

## Second Annual Higher Education Investment Conference:

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May You Live (and Invest) in Interesting Times  
(with Special Pre-Conference Investor Boot Camp)

# Student Lending: Past, Present and Future

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# Key Issues and Developments in the FFEL Program

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## College Cost Reduction Act (“CCRA”) and Credit Crunch – Impact on Lenders and Guarantors

- Significant reductions in Special Allowance Payments
- Doubling of origination fees
- Reinsurance cuts and elimination of Exceptional Performer designation
- Credit crunch intensified shortly after CCRA passed and severely impacted lenders ability to fund FFEL loans
- Funding costs in the securitization markets increased dramatically
  - Cost for June 2007 securitization: LIBOR + 10bp
  - Now LIBOR + 200bp
  - Are there buyers for FFEL securitizations given massive deleveraging throughout financial system
- Combination of CCRA and credit crunch made FFEL lending unprofitable
- Commercial Paper index for lender subsidy calculations – does it still work

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## CCRA and Credit Crunch – Impact on Lenders and Guarantors (Continued)

- Collapse in stock price of publicly traded student loan companies
- Most lenders eliminate borrower benefits
- Many lenders and some schools exit FFEL Program
- Growth in Direct Lending Program

# Legislative Efforts to Support FFEL

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## Ensuring Continued Access to Student Loans Act ("ECASLA")

- Loan Purchase Commitment Program
  - Originally covered FFEL loans originated for 2008-2009 Academic Year ("AY")
  - Replicated for FFEL loans originated for 2009-10 AY
  - Consolidation loans not eligible
- Loan Participation Commitment Program
  - Originally covered loans originated for 2008-09 AY
  - As of November 10, 2008, ED had purchased \$8.7 billion in Participation Interests
  - Consolidation loans not eligible
  - Participation program replicated for 2009-10 AY loans

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## ECASLA (continued)

- Asset-Backed Commercial Paper Conduits
  - ABCP Conduits will purchase fully disbursed non-FFEL loans awarded between October 2003 and July 2009
  - Eligible lender trustee creates conduit pool to which lenders transfer ownership
  - Conduit issues commercial paper to sell backed by loans in the pool
  - ED to enter into forward purchase commitments with eligible lender trustees to purchase loans at set price if CP issued by conduit cannot be reissued or rolled
- Strengthened Lender of Last Report Program

# Other Key Developments in the FFEL Program

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- New Requirements for schools using Preferred Lender Lists
- Schools must adopt Code of Conduct for student lending
- Prohibited Inducement definitions spelled out more clearly
  - lenders cannot offer access to or preferential rates on other financial products as quid pro quo for FFEL
  - “rebuttable presumption” makes it easier for ED to bring enforcement actions
  - Some conflicts between ED regulations and HEOA provisions
- Increased state enforcement
  - Cuomo investigation leads to interest from other state AG offices
  - State codes of conduct and legislation
    - NY SLATE Act
    - Preemption issues

# The Private Loan Market

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## Current Trends

- Significant reduction in capacity as lenders drop out of market
  - Per Finaid more than 30 lenders have suspended making private loans
  - TERI, insurer of private education loans, filed for bankruptcy under Chapter 11
- Total collapse of ABS market to finance private education loans
- Student Loan Analytics study reports up to 27% of capacity in market has disappeared
- Lenders still making private education loans have tightened underwriting standards, raised interest rates and pushed for co-signers
- Very difficult for credit challenged borrowers to obtain private education loans

# The Private Loan Market

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## Legislative Changes – The Private Student Loan Transparency and Improvement Act of 2008

- Broad definitions of “private educational lender” and “private education loan”
- Imposes 3 additional sets of TILA disclosures
  - Loan application/solicitation disclosures
  - Loan approval disclosures
  - Consummation disclosures
- 30-day waiting period
- 3 business day right to cancel

# The Private Loan Market

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## Future of Private Education Loans

- Private loans to date have followed FFELP in structure
- Future products may look different
  - Lenders could require interest payments during in-school period
  - Terms might shorten
- To date government solutions are focused on FFEL
- Impact of Treasury initiative to unfreeze consumer loan markets
- Funding challenges likely to continue in near-term

# The Private Loan Market

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## Options for Schools Where Private Loans are Unavailable

- Institutional loan programs
- Favorable treatment of institutional loans under 90/10 rule
- Credit enhancement or risk sharing with lenders- but must be completely separate from FFEL lender list decisions

# The Future of Student Lending

## Key Issues and Questions

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- Costs of higher education and demand for loans still rising
- What is the future of the FFEL under the Obama Administration
- Will lenders remain in FFEL if yield cuts are not reversed
- Is Congress still committed to competition between FFEL and Direct Loan Programs
- Can Direct Loan program handle increased volume if schools and lenders exit FFEL
- Will ED programs unthaw capital markets for FFEL collateral
- Will Stafford limits be increased or PLUS extended to undergraduates
- Will the supply/demand imbalance in private loan market lead to new market entrants or new form of private loan product
- Impacts of recession on default rates

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**Robert S. Lavet**

Rob Lavet joined PPSV's Education Practice Group in 2008 as a Principal. Mr. Lavet counsels the firm's higher education clients on student loan matters and on transactional, corporate, securities, and litigation concerns, as well as the resolution of audits and government investigations. Prior to joining the firm, he was General Counsel to SLM Corporation (Sallie Mae). At Sallie Mae, Mr. Lavet managed legal affairs, corporate compliance and student loan servicing policy functions. He regularly advised board members and senior management on securities disclosures and corporate debt offerings, oversaw significant litigation and regulatory matters, led due diligence on numerous acquisitions and transactions, and integrated legal teams of acquired businesses in multiple locations. He and his team of attorneys took on leadership roles in postsecondary education as they developed strategies to address the emerging array of regulatory, legislative, corporate, and transactional challenges facing the nation's student loan programs. He successfully litigated the only federal court case involving the Department of Education's attempted application of the prohibited inducement section of the Higher Education Act to a lender.

Prior to joining Sallie Mae, Mr. Lavet served as a trial attorney at the U.S. Department of Justice, and as a partner with the law firm Cole, Corette & Abrutyn where he specialized in commercial litigation, and securities litigation. He is a member of the bar of the District of Columbia and served as a past president of the Washington Metropolitan Area Corporate Counsel Association.

Mr. Lavet graduated with honors from the University of Pennsylvania in 1976 and received his law degree with honors, from Georgetown University Law Center in 1979.

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