

## **II. CODE OF CONDUCT**

### **A. Prohibition of Certain Remuneration to School Employees**

18. The School shall require and ensure that no officer, trustee, director, employee, or agent of the School accepts anything of more than nominal value on his or her own behalf or on behalf of another from or on behalf of a Lending Institution, except that this provision shall not be construed to prohibit any officer, trustee, director, employee, or agent of the School from conducting (a) non-School business with any Lending Institution; or (b) School business unrelated to education loans. As used in the preceding sentence and throughout the AVC, a Lending Institution is defined as:

(a) Any entity that itself or through an affiliate engages in the business of making loans to students, parents or others for purposes of financing higher education expenses or that securitizes such loans; or

(b) Any entity, or association of entities, that guarantees education loans; or

(c) Any industry, trade or professional association that, to the best of School's knowledge after reasonable inquiry, receives money from any entity described above in subsections a and b.

Nothing in this provision or throughout the AVC shall prevent the School from holding membership in any nonprofit professional association.

19. The prohibition set forth in the previous paragraph shall include, but not be limited to, a ban on any payment or reimbursement by a Lending Institution to a School employee for lodging, meals, or travel to conferences or training seminars unless such

payment or reimbursement is related solely to non-School business or School business unrelated to education loans.

**B. Limitations on School Employees Participating on Lender Advisory Boards**

20. The School shall prohibit any officer, trustee, director, employee, or agent of the School from receiving any remuneration for serving as a member or participant of an advisory board of a Lending Institution, or receiving any reimbursement of expenses for so serving, provided, however, that participation on advisory boards that are unrelated in any way to higher education loans shall not be prohibited by the AVC.

**C. Prohibition of Certain Remuneration to the School**

21. The School may not accept on its own behalf anything of value from any Lending Institution in exchange for any advantage or consideration provided to the Lending Institution related to its education loan activity. This prohibition shall include, but not be limited to, (i) “revenue sharing” by a Lending Institution with the School, (ii) the School’s receipt from any Lending Institution of any computer hardware for which the School pays below-market prices and (iii) printing costs or services. Notwithstanding anything else in this paragraph, the School may accept assistance as contemplated in 34 CFR 682.200(b)(definition of “Lender”)(5)(i).

**D. Preferred Lender Lists**

22. In the event that the School promulgates a list of preferred or recommended lenders or similar ranking or designation (“Preferred Lender List”), then

- (a) Every brochure, web page or other document that sets forth a Preferred Lender List must clearly disclose the process by which the School selected lenders

for said Preferred Lender List, including but not limited to the criteria used in compiling said list and the relative importance of those criteria; and

(b) Every brochure, web page or other document that sets forth a Preferred Lender List or identifies any lender as being on said Preferred lender List shall state in the same font and same manner as the predominant text on the document that students and their parents have the right and ability to select the education loan provider of their choice, are not required to use any of the lenders on said Preferred Lender List, and will suffer no penalty for choosing a lender that is not on said Preferred Lender List.

(c) The School's decision to include a Lending Institution on any such list and the School's decision as to where on the list the Lending Institution's name appears shall be determined solely by consideration of the best interests of the students or parents who may use said list without regard to the pecuniary interests of the School;

(d) The constitution of any Preferred Lender List shall be reviewed no less than annually;

(e) No Lending Institution shall be placed on any Preferred Lender List unless the said lender provides assurance to the School and to student and parent borrowers who take out loans from said Lending Institution that the advertised benefits upon repayment will continue to inure to the benefit of student and parent borrowers regardless of whether the Lending Institution's loan are sold;

(f) No Lending Institution that, to the best of School's knowledge after

reasonable inquiry, has an agreement to sell its loans to another unaffiliated Lending Institution shall be included on any Preferred Lender List unless such agreement is disclosed therein in the same font and same manner as the predominant text on the document in which the Preferred Lender List appears;

(g) No Lending Institution shall be placed on any one of the School's Preferred Lender Lists or in favored placement on any one of the School's Preferred Lender Lists for a particular type of loan, in exchange for benefits provided to the School or to the School's students in connection with a different type of loan;

**E. Prohibition of Lending Institutions' Staffing of School Financial Aid Offices**

23. The School may not allow and shall ensure that no employee or other agent of a Lending Institution is ever identified to students or prospective students of the School or their parents as an employee or agent of the School. No employee or other agent of a Lending Institution may staff the School financial aid offices at any time.

**F. Proper Execution of Master Promissory Notes**

24. The School shall not link or otherwise direct potential borrowers to any electronic Master Promissory Notes or other loan agreements that do not allow students to enter the lender code or name for any lender offering the relevant loan.

**G. School as Lender**

25. If the School participates in the "School as Lender" program under 20 U.S.C. § 1085(d)(1)(E), the School may not treat School As Lender loans any differently

than if the loans originated directly from another lender; all sections of the AVC apply equally to such School as Lender loans as if the loans were provided by another lender.

#### **H. Prohibition of Opportunity Loans**

26. The School shall not arrange with a Lending Institution to provide any Opportunity Loans as defined above if the provision of such Opportunity Loans prejudices any other borrower.

### **III. SCOPE OF THE AVC**

27. Except as provided below, the AVC precludes any action that the Attorney General could commence against the School and its respective current and former officers, trustees and employees for the acts, practices, and omissions listed in the AVC; provided however, that nothing contained in the AVC shall be construed to cover claims of any type by any other state agency or any claims that may be brought by the Attorney General to enforce the School's obligations arising from or relating to the provisions contained in the AVC.

The AVC shall not prejudice, waive or affect any claims, rights or remedies of the Attorney General with respect to any person, other than the School and its current and former officers, trustees and employees, all of which claims, rights, and remedies are expressly preserved, nor shall the AVC create any rights on behalf of persons not parties to the AVC. The AVC does not preclude any action that the Attorney General may take for acts, practices, or omissions not listed in the Findings section of the AVC, even if such acts, practices, or omissions constitute a part of the Investigation.

#### **IV. COOPERATION**

28. The School shall continue to cooperate fully and promptly with the Attorney General with regard to the Investigation and any related proceedings and actions. The School shall use its best efforts to ensure that all of its officers, directors, employees and agents also fully and promptly cooperate with the Attorney General in the Investigation and any related proceedings and actions, subject to their individual rights and privileges and those of the School.

29. Cooperation shall include without limitation:

(a) Production, voluntarily and without service of subpoena, by the School of any information and all documents or other tangible evidence related to education loan practices reasonably requested by the Attorney General, and any compilations or summaries of information or data that the Attorney General reasonably requests be prepared, subject to recognized privileges and protections for confidential information;

(b) Using the School's best efforts to cause the School's officers, directors, employees and agents to attend any proceedings at which the presence of any such persons is reasonably requested by the Attorney General and having such persons answer any and all inquiries that may reasonably be put by the Attorney General to any of them at any proceedings or otherwise ("proceedings" include but are not limited to any meetings, interviews, depositions, hearings, grand jury hearing, trial

or other proceedings) voluntarily, and without service of a subpoena, subject to their individual rights and privileges and those of the School; and

(c) Fully, fairly and truthfully disclosing all information and producing all records and other evidence in its possession relevant to all reasonable inquiries made by the Attorney General in connection with this Investigation concerning any alleged fraudulent or criminal conduct by anyone whatsoever about which the School, its officers, trustees, directors, employees and agents may have any knowledge or information, subject to recognized privileges and protections for confidential information.

30. In the event any document otherwise required to be provided under the terms of the AVC is withheld or redacted on grounds of privilege, work-product or other legal doctrine, a statement shall be submitted in writing by the School indicating: the type of document; the date of the document; the author and recipient of the document; the general subject matter of the document; the reason for withholding the document; and the Bates number or range of the withheld document. The Attorney General may challenge such claim in any forum of its choice and may, without limitation, rely on all documents or communications theretofore produced or the contents of which have been described by the School, its officers, directors, employees, or agents.

31. The School shall not knowingly jeopardize the confidentiality of any aspect of the Investigation, including sharing or disclosing evidence, documents, or other information with others during the course of the investigation without the consent of the Attorney General. Nothing herein shall prevent the School from conferring with counsel

or consultants, issuing public statements, or providing such evidence or information to other regulators or as otherwise required by law.

## V. MISCELLANEOUS PROVISIONS

32. This AVC shall apply to Northwest Missouri State University and any other names under which it now does business or will in the future do business. This AVC also applies to each and every agent, representative, employee, and any other individual acting on behalf of, or at the direction of, the School

33. This AVC has been entered into and executed by and between the State of Missouri and the School to resolve a contested dispute in which the State of Missouri alleged that the School has violated Chapter 407 RSMo, commonly known as the Missouri Merchandising Practices Act. The Attorney General alleges that the School violated the Act through its use, as more fully set forth herein, of “preferred lender lists.” The School denies these allegations and enters into this AVC without making any admission of fault. Nothing in this AVC shall be construed as excusing or forgiving current or future noncompliance with any of Missouri’s laws, or requiring the Attorney General to forgo pursuit by any legal means of any other violation of any state law.

34. This Court has jurisdiction over the parties and subject matter of this AVC pursuant to § 407.030, RSMo 2000.

35. This AVC is entered into pursuant to the laws of the State of Missouri and shall be governed by and construed in accordance with the same.

36. The School shall not represent to any person, natural or otherwise, that the



Attorney General sanctions, endorses, or approves of any methods, acts, uses, practices, or solicitations undertaken by or on behalf of the School.

37. This AVC shall not be revised unless such revisions are made in writing and signed by all parties hereto.

38. This AVC embodies the entire and exclusive agreement and understanding of the parties hereto with respect to the subject matter contained herein. The terms of this AVC supersede all previous notes, conversations, and agreements, express or implied.

39. The Attorney General may seek enforcement of this AVC at any time. Further proceedings may include, but are not limited to, an action to obtain a civil penalty pursuant to § 407.030, RSMo 2000, or an action otherwise authorized by § 407.100, RSMo 2000.

40. If the School materially breaches any of the obligations described herein, the Attorney General may in its sole discretion terminate the AVC upon written notice to the School. In such event, any statute of limitations or other time-related defense applicable to the subject of the AVC and any claims arising from or relating thereto are tolled from and after the last execution date of the AVC and the AVC shall in no way bar or otherwise preclude the Attorney General from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Investigation, against the School or from using in any way any statements, documents or other materials produced or provided by the School after commencement of the Investigation, including, without limitation, any statements, documents or other materials provided for purposes of settlement negotiations.

41. No failure or delay by the Attorney General in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided herein shall be cumulative.

42. The School enters into the AVC voluntarily and represents that no threats, offers, promises or inducements of any kind have been made by the Attorney General or any member, officer, employee, agent or representative of the Attorney General to induce the School to enter into the AVC other than as described herein.

43. The AVC may be changed, amended or modified only by a writing signed by all parties hereto.

44. The AVC constitutes the entire agreement between the Attorney General and the School and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of the AVC.

45. The AVC shall be binding upon the School and its successors, assigns, and/or purchasers of all or substantially all its assets.

46. The AVC and its provisions shall be effective on the date that it is approved by this Court, except for the provisions contained in paragraphs 22 and 24 above, which shall become effective on June 1, 2007. However, the School shall have until November 1, 2007 to change any printed materials as required to comply with this AVC.

47. In the event of any inconsistency between the terms of this AVC and federal, state or local statutes, rules, regulations, guidelines or assurances of voluntary

compliance with another regulatory authority (“Authorities”), the provisions of the Authorities shall prevail.

48. The AVC may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one instrument.

49. Nothing contained herein shall be construed as relieving the School of its obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of the AVC be deemed permission to engage in any act or practice prohibited by such laws, regulations or rules.

50. The acceptance of the AVC by the Attorney General shall not be deemed approval by the Attorney General of any of the School’s business practices, and the School shall make no representation to the contrary. The School’s execution of the AVC is not an admission of liability.

51. Nothing in the AVC shall be construed to prevent any individual from pursuing any right or remedy at law which any consumer may have against the School.

52. The School shall submit to the Attorney General, on or before August 15, 2007, an affidavit, subscribed to by an officer of the School authorized to bind the School, setting forth its compliance with the provisions of the AVC.

53. Unless otherwise provided, all notices as required by the AVC shall be provided as follows: