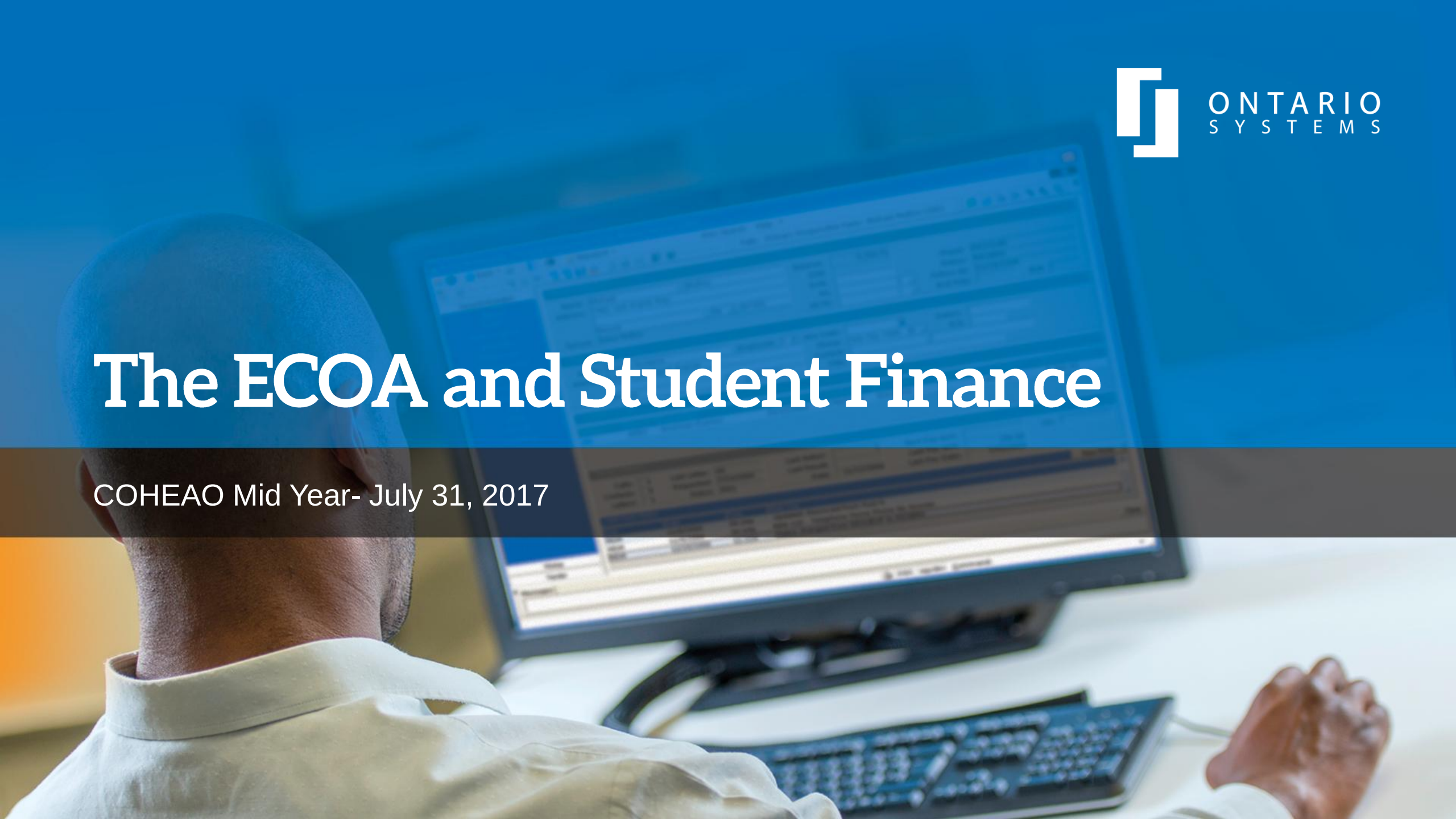
ONTARIO SYSTEMS

The ECOA and Student Finance

COHEAO Mid Year- July 31, 2017



Disclaimer

- **Disclaimer**: Ontario Systems is a technology and compliance consulting company. This information is provided solely for general informational purposes. You should not rely on the content of this material for any other purpose or as specific guidance for your company. The presenters and Ontario Systems assume no liability for typographical or other errors contained in the presentation and materials or for changes in the law affecting anything discussed herein.
- This presentation does is not intended as legal advice and does not form an attorney-client relationship. You are ultimately responsible for your own actions and your company's actions including compliance efforts and cannot rely on this information as business or legal advice. Consult with your own legal and business advisors to obtain specific advice on your company's compliance, legal and other business needs.

© Ontario Systems, LLC. All rights reserved.

Agenda

In this session we will discuss:

- What are some regulations related to discrimination in student finance that financial administrators should be aware of?
- What are the groups of people protected by these regulations?
- What are some of the examples of non-compliance with these regulations?
- What are some practices to avoid violations?

© Ontario Systems, LLC. All rights reserved.

Two Roads- Same Destination

Public funds: Non-discrimination provisions of the Higher Education Act (HEA):

- FFELP Loans
- Direct Loans
- Perkins Loans
- PLUS Loans

Private Funds: The Equal Credit Opportunity Act (ECOA):

- All other tuition based loans or credit not under HEA

© Ontario Systems, LLC. All rights reserved.

Discrimination under the Higher Education Act

HEA authorized funds incorporate the following non-discrimination laws by reference as a condition of participation in the program:

- The Civil Rights Act of 1964 (Title VI)
- The Education Amendments (Title IX)
- The Family Rights and Privacy Act of 1974 (FERPA)
- The Rehabilitation Act of 1974 (connected to the ADA)
- The Age Discrimination Act of 1975

This includes lending practices!

© Ontario Systems, LLC. All rights reserved.

Discrimination under the Equal Credit Opportunity Act

The Equal Credit Opportunity Act of 1974 (ECOA) is a federal statute that prohibits discrimination or discouragement against consumers in credit transactions. The requirements of the statute were implemented by Federal Reserve Regulation B, so ECOA's requirements are often simply referred to as Regulation B or "Reg B."

© Ontario Systems, LLC. All rights reserved.

Protected Classes

Both the HEA participation regulations and the ECOA protect certain groups of people from discrimination. These groups are called “protected classes.”

© Ontario Systems, LLC. All rights reserved.

Protected Classes- Race or Color

Discrimination based on race or color is prohibited by the Civil Rights Act and the ECOA. Caution- there are Dept. of Education exceptions discussed below.

© Ontario Systems, LLC. All rights reserved.

Protected Classes- National Origin

Discrimination based on national origin is prohibited by the Civil Rights Act and the ECOA.

© Ontario Systems, LLC. All rights reserved.

Department of Education Guidance

The Dept. of Education has detailed guidelines for how race and national origin may be considered as factors for Federal student aid awards under Title VI. Specifically race or national origin may be factors if:

1. The aid is designated for disadvantaged students
2. The aid is authorized by Congress for certain groups
3. The aid is designed to remedy past discrimination
4. The aid is designed to create diversity (3 and 4 apply to private gifts).

© Ontario Systems, LLC. All rights reserved.

Protected Classes- Religion

Discrimination based on Religion is prohibited by the ECOA expressly. Religious affiliation is considered protected by the Dept. of Education under the Civil Rights Act if the religion is strongly affiliated with another protected status, such as national origin.

© Ontario Systems, LLC. All rights reserved.

Protected Classes- Sex or Gender

Discrimination based on gender is prohibited by Title IX and the ECOA.

© Ontario Systems, LLC. All rights reserved.

Protected Classes- Age

Discrimination based on age is prohibited by the Age Discrimination Act and the ECOA.

© Ontario Systems, LLC. All rights reserved.

Protected Classes- Marital or Familial Status

Discrimination based on marital or familial status, or family size is prohibited by the ECOA. Familial status may implicate certain decisions for Federal lending programs under the HEA such as the expected family contribution (EFC). FERPA also governs HEA disclosures, so some sharing of information may be prohibited by FERPA.

© Ontario Systems, LLC. All rights reserved.

Protected Classes- Disability

Discrimination based on a disability is prohibited by the Rehabilitation Act. It is not prohibited by the ECOA explicitly but may be an issue under source of income calculations (like SSI disability income).

© Ontario Systems, LLC. All rights reserved.

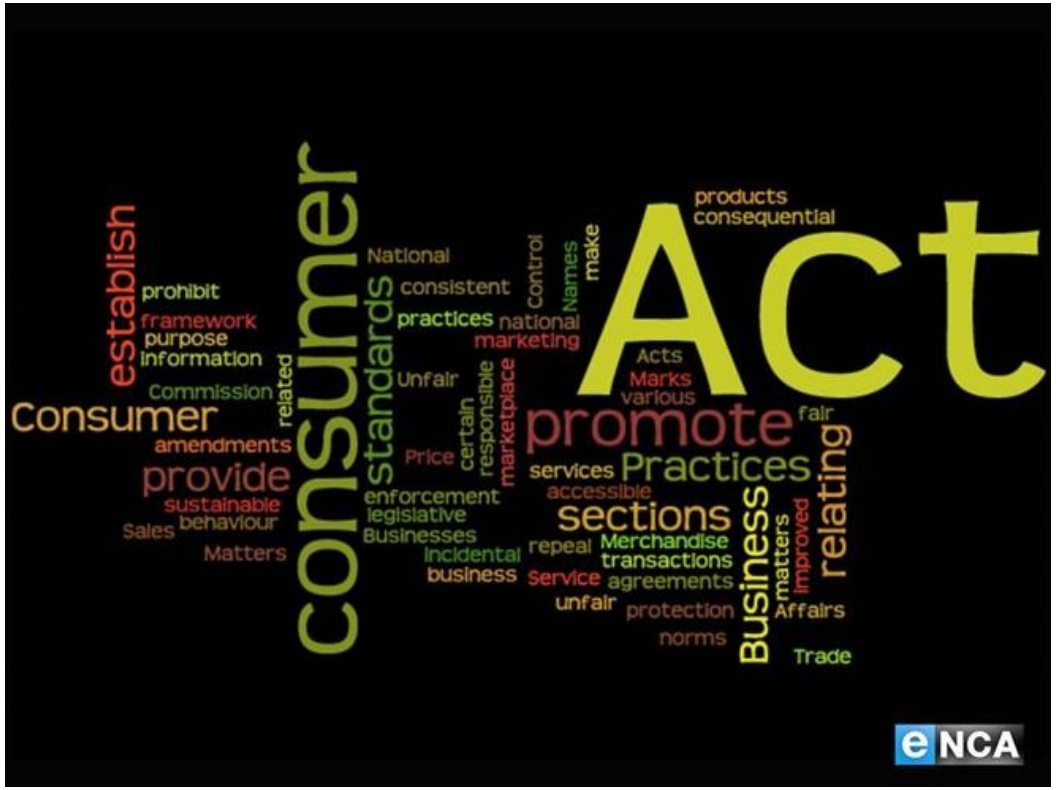
Protected Classes- Receipt of Public Assistance

Discrimination based on receipt of public assistance is prohibited by the ECOA. It is not explicitly prohibited by the HEA. (For example, PLUS loans)

© Ontario Systems, LLC. All rights reserved.

Protected Classes- Exercised rights under CPA

Discrimination against individuals who have exercised rights under the Consumer Protection Act (FCRA, FDCPA, FCBA, ECOA, etc.) is prohibited under the ECOA.



© Ontario Systems, LLC. All rights reserved.

Protected Class- Military Service

Special anti discrimination sections referenced in the HEA prohibit discrimination against military servicemembers. See also the Servicemembers' Civil Relief Act (SCRA)

© Ontario Systems, LLC. All rights reserved.

Direct vs Disparate

There are two types of discrimination or discouragement.

Direct treatment: Policies or practices intended to treat groups differently in order to achieve some result.

Disparate impact: Facially neutral policies or practices intended to treat groups in a similar manner, but that have unintended consequences.

© Ontario Systems, LLC. All rights reserved.

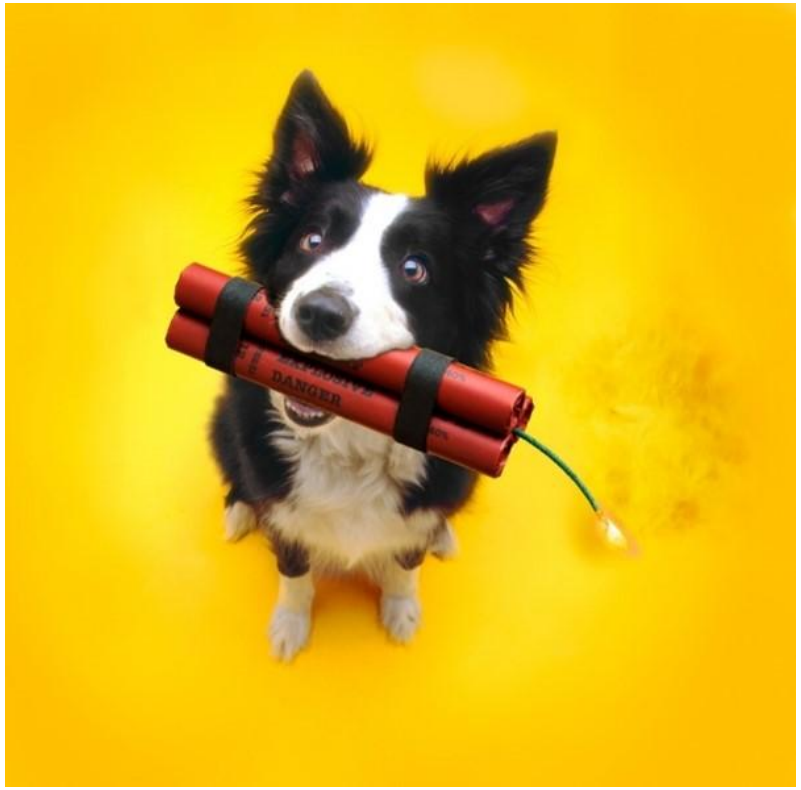
Don’t forget discouragement

Certain types of behavior can be considered discouragement. That is dissuading individuals from certain classes to apply for financial aid. These statements can be written or oral.

© Ontario Systems, LLC. All rights reserved.

Examples of Conduct that may lead to Violations

- Awards of aid based on race, national origin, gender, age or disability status without a narrowly tailored program
- Awards of scholarships based on race, national origin, gender, age or disability status, without a narrowly tailored program
- Waivers of fees or costs without controls to account for disparate impact
- Adverse consequences for similar conduct without controls to account for disparate impact



© Ontario Systems, LLC. All rights reserved.

Potential Penalties

HEA- The most severe penalty would be loss of Federal funding, but defense of section 1983 lawsuits (civil rights lawsuits) or Title IX claims can result in millions of dollars lost by educational institutions.

ECOA- Complaints subject to the ECOA can result in up to $500,000 in fines or 1% of an institutions' net worth.

© Ontario Systems, LLC. All rights reserved.

Practices to avoid violations

- Have a non-discrimination policy and procedure. Train all finance staff on it and document understanding.
- Provide offers based on objective, or legally-approved criteria. The narrowly tailored standard applies to offers of aid subject to Federal student aid awards.
- Treat students the same after aid has been awarded; do not waive fees or costs unless similar treatment is afforded to all students

© Ontario Systems, LLC. All rights reserved.

Questions?

Q & A period

© Ontario Systems, LLC. All rights reserved.

Thank you!

Richard Brown
Compliance Associate
Ontario Systems
Richard.brown@ontariosystems.com

© Ontario Systems, LLC. All rights reserved.

Follow us on Social Media

© Ontario Systems, LLC. All rights reserved.