigation, so the value he obtained from sale of his shares is unknown. We have not yet ascertained when and for how much Ms. Thomas sold her shares.

a) Dr. Lawrence Burt, University of Texas at Austin

The Chairman's investigation has ascertained that Student Loan Xpress appeared at the top of the University of Texas preferred lender lists while Dr. Burt owned shares in company. The Report's discussion of Student Loan Xpress' ranking on the University's preferred lender lists is worth quoting at some length:

---

[29] Fabrizio Balestri previously managed the student lending unit of American Express ("AMEX") and, prior to that, worked for Direct III Marketing, Inc, founded by Robert DeRose. In October 2001, AMEX ended its involvement in the student loan business, and Student Loan Xpress was launched at about the same time.

[30] Student Loan Xpress's parent company was originally named Direct III Marketing, later renamed Education Lending Group. Before Mr. Balestri began work at Student Loan Xpress, Mr. DeRose initiated a sale of Direct III Marketing shares offered only to a select group of sophisticated investors, as required by securities regulations. Such a transaction, in which shares in a public company are not offered to the general public, is typically known as a "Regulation D" private placement. These shares may only be sold to "accredited investors," typically wealthy individuals, corporations or pension funds. Purchasers of the shares in the private placement, as well as Burt, Charlow, Thomas and Fontana, acquired them at $1 per share, a significant discount from market value – CIT has indicated that the stock was trading around $2 in late 2001, and a letter from Mr. Balestri to purchasers dated January 11, 2002 indicates that the stock was trading at $2.69.

[31] The Special Report notes that Dr. Burt purchased private placement units in Direct III Marketing (the parent company of Student Loan Xpress) from Mr. Balestri on December 31, 2001 and paid for these units in three separate cash payments: one in the fall of 2001 and two in the spring of 2002.

Dr. Burt asserted that he was willing to put Student Loan Xpress on the lender lists, even as a new lender, because in his words it was "born full grown" as a reincarnation of the American Express student lending group where Robert DeRose had worked. While this analysis may provide some justification for consideration of Student Loan Xpress, it does not fully explain its quick ascent on OSFS lender lists. Student Loan Xpress occupied the #1 spot over a five-year period on every list in our possession except for one list where it appeared as #11.[75] Don Davis, Associate Director of OSFS, stated that the 11th position at which Student Loan Xpress appeared on the 2003-04 FFEL Stafford Subsidized and Unsubsidized Loan Lender List is in fact a highly favorable position because it is at the top of the right-hand column of the lender list.[76] Some students might even see that as the 2nd position reading left-to-right in looking at the lender list.[77]

The statistical information compiled by OSFS regarding Student Loan Xpress does not seem to justify a 1st ranking, and no employee of OSFS interviewed, including Dr. Burt, was able to articulate a compelling case for Student Loan Xpress being 1st on any lender list.[78] Even the flawed criteria Dr. Burt referenced when making lender list decisions indicate Student Loan Xpress was over-ranked. Student Loan Xpress volume ranks on the various lender lists were near the bottom of all lenders on the lists, school customer service was often rated as "average," and, for example, on the GRAD Lender List for 2005, it is not even clear that Student Loan Xpress offered $0 or reduced fees to students – a key borrower benefit. Finally, Student Loan Xpress' 2005 default rate, while still below the national average, was on the high end for U. T Austin at 3.2%.[79] The only category in which Student Loan Xpress excelled in comparison to other lenders was in "OSFS visibility," where it was ranked "very good." As noted earlier, a review of the "lender treats" list indicates that Student Loan Xpress was extremely active in visits and provision of treats to OSFS staff.

Dr. Burt's acceptance of Education Lending Group shares and continued retention of them in his portfolio represents an error in judgment that created an appearance of impropriety and leads one to seriously question whether there was a *quid pro quo* for purchase of those shares and inclusion of Student Loan Xpress on OSFS lender lists.

UT Report, 18-19

When it was publicly disclosed that Dr. Burt had owned shares in Student Loan Xpress, the University of Texas put Dr. Burt on paid administrative leave and initiated an internal investigation, which culminated in a May 14, 2007 "Special Investigative Report." The University fired Dr. Burt the same day.

A series of documents not mentioned in the Special Investigative Report shed light on Dr. Burt's involvement in the preferred lender list placement of Student Loan Xpress. These documents are strong circumstantial evidence of a *quid pro quo* arrangement between Dr. Burt and Student Loan Xpress.

After AMEX's exit from student lending business at the end of 2001, OSFS considered how to advise students who had borrowed from that company. A printout of the University's preferred lender list website from Dr. Burt's files, dated January 24, 2002, shows a handwritten change (presumably Dr. Burt's) to the list. "A Plus Funds" is crossed out from the top of the 2nd column and "Xpress" is written in. Exhibit 69. Dr. Burt's handwritten instructions were followed -- Student Loan Xpress appeared at the top of the second column on the University's preferred lender lists for the 2002-2003 and

2003-2004 academic years. UT Report, Exhibit E. The Special Report indicates that this position on the preferred list is the second most advantageous. UT Report, 18. These changes were made during the same time that Dr. Burt was purchasing the private placement units from Balestri and at a time when Student Loan Xpress was a new, unproven company.

During the period in which Dr. Burt held shares in the parent company of Student Loan Xpress, the company's market share of the University's FFEL loan portfolio increased from 1.51% (in 2002) to 3.04% (in 2005).[32]

Of even more concern is Dr. Burt's involvement in editing an OSFS notification sent to students who had borrowed from AMEX and now had to decide on a new lender. The original draft of this electronic notification, presented to Dr. Burt by his staff on February 14, 2002, contained a list of suggested lenders shorter than the "master" preferred lender list – this shorter list did not contain Student Loan Xpress. Exhibit 70. By April, Dr. Burt had made significant changes to text of this notification. Printouts of the notification from Dr. Burt's files, dated April 11, 2002, show Student Loan Xpress listed first and a paragraph in large font has been added:

To make things easier for you, we encourage you to continue your educational loan borrowing with Student Loan Xpress. Student Loan Xpress is a student loan company that is comprised of the core team of American Express Educational Loan employees, offering you the same quality products and customer service as your previous lender. You may select Student Loan Xpress by selecting the first lender listed below.

Lender Name	**Loan Description**
833908 - Student Loan Xpress	Lender Info
807807 - Chase	Lender Info
829076 - Nellie Mae	Lender Info
833810 - A Plus Funds	Lender Info
831366 - First American Bank	Lender Info
824206 - Bank One	Lender Info

Specify a lender not on this list

I do not wish to borrow a student loan

Close

Exhibit 71

[32] Data provided to the Chairman's office by CIT.

Five days later, Dr. Burt faxed this final draft to Mr. Balestri. Exhibit 72. These documents show that, at the same time Dr. Burt was purchasing shares in Student Loan Xpress's parent company, he altered the University's lender lists to place the company in an advantageous position and personally notified the head of the company that he had done so.

In an interview with Committee staff, Dr. Burt denied ever discussing the growth of Student Loan Xpress market share with Balestri or DeRose.[33] However, the University's Special Report noted two occasions on which Dr. Burt promoted Student Loan Xpress loan products:

- In a draft letter addressed to Jill Desjean, Chair of Graduate Financial Aid at the New School in New York, Dr. Burt wrote that "I highly recommend Student Loan Xpress to the New School." UT Report, 19. Dr. Ellen Frishberg, who was paid consulting fees by Student Loan Xpress, wrote an identical letter to Ms. Desjean. Exhibit 73.
- Dr. Burt also wrote a draft form letter to "directors of financial aid in general" recommending Student Loan Xpress products. The Special Report notes that this "draft letter is perhaps more troubling in that it is a form letter to directors of financial aid in general" and "makes it appear as if Dr. Burt is an employee of, or contractor of, Student Loan Xpress." UT Report, 19.

Other documents uncovered by the Chairman's investigation show that Dr. Burt engaged in marketing activities on behalf of AMEX when that lender appeared on the University's preferred lender list. While a member of the AMEX advisory board, Dr. Burt wrote an article for the company website. An April 2000 email from an American Express employee to Dr. Burt asks him to participate in an interview "for the purpose of including a quote" in an article on "general consumer advice…posted to the American Express Web site." Exhibit 74. Dr. Burt agrees to the interview, and in a later email to Balestri, notes that he "tried to get your name in print but they would have none of it. Something about prior warrants." Balestri indicates his satisfaction that Burt agreed to the interview. Exhibit 75. Dr. Burt was also a member of AMEX's advisory board during this period.[34]

b) David Charlow, Columbia University

Documents uncovered by the Chairman's investigation indicate that, in addition to holding shares in the parent company of Student Loan Xpress, Columbia University financial aid official David Charlow had a very close relationship with the company's management over a period of years.[35] Mr. Charlow and the financial aid staff received various personal benefits from Student Loan Xpress and its parent company, CIT, including tickets to a 2005 Sheryl Crow concert (although it is unclear whether Mr. Charlow ever attended), Yankees tickets, and tickets to a 2007 Allman Brothers concert. Exhibit 76.

---

[33] Interview with Dr. Lawrence Burt, April 30, 2007.
[34] Interview with Dr. Lawrence Burt, April 30, 2007.
[35] Charlow was director of financial aid for Columbia's undergraduate and engineering schools. In this section, references to "Columbia" refer to these parts of the University.

Several documents show an uncomfortable juxtaposition of offers by Student Loan Xpress to entertain Mr. Charlow with discussions of Student Loan Xpress loan volume at Columbia. For example, in an August 17, 2005 email, Mr. Balestri emails Mr. Charlow, Tim Lehmann, former Director of Financial Aid at Capella University and a paid contractor of Student Loan Xpress, and Dr. Burt the following invitation:

> "Jeff Peek chairman of CIT wants to know if you can join him for a round of golf and dinner on Sept 28 in NYC. You would have to fly in on Tuesday night. Robert and I are also trying to arrange an out for the 29 as well. Of course we will cover all expenses."
>
> Charlow responds, "OK,"

and, later that same day, replies to the same email:

> "Did you see the data on our first year loans?" Exhibit 77.

In a December 27, 2005 email, Balestri suggests to Charlow that Columbia enter into a "very private" School as Lender agreement with Student Loan Xpress, since "the future of the school as lender program is getting pretty cloudy."[36] Charlow agrees to pass the idea along to a colleague at Columbia, and Balestri replies with a description of dinner plans at "my house," to which Charlow answers, "[n]ext Monday for dinner as you suggested." Exhibit 78. Charlow does indeed pass along Balestri's suggested deal to a Columbia colleague. Exhibit 79. Columbia did not enter into a School as Lender arrangement with the company.

In 2001, AMEX was the sole preferred PLUS lender and one of three preferred lenders for Stafford loans for Columbia's undergraduate and engineering schools. Exhibit 80. In the next academic year, after AMEX left the student loan business, Student Loan Xpress became one of three PLUS preferred lenders at Columbia. Exhibit 81. According to the University, Student Loan Xpress did not earn its way onto the PLUS preferred list, as other lenders did, through an RFP process, but by making a presentation to Mr. Charlow.[37] In 2005, Student Loan Xpress was added to Columbia's Stafford preferred lender list, as well as appearing on the PLUS list. Exhibit 82.

In 2005, Columbia convened a committee, comprised of financial aid officials campus-wide, to formulate a Request for Proposal ("RFP") for inclusion on the University's preferred lender list. According to the University, the RFP was sent to eleven lenders and four were selected, among them Student Loan Xpress. Internal University documents show that Mr. Charlow advocated for Student Loan Xpress throughout the process and

---

[36] In a School as Lender arrangement, a school originates loans to its graduate students and enters into an agreement with an FFEL lender to sell those loans at a future date for a premium over face value. In this way, School as Lender deals can create significant revenue for a school. New School as Lender agreements were prohibited by the Higher Education Reconciliation Act of 2005.

[37] Interview with Columbia University attorney, June 11, 2007.

sent Mr. Balestri details of the committee's internal deliberations, in effect giving Student Loan Xpress an "inside track" in the RFP process.

In response to a June 10, 2005 email from a committee member recounting a meeting that Charlow was unable to attend, Charlow passed along his thoughts:

> "Since I will be away again on business travel I am passing along a few comments as requested….We rate Student Loan Express and Access very, very high but like Citi and Nellie as well.
>
> A committee member responds: "I'm interested in knowing what Student Loan Express does for you? What makes them competitive?"

Charlow responds, and then forwards the entire email chain, *including the committee's account of its deliberations*, to Balestri:

From: David Charlow
Sent: Wednesday, June 15, 2005 9:31 AM
To: 'breeze@slxpress.com'
Subject: Fw: RFP: Yesterday's meeting and updated information

```
Fyi......call me. I need some information.
--------------------------
Sent from my BlackBerry Wireless Handheld


-----Original Message-----
From: David Charlow <dc120@columbia.edu>
To: Michelle Brown-Nevers <mhb14@columbia.edu>; dc120@columbia.edu <dc120@columbia.edu>;
lb216@columbia.edu <lb216@columbia.edu>; mb2602@columbia.edu <mb2602@columbia.edu>; ar63
@columbia.edu <ar63@columbia.edu>; es29@columbia.edu <es29@columbia.edu>; utg1
@columbia.edu <utg1@columbia.edu>; nm171@columbia.edu <nm171@columbia.edu>
CC: rr2312@columbia.edu <rr2312@columbia.edu>; kmg11@columbia.edu <kmg11@columbia.edu>
Sent: Wed Jun 15 10:25:36 2005
Subject: Re: RFP:  Yesterday's meeting and updated information

Michelle

They have been our preferred PLUS lender for ten years. (Under a couple of differnt names,
most recentl American express). Their service is excellent and my staff loves working with
them.

They also provide great borrower benefits because theyare very flexible and able to work
with many different servicers and guarentee agecies. ( they have recently opened their own
servicer as well).  Our parents get a 2 percent interest rate reduction for direct pay
which is a huge benefit considering the size off most Plus loans.

I also find them to be fairly nimble abd able to adjust more quickly and creatively to the
market than the giants. I antcipate that their new private loan offering will be
interesting. Theyhave also recently developed a private loan consolidation product.

I also think it is important that we have good faith highest level access to ou r lenders.
We have it with SLX and nellie(balestri and marcus) and we had it unti recently with Citi
(roberts).  I assume Alice and Ellen are well connected to. Access. It make a difference
when we can get immediate response from the President of these companies if need be That's
all for now. I'm on the train.......David
--------------------------
Sent from my BlackBerry Wireless Handheld
```

Exhibit 83

In a July 10, 2005 email, Charlow again emphasizes that he believes the list of solicited lenders should stay small: "I think we should include access, Citi, SLX and nellie/sallie and only two or three more of the bigger lenders but I am ultimately satisfied as long as the first four are included." Exhibit 84.

After the RFP process was complete, and Student Loan Xpress occupied the first position on the preferred lender list, a Student Loan Xpress employee emailed Charlow in appreciation:

> Hi David – We would like to host a celebration for the directors at Columbia University to acknowledge your decision to include us as one of your top lenders….Breeze [Mr. Balestri's nickname] asked me to contact you regarding a restaurant that you would want to go to – he mentioned that it was Ellen Spilker's [a member of the committee that conducted the RFP process] favorite. Any ideas? Exhibit 85.

Finally, Mr. Charlow lent his name, and Columbia's prestige, to the company's marketing and lobbying efforts. Two such occasions are:

- In a March 21, 2006 email, a Student Loan Xpress employee asked Mr. Charlow, along with other members of the advisory committee (including Dr. Ellen Frishberg of Johns Hopkins, Dr. Burt, and Darryl Marshall, Director of Financial Aid at Florida State University), to endorse the company's graduate and undergraduate PLUS loan products in company marketing materials. Charlow agreed, and the following sentence was used in the materials: "We have worked with the Student Loan Xpress team for many years because they consistently meet the very high standards for service that our students and parents expect not only from our University but also from our partners." Exhibit 86.[38]
- Documents produced by Columbia University show that Mr. Charlow, Dr. Frishberg and Anne Traverso (Director of Financial Aid at Quinnipiac University) acted as "school partners" in Student Loan Xpress lobbying meetings with Representative Buck McKeon (R-CA) on June 18, 2003. Exhibit 87.

During the period that Mr. Charlow held shares in the parent company of Student Loan Xpress, the company's market share of Columbia University's FFEL loan portfolio increased from 5.15% (in 2002) to 12.17% (in 2006).[39]

B. *Consulting or Other Paid Arrangements for Services*

1. Student Loan Xpress

a) Dr Ellen Frishberg, Johns Hopkins University

Dr. Ellen Frishberg, until recently Financial Aid Director of the Colleges of Arts and Sciences and Engineering at Johns Hopkins University, received payments from several companies involved in the FFEL program during her tenure at the University, including

[38] Absent authorization, the University's conflict of interest policy prohibits the use of the University's name in any endorsement. Interview with Columbia University's attorney, June 6, 2007.
[39] This data provided to the Chairman's office by CIT.

American Express and Student Loan Xpress.[40] During the period Dr. Frishberg was being paid by these lenders, they appeared on the preferred lender lists at Johns Hopkins for which Dr. Frishberg had responsibility.

AMEX and Student Loan Xpress paid Dr. Frishberg more than $93,000 in consulting fees since 1996. Student Loan Xpress also paid $21,678 of Dr. Frishberg's tuition for the University of Pennsylvania's Executive Doctorate program between August 2002 and January 2004. Student Loan Xpress was ranked first on the University's preferred lender list for PLUS loans from 2001 through 2007, and appeared on the University's private loan preferred lender list in 2006. Exhibit 88. According to data provided by CIT, the parent company of Student Loan Xpress, Student Loan Xpress' share of Johns Hopkins PLUS loan volume increased from 34.28% in 2002 to 43.81% in 2006. American Express was the only lender on Johns Hopkins' preferred lender list for PLUS loans from 1997 through 2001.[41] Exhibit 89. Dr. Frishberg served on AMEX and Student Loan Xpress advisory councils during this period, pursuant to which she traveled to various meetings at the company's expense.

In interviews with the Chairman's office, Dr. Frishberg indicated that, from very early in her career at Hopkins, her colleagues and superiors knew of her outside consulting work and encouraged her to seek such work to supplement her income. She acknowledged that her superiors were not specifically aware of the consulting arrangements with AMEX or Student Loan Xpress.[42]

No written contract or arrangement setting forth Dr. Frishberg's duties in connection with her consulting work exists, a circumstance that seems strange given the fairly substantial sums involved. For all of her Student Loan Xpress work, Dr. Frishberg submitted

[40] Companies not discussed in detail herein that paid Dr. Frishberg consulting fees were KnowledgeFirst, Inc (which developed internet-based software for financial aid offices), Student Loan Processors (also known as JustEducation Loans.com, services federal and private loans), Campus Direct/Affinity Direct (a loan consolidation company), Gerson Lehrman (a consulting firm), FinancialAid.com, and Buzzeo, Inc. (a software development and consulting firm for colleges and universities). Dr. Frishberg also did subcontract work for the Department of Education.

[41] Johns Hopkins has been unable to determine whether AMEX was the sole preferred PLUS lender for 1996.

[42] Specifically, Dr. Frishberg said that Robert Massa (no longer at Johns Hopkins), Lorna Whalen (no longer at Johns Hopkins), Susan Boswell, and William Conley were all aware that she was being compensated for outside consulting work. An email of undetermined date from Frishberg to Conley seems to confirm this – she notifies Conley that "I am writing some web content for a new lender, justeducationloans.com. The contract I am signing asks for me to be identified by institutional affiliation. I ran the contract by Gerard St. Hours [Associate General Counsel for the University] and he ok'ed it and asked me to let you know." Conley responds that it "sounds like a win-win for you and Hopkins." Exhibit 90. Dr. Frishberg said that the University required her to file no forms disclosing her consulting arrangements. Hopkins asserts that "[t]he University has a Policy on Conflict of Interest and Conflict of Commitment, a Statement of Ethical Practices, and a Conflict of Interest Policy relating to purchasing decisions. These policies require certain disclosures and regulate potential conflicts of interest. As noted, Dr. Frishberg did not disclose to the University either her consulting relationship with SLX or the payment of tuition." Letter from Johns Hopkins General Counsel, April 25, 2007. Exemplars of invoices Dr. Frishberg submitted for AMEX consulting work appear at Exhibit 90.

homemade invoices to Mr. Balestri and Mr. DeRose.[43] For her work in 2004-2005, for which she was paid the most (seven $6,000 quarterly payments), Dr. Frishberg describes "work performed" on her invoices as "strategic advisement, federal relations, media response, marketing consulting." Exhibit 91. When interviewed by Committee staff, Dr. Frishberg described her consulting work during this period as being "available to staff," keeping staff "up to date on what's happening in Washington," and "helping young staff gain confidence." She did not recall whether she generated any written work product pursuant to the arrangement.[44]

It is important to note that several documents provided by Johns Hopkins support Dr. Frishberg's description of the consulting work she performed for Student Loan Xpress. For example, an early invoice states that she worked on the Consolidation Assistance Program. Documents reflect that Dr. Frishberg edited Student Loan Xpress marketing documents for this program. Exhibit 92.

Nevertheless, the absence of a written agreement memorializing Dr. Frishberg's consulting duties raises the question whether the fees she received reflected the fair market value of her advice, or masked some other type of *quid pro quo* relationship with the company. These concerns are heightened when viewed in conjunction with an April 2002 email exchange between Dr. Frishberg and DeRose, in which Dr. Frishberg solicits funds for her University of Pennsylvania tuition:

> Frishberg writes:
>
> "…I have been accepted to a doctoral program at Penn that begins in August. I am searching for ½ tuition support – know any good scholarship programs?? (I already know where to get loans) – or, why don't you put me on retainer to EdLending? [parent company of Student Loan Xpress]."
>
> DeRose responds:
>
> "How much is the ½ tuition? If we can help you we will."
>
> Several weeks later, he writes: "we would be happy to extend to you a consulting contract that would pay ½ of your costs. As I understand that would be $900 per year. We would be delighted to help. As I said you're the best and education should never stop for us." Exhibit 93[45]

The documents provided to the Chairman's office do not indicate that Dr. Frishberg ever performed any consulting in exchange for these tuition payments.

---

[43] Interview with Dr. Ellen Frishberg, April 24, 2007.
[44] Interview with Dr. Ellen Frishberg, April 24, 2007. Dr. Frishberg told Committee staff that work was done primarily via phone conversations with DeRose, Balestri and "three or four other" SLX staffers, including LeAnn Rohmann and John Weir.
[45] An example of the tuition bills Dr. Frishberg sent to DeRose is included in Exhibit 93.

Other documents indicate that Dr. Frishberg served as an advocate, not just a consultant, for Student Loan Xpress during the period that the company appeared first on the University's preferred lender list and was paying her consulting fees:

- In February 2007, Dr. Frishberg authored a letter to Jill Desjean, Director of Graduate Financial Aid at the New School, touting Student Loan Xpress. Johns Hopkins has located only a draft of this letter. As discussed above, Dr. Lawrence Burt, who had a similarly close relationship with Student Loan Xpress and its CEO, authored an identical letter to the New School. Exhibit 94.
- In an October 1, 2004 email to DeRose, Dr. Frishberg indicates that she is working with Mr. Balestri to promote Student Loan Xpress loan products at Johns Hopkins:

-----Original Message-----
From: Ellen Frishberg [mailto:EF1@jhu.edu]
Sent: Friday, October 01, 2004 10:56 AM
To: Robert deRose
Subject: Invoice through January

Dear Robert,

Great to see you -- exciting times for EdLending. Let me know how I can help further. Working with Breeze on Right Rate, which is generating lots of excitement on campus.

Attached is my latest invoice. Thanks for everything.

Happy trails,

Ellen

Exhibit 95.

- As discussed in the section concerning David Charlow above, documents produced by Columbia University show that Dr. Frishberg (along with other financial aid administrators) acted as "school partners" in Student Loan Xpress lobbying meetings with Representative Buck McKeon (R-CA) on June 18, 2003. Exhibit 96.
- Also as discussed above, documents show that Dr. Frishberg endorsed the company's PLUS loan products in company marketing materials. Dr. Frishberg said: "We have referred our parents to the Student Loan Xpress team for more than ten years. They are experienced, knowledgeable and reliable." Exhibit 86.

Dr. Frishberg maintains that her financial ties to Student Loan Xpress had no influence on the company's position on Johns Hopkins' preferred lender list. According to Dr. Frishberg, the company gained a high lender list position because it had the "best priced loan on our list" and no other lender offered a 2% principal reduction at repayment on the private loan list.[46]

In an interview with the Chairman's office, Dr. Frishberg cited her handling of a School as Lender bidding process as demonstrating her lack of bias. Dr. Frishberg told

[46] Interview with Dr. Ellen Frishberg, April 24, 2007.

investigators that the University solicited bids for a lender to administer a graduate School As Lender Program in 2005 and that Student Loan Xpress, Bank of America, and Citibank responded. While Dr. Frishberg said she was generally opposed to the deal, she thought that Citibank offered better terms than Student Loan Xpress and recommended them.[47]

The University provides a different account – that "as part of the University's consideration [of Student Loan Xpress in connection with the School as Lender deal], Dr. Frishberg disclosed her role on the advisory committee for SLX. For this reason, the University decided to consider other vendors and in fact did not choose SLX as the vendor for the program." Letter from Johns Hopkins University General Counsel to Committee staff, April 25, 2007.

Documents show that Dr. Frishberg initially proposed that Student Loan Xpress be awarded the School as Lender contract. In a December 21, 2005 email to Johns Hopkins' General Counsel Stephen Dunham and Senior Vice President for Finance and Administration James T. McGill, Dr. Frishberg writes that, in connection with a possible School as Lender program,

> …I contacted our lowest cost and largest provider of PLUS loans, Student Loan Xpress….[after the demise of AMEX student loan unit,] we continued to do business with this group that provided JHU families with excellent pricing and service, while also offering our borrowers a variety of other options. Full disclosure: I have served for 8 years on a school advisory group for American Express and now Student Loan Xpress. We meet once a year – every Fall for a day and a half. The lender pays travel, lodging, and meal expenses…We receive no compensation for our participation….Because we were moving so quickly…I thought it would be expedient to contact this lender that I know best, that we do the most business with, who had offered to become our partner… Exhibit 97.

In a later email to McGill and Patricia Friend, University Senior Assistant General Counsel, Dr. Frishberg discusses two proposals – by Citibank and Student Loan Xpress: "Citibank appears to be offering a much larger premium at lower cost money and more in keeping with our requirements…it's a pretty impressive proposal overall." Exhibit 98. Evidently, in the intervening month, Johns Hopkins had solicited more bids for the School as Lender contract than just Student Loan Xpress – an inference that comports with Johns Hopkins' account of how the deal unfolded. Dr. Frishberg then formally proposes signing the Citibank arrangement in a February 2, 2006 memo to McGill. Exhibit 99.

It is worth noting that a condition of the Citibank School as Lender offer was that "Johns Hopkins University is promoting Citibank as one of two preferred lenders on the private loan and PLUS lender lists" and that "Citibank is printing and is highlighted on the private loan and PLUS lender lists." Exhibit 100. This contract term raises questions about whether Johns Hopkins agreed to give Citibank preferred lender status as part of a

---

[47] Interview with Dr. Ellen Frishberg, April 24, 2007.

negotiation over the School as Lender deal, rather than requiring Citibank to earn its way onto the list based on the competitiveness of its private and PLUS loan terms.

Six days after Dr. Frishberg sent her memo proposing Student Loan Xpress as a School as Lender partner, David Charlow received an email from Mr. Balestri proposing a "very private" school as lender deal with Columbia University, an idea Mr. Charlow passed along to his colleagues. However, the Chairman's office has come across no evidence beyond this proximity in time to suggest Student Loan Xpress was engaged in a coordinated effort to use its contacts with Dr. Frishberg and Mr. Charlow to enter into School as Lender agreements with their schools.

In 2000, Dr. Frishberg was paid more than $1,300 in consulting fees by Global Student Loan Corporation. The company also offered her a more formal arrangement, which she declined, that contained a promise of future employment with the company as "Senior Vice President." Exhibit 101.

Several years after receiving this compensation, Dr. Frishberg advocated on the company's behalf. In a November 1, 2006 email, Dr. Frishberg wrote to superiors that "the deans and aid officers have been asking for a loan program for international students that does not require a US co-signer. The needs are greatest at SAIS and Peabody." Dr. Frishberg recommended a loan arrangement with Global Student Loans in which the University would share some default risk. Her email is notable not only for its advocacy of the company, but also its candid description of an "implied quid pro quo" in Sallie Mae's offer of a private loan "opportunity pool of financing" (such deals will be discussed in depth in a future report):

> We have worked in the past with Global Student Loans until they lost the source of their financing and changed the terms of their loans to be prohibitively expensive for the student and the University. So we have been scouring the market to find something viable. SLMA offered us/Ted Baker an 'opportunity pool' of financing, that would allow us to make loans to whomever with [sic] wanted, but **we were concerned about the implied quid pro quo for student lending issues generally…** Exhibit 102.

Internal communications show that the arrangement with Global Student Loans involved an improper *quid pro quo* that violates the inducement prohibition. Dr. Frishberg wrote a June 27, 2006 email to her staff in which she described the terms of the join Global Student Loans/Wachovia Corporation ("Wachovia") offer:

> I have asked for an agreement to be reviewed by the central legal and financial folks. If everyone is OK with it, we can begin linking to and promoting this opportunity to our international students with need to borrow**. The only thing Wachovia asks is to be put on any lender lists we have for PLUS –** so that affects only Peabody and Homewood. Their PLUS loan is competitive. I have not researched their private loan. Exhibit 103.

In a December 21, 2006 email, Dr. Frishberg writes that

> through Wachovia, Global Student Loans is offering non-co-signed loans to international students…**What Wachovia is asking is a fair shot at our student loans (placement on the lender list)**, and they will pick up the first 10% of every cohort's default….We have just signed contracts with them. Exhibit 104.

A December 17, 2006 email shows that Wachovia was indeed added, as per Dr. Frishberg's request, to Johns Hopkins' online preferred lender list. Exhibit 105.

These documents show that, in exchange for providing private loan funds to Johns Hopkins students that do not require a US co-signer, Wachovia asked to be placed on Hopkins' preferred lender lists – and the University complied. This practice falls squarely within the inducements prohibition. Similar *quid pro quo* deals involving private loan, or "Opportunity Loan," funds will be discussed in a future report.

Several documents show that Dr. Frishberg cautioned her staff not to accept improper inducements from lenders. When heightened scrutiny was focused on relationships between lenders and schools, Dr. Frishberg emailed her staff to be "extra careful:"

> While we are a very ethical bunch, this is the time to be extra careful. Before accepting any invitations to events, trainings, meals or other events sponsored by lenders and/or guarantors, I would like to have the right of approval, at least until this latest round blows over or the feds produce clear regulations on the topic. Exhibit 106.

On April 2, she again emailed a warning: "Please do not take compensation for service on lender advisory boards, if you promote their loans. This is not the end of the restrictions still to come." Exhibit 106.

2. JPMorgan Chase and Collegiate Funding Services

JPMorgan Chase also paid several school officials for consulting services (the amounts that follow include fees and reimbursed expenses):[48]

- Zebulun R. Davenport, Associate Vice President of Student Affairs at Northern Kentucky University (formerly Associate Vice President of Student Affairs at James Madison University), was paid a total of $4,079.70 for services that included the "Robert Morris College yearly all staff meeting,"
- Mark Martin, financial aid director at Lawrence Technological University, was paid $754 for a "conference presentation,"

[48] According to Chase, all of these agreements have been terminated or have expired as of the date of this report.

- Louise Strauser, Director of Financial Aid at Lyon College, was paid $2,500 for services related to the "PowerFAIDS Service" at Our Lady of the Lake College in Baton Rouge, Louisiana,
- Tyrone Thornton, Controller in the Fiscal Services office at Xavier University of Louisiana, was paid $1,374 for a "consulting visit" at Fort Valley State University,
- Lynette Viskozki, Assistant Director of Financial Aid at Centenary University, was paid a total of $7,418 for "technology support" at a "teleconference and site visit with Richard Stockton College" and a Chase conference call on technology issues,
- Cynthia Thornton, Director of Financial Aid at Dillard College, was paid $1,356 for computer training at another college and work in connection with an conference of financial aid administrators, and
- James Wingate, Associate Director of Financial Aid at St. Leo University, was paid $1,991 for training staff at Tuskegee University and Stillman College.[49] Exhibit 107.

Except for Dillard University, Chase is currently on the preferred lender list at all of the schools where these officials are employed.[50]

Collegiate Funding Services, Inc. ("CFS"), purchased by JPMorgan Chase in March 2006, paid two financial aid officers consulting fees: Dr. Ellen Frishberg of Johns Hopkins University and Daniel Pinch of Emerson College. The Pinch arrangement ended in 2003, and the Frishberg arrangement ended just prior to the acquisition.

CFS paid Dr. Ellen Frishberg a total of $48,000 between April 2004 and January 2006. As with Dr. Frishberg's consulting arrangement with Student Loan Xpress, she had no written consulting agreement with CFS, but rather submitted homemade invoices to the company describing her work as "strategic advisement, federal relations assistance, media responses, marketing consulting." Exhibit 108. An internal CFS email describes Frishberg's consulting work:

> Ellen Frishberg (Aid Director at Johns Hopkins) has been helping me the last few months with lobbying. It helps to have a well-known aid director in our corner who, unlike most directors I've known over the years, has good political instincts and is more a doer than a talker. She's worked so hard that I didn't feel like it was right to keep using her time without compensation, so Barry and I decided to put her on a small retainer. As a by-product of that, to the extent she has any extra time, she's volunteered to critique our marketing materials from an aid director point of view…She's one of the best in the industry. Exhibit 109.

---

[49] Chase had consulting arrangements with other school officials that never resulted in payment. These officials were Eugenia Hickman, director of Financial Aid at Virginia Wesleyan, Melissa Smurden at Butler University, and Willie Williams at Fort Valley State University.

[50] Summary materials provided by JPMorgan Chase.

Later in the email correspondence, a CFS Executive Vice President disagrees with a suggestion that Dr. Frishberg should be invited to join the company's advisory board: "She is better helping us lobby on the side and not on an ad board. Please keep her relationship with us very quiet, ie just you and me." Exhibit 109. A later email from the company's Chief Operating Officer indicates that CFS's investment in Dr. Frishberg's "lobbying" services have paid off: "At my urging, Ellen Frishberg at Johns Hopkins has started a major debate within NASFAA about the fixed to variable issue." Exhibit 110.

Of most concern are internal documents demonstrating that CFS viewed the arrangement with Dr. Frishberg not only as a lobbying agreement, but also as an opportunity to increase market share at Johns Hopkins. In response to an email asking his thoughts about hiring Dr. Frishberg as a consultant, a CFS Vice President replies

> I'll check with Donna on which lenders are on JHU's PLL [Preferred Lender List] for all products and with Lee on Student Market Measure to confirm who's getting the volume; **let's confirm if there is a correlation between 'hourly consultant' and $$$ loan volume.** Exhibit 111.

Offering consulting fees to a financial aid officer in exchange for increased loan volume or preferred lender list position is a clear violation of the inducement prohibition. According to Chase and Johns Hopkins, CFS materials were distributed to students at Johns Hopkins' School for Advanced International Studies ("SAIS") in 2004, a year in which Dr. Frishberg was receiving fees from CFS. Johns Hopkins advises Committee staff that Dr. Frishberg had no role in formulating the lender list for this part of the University. It is apparent, however, that Dr. Frishberg had input into the content of the SAIS preferred lender list in connection with the Global/Wachovia private loan quid pro quo discussed above.

CFS also paid Daniel Pinch, Associate Vice President for Student Administrative Services and Acting Dean of Enrollment at Emerson College, a total of $36,000 between July 2001 and July 2003. CFS was on the preferred lender list at Emerson during this period.[51] The "Personal Services Agreement" between CFS and Pinch describes his duties as consulting on regulatory matters, acting as "Government Relations Liaison," and "generally any matter arising out of the business affairs of the Company." The agreement specifies a rate of $150 per hour but states that Pinch "will be paid at least $1,500 per month regardless of the amount of time spent in accordance with this Agreement." Exhibit 112.

As with Frishberg, Pinch's business relationship with CFS crossed over from consulting work into advocacy and lobbying. Internal CFS documents indicate that Pinch drafted letters to members of Congress addressing consolidation loan policy at the company's behest, sent letters to industry associations advocating particular positions on pending legislation, and made contacts with officials at other schools where CFS aimed to gain business. See *e.g.* Exhibit 113.

---

[51] Summary materials provided by Chase.

- Pinch allowed his name and college affiliation to be used in CFS marketing materials. In a May 28, 2003 email exchange, a CFS official writes "as discussed during our advisory board meeting, we've crafted a testimonial quote for your review and approval. We'll use the quotes in our standard marketing materials." Pinch responds: "The quote is very good. I am fine with it. Also I just received the NY book. I cannot say thanks enough it was very thoughtful!!! Many Thanks." The approved quote reads: "We encourage our graduates to consolidate private and/or federal loans with CFS as a smart way to proactively manage personal finances. Dan Pinch, Emerson College." Exhibit 114.
- Pinch lobbied a financial aid officer at Marist College on CFS's behalf. In a September 19, 2003 email to a CFS Executive Vice President, Pinch writes "I set CFS up with a friend of mine at Marist College in NY. Please have your NY person call on him, he is interested in Stafford loan business. His name is Joseph Weglarz. Just tell him I recommend you." Exhibit 115.
- CFS Vice President for Business Development Frank Hollister thanked Pinch in an August 13, 2002 letter for his "vocal support of Collegiate Funding Services (CFS) during the July 2002 NASFAA Conference in New Orleans. We hope you enjoyed dinner at Arnaud's and we certainly appreciate your visible and vocal support of our efforts during the conference. As always, thank you and Emerson College for your continued interest and support of CFS." Exhibit 116.

Finally, CFS offered to make a $50,000 investment in a business venture launched by Mr. Pinch – Tuition Advantage, LLC -- in exchange for an ownership stake in the company. Exhibit 117.[52]

3. Nelnet

Nelnet has indicated that it paid Dr. Richard Whiteside, then Tulane University's Dean of Enrollment Management, $2,000 in speaking fees for a presentation at an "enrollment management workshop" at Nelnet's January 4, 2005 Advisory Board Meeting in San Diego. Exhibit 118.

VI. Conclusion

Evidence uncovered by the Chairman's investigation demonstrates that many FFEL lenders routinely engage in marketing practices that violate the letter and spirit of the inducement prohibition of the Higher Education Act. Given the breadth of the evidence presented in this report it is clear that the problem is systemic and cannot be isolated to a few "problem" lenders or schools. Students and parents deserve to know whether schools

[52] Chase's attorney advises that, "To the best of Chase's knowledge after researching the issue, the proposed CFS investment in Pinch's Tuition Advantage was never executed." Email from Chase Attorney, 6/7/07. A description of Tuition Advantage's business model describes the venture as "an innovative and exclusive financing system" that "allows schools to pass four years worth of savings on to 'full-pay' parents without a cost to your institution. Tuition Advantage has secured an exclusive financing package with First Marblehead that allows parents to lock in tuition rates at the matriculation of their child's four-year education."

and lenders have engaged in improper practices, how those practices may have affected them, and what is being done to solve the problem.