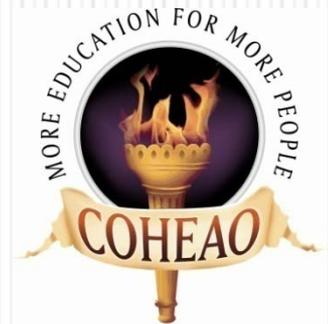


# Financial Responsibility Agreements

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# Required Disclaimer

\* The information contained within this presentation is not legal advice and is not a full and exhaustive explanation of credit and collections laws or legal requirements for binding contracts. This information should not be used to replace the sound advice of your own legal counsel who has a working knowledge of your business and all its applicable state and federal laws. This information is provided for informational and educational purposes only.





# COHEAO Financial Responsibility Agreement Task Force

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A team of institutional and commercial COHEAO members worked together to provide a checklist to be used as a consideration guide when creating or updating student financial responsibility agreements.

Disclaimer: This is a guide and should not be used as legal advice. You should always check with your institution's legal counsel before implementing an agreement or making changes to an existing agreement.

# Terms of Agreement/ Length of Contract

- a. Explain the length of the agreement (example: for as long as the student is registered and/or has an outstanding balance).
- b. Does the balance transfer to a student note (loan) if not paid by the due date? What is the maturity date of the note (example: 12, 24, 36 months)?
- c. If the balance turns into a note, do the terms of the note require you to follow Regulations Z (TILA)?

## Other considerations:

- i. How frequently will an updated signature be required? (Every term, annually, only once as long as student is continuously enrolled?)
- ii. Will agreements be e-signed? If so, how will you capture the information to be able to substantiate borrower acceptance?



# Promise to Pay

- a. A signed acknowledgment by the student that he/she is responsible for the payment of tuition, room, board, activity fees, extra course fees, library fines, parking fines, or other fees incurred by the student.

***In Advisory Report 2015-1, NACUBO provided the following sample verbiage:***

I understand that when I register for any class at {Institution Name} or receive any service from {Institution Name} I accept full responsibility to pay all tuition, fees and other associated costs assessed as a result of my registration and/or receipt of services. I further understand and agree that my registration and acceptance of these terms constitutes a promissory note agreement (i.e., a financial obligation in the form of an educational loan as defined by the U.S. Bankruptcy Code at 11 U.S.C. §523(a)(8)) in which {Institution Name} is providing me educational services, deferring some or all of my payment obligation for those services, and I promise to pay for all assessed tuition, fees and other associated costs by the published or assigned due date.

I understand and agree that if I drop or withdraw from some or all of the classes for which I register, I will be responsible for paying all or a portion of tuition and fees in accordance with the published tuition refund schedule at {Institution's tuition refund policy/schedule URL}. I have read the terms and conditions of the published tuition refund schedule and understand those terms are incorporated herein by reference. I further understand that my failure to attend class or receive a bill does not absolve me of my financial responsibility as described above.



# Electronic Consent

- a. A consent to receive tuition statements, tax forms, etc. electronically.
- b. Is there an opt-out process? Do they have to complete a form or send something in writing? Who do they send it to?
- c. Does this electronic consent include electronic funds transfer for refunds (direct deposit or debit card)?

## ***In Advisory Report 2015-1, NACUBO provided the following sample verbiage:***

I understand that {Institution Name} uses electronic billing (e-bill) as its official billing method, and therefore I am responsible for viewing and paying my student account e-bill by the scheduled due date. I further understand that failure to review my e-bill does not constitute a valid reason for not paying my bill on time. E-bill information is available at {link to E-bill information}.

I agree to provide my Social Security number (SSN) or taxpayer identification number (TIN) to {Institution Name} upon request as required by Internal Revenue Service (IRS) regulations for Form 1098-T reporting purposes. If I fail to provide my SSN or TIN to {Institution Name}, I agree to pay any and all IRS fines assessed as a result of my missing SSN/TIN.

I consent to receive my annual IRS Form 1098-T, Tuition Statement, electronically from {Institution Name}. I understand that if I do not consent to receive my Form 1098-T electronically, a paper copy will be provided. I understand that I can withdraw this Consent or request a paper copy by following the instructions at {Institution's IRS Form 1098-T reporting website}.



# Will You Use Electronic Billing?

If you plan to utilize e-mail for billing students, provide proper disclosure and obtain consent.

***In Advisory Report 2015-1, NACUBO provided the following sample verbiage:***

I understand that {Institution Name} uses electronic billing (e-bill) as its official billing method, and therefore I am responsible for viewing and paying my student account e-bill by the scheduled due date. I further understand that failure to review my e-bill does not constitute a valid reason for not paying my bill on time. E-bill information is available at {link to E-bill information}.



# Address/Phone Change Responsibility

- a. Notify the student of his/her responsibility to communicate any change of name, SSN, address, phone number to the institution or billing servicer as directed by the institution.
- b. Some institutions have a pop-up reminder on their systems to update the student's permanent address prior to being allowed to register.

***In Advisory Report 2015-1, NACUBO provided the following sample verbiage:***

I understand and agree that I am responsible for keeping {Institution Name} records up to date with my current physical addresses, email addresses, and phone numbers by following the procedure at {Institution website for updating student address/email address/phone number}. The linked procedure is incorporated herein by reference. Upon leaving {Institution Name} for any reason, it is my responsibility to provide {Institution Name} with updated contact information for purposes of continued communication regarding any amounts that remain due and owing to {Institution Name}.



# Telephone Consumer Protection Act (TCPA)

- a. Student granting permission to institution or third parties to contact them at a mobile phone number by auto dialers or artificial or pre-recorded voice or text messages.
- b. Is there an opt-out process? Do they have to complete a form or send something in writing? Who do they send it to?

***In Advisory Report 2015-1, NACUBO provided the following sample verbiage:***

I authorize {Institution Name} and its agents and contractors to contact me at my current and any future cellular phone number(s), email address(es) or wireless device(s) regarding my delinquent student account(s)/loan(s), any other debt I owe to {Institution Name}, or to receive general information from {Institution Name}. I authorize {Institution Name} and its agents and contractors to use automated telephone dialing equipment, artificial or pre-recorded voice or text messages, and personal calls and emails, in their efforts to contact me. Furthermore, I understand that I may withdraw my consent to call my cellular phone by submitting my request in writing to {Institutional office or position} or in writing to the applicable contractor or agent contacting me on behalf of {Institution Name}.



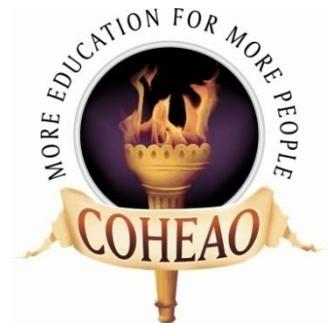
# Telephone Consumer Protection Act

- The TCPA prohibits using computer assisted or automatic dialing technology to call cell phone numbers without prior express consent
- The TCPA is not limited to collection-related calls
- This includes text messages unless public safety is involved
- The original creditor is required to obtain consent
- If there is an opt-out process, students must be advised of the process or requirements



# The issues:

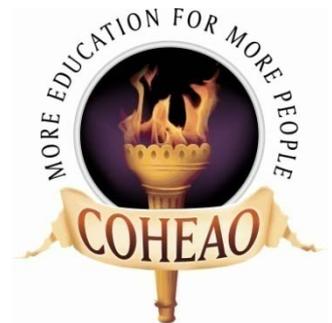
- Most of today's students do not have a land line
- The Act was written in 1991 and is based on technology from that time
- Use of predictive dialers is much more efficient
- Violations can be very costly
- There is no class cap for the amount of damages that can be awarded
- Cases can be brought in state or federal court



# Monthly Payment Plans/Extension of Credit

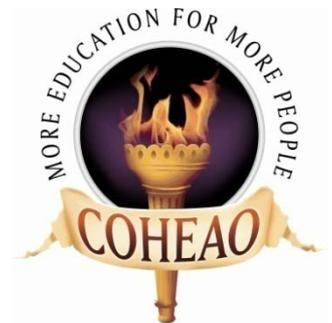
- a. Notify the student of the extension of credit or deferred payment if tuition is not paid by due date.
- b. Are there alternatives to standard payment? Is it internal or managed by an outside company?

Because this section has numerous variables, it is recommended that you seek direction from your institution's legal counsel for the correct wording and terms to ensure compliance with all applicable laws and regulations governing payment plans in your state.



# Financial Aid/Title IV Consents

- a. Student is consenting to allow institution to:
  - i. Use of Title IV funds to pay prior year charges up to \$200
  - ii. Use of Title IV funds to pay discretionary charges (parking fines, library fines, late fees etc.)
  - iii. Hold Title IV funds as a credit on the students account for future charges
- iii. Some institutions use a separate form to opt-in or have an opt-out process.



## ***In Advisory Report 2015-1, NACUBO provided the following sample verbiage:***

### **FINANCIAL AID**

I understand that aid described as “estimated” on my Financial Aid Award does not represent actual or guaranteed payment, but is an estimate of the aid I may receive if I meet all requirements stipulated by that aid program.

I understand that my Financial Aid Award is contingent upon my continued enrollment and attendance in each class upon which my financial aid eligibility was calculated. If I drop any class before completion, I understand that my financial aid eligibility may decrease and some or all of the financial aid awarded to me may be revoked.

If some or all of my financial aid is revoked because I dropped or failed to attend class, I agree to repay all revoked aid that was disbursed to my account and resulted in a credit balance that was refunded to me.

I agree to allow financial aid I receive to pay any and all charges assessed to my account at {Institution Name} such as tuition, fees, campus housing and meal plans, student health insurance, parking permits, service fees, fines, bookstore charges, or any other amount, in accordance with the terms of the aid.

**Federal Aid:** I understand that any federal Title IV financial aid that I receive, except for Federal Work Study wages, will first be applied to any outstanding balance on my account for tuition, fees, room and board. Title IV financial aid includes aid from the Pell Grant, Supplemental Educational Opportunity Grant (SEOG), Direct Loan, PLUS Loan, Perkins Loan, and TEACH Grant programs. I authorize {Institution Name} to apply my Title IV financial aid to other charges assessed to my student account such as student health insurance, parking permits, bookstore charges, service fees and fines, and any other education related charges. I further understand that this authorization will remain in effect until I rescind it or the end of {Institution’s authorization term} and that I may withdraw it at any time by following the instructions at {Institution’s authorization website}. *Note: This authorization cannot be mandatory or coerced. The institution may also want an authorization from the student to use Title IV funds to pay other educationally related charges from the prior year.*

**Prizes, Awards, Scholarships, Grants:** I understand that all prizes, awards, scholarships, and grants awarded to me by {Institution Name} will be credited to my student account and applied toward any outstanding balance. I further understand that my receipt of a prize, award, scholarship, or grant is considered a financial resource according to federal Title IV financial aid regulations, and may therefore reduce my eligibility for other federal and/or state financial aid (i.e., loans, grants, Federal Work Study) which, if already disbursed to my student account, must be reversed and returned to the aid source.



# Late Fees

## Late Fees

- a. Notify the student of the rate at which late fees are calculated for past due balances (example: flat amount or percentage of past due balance).
- b. Notify the student of the frequency of calculation (example: monthly or quarterly).

***In Advisory Report 2015-1, NACUBO provided the following sample verbiage:***

**Late Payment Charge:** I understand and agree that if I fail to pay my student account bill or any monies due and owing {Institution Name} by the scheduled due date, {Institution Name} will assess late payment and/or finance charges at the rate of {Institution \$ or % amount} per month on the past due portion of my student account until my past due account is paid in full.

Note: Schools looking to implement this provision should make certain any and all amounts comport with applicable law.



# Transcript/Registration Holds

- a. Notify the student of the withholding of transcripts/diploma and registration for past due balances.
- b. Does your institution cancel or drop the student from their courses?  
Does your institution cease all services?

***In Advisory Report 2015-1, NACUBO provided the following sample verbiage:***

**Financial Hold:** I understand and agree that if I fail to pay my student account bill or any monies due and owing {Institution Name} by the scheduled due date, {Institution Name} will place a financial hold on my student account, preventing me from registering for future classes, requesting transcripts, or receiving my diploma.



# Default

- a. Explain what constitutes default on tuition accounts.
- b. What are the consequences of defaulting?
  - i. Is the account reported to a credit bureau?
    1. What are the consequences of a default on credit report?
  - ii. Is the student responsible for any legal or collection costs resulting from the default? (If allowed by state law)
    1. Are there limitations?
    2. Be sure the language in this section accurately reflects your institution's policy with respect to actual or percentage based collection costs. Actual costs are harder to compile and prove. You may want to consider using language provided by the 11<sup>th</sup> Circuit Court of Appeals as part of the language as it could be more enforceable.



***In Advisory Report 2015-1, NACUBO provided the following sample verbiage:***

**Collection Agency Fees:** I understand and accept that if I fail to pay my student account bill or any monies due and owing {Institution Name} by the scheduled due date, and fail to make acceptable payment arrangements to bring my account current, {Institution Name} may refer my delinquent account to a collection agency. I further understand that I am responsible for paying the collection agency fee which may be based on a percentage at a maximum of {Institution maximum percentage} percent of my delinquent account, together with all costs and expenses, including reasonable attorney's fees, necessary for the collection of my delinquent account. Finally, I understand that my delinquent account may be reported to one or more of the national credit bureaus.

*Note: This provision is critical if a school intends to pass any collection agency fees on to a defaulting student. The provision will not allow fees in states that prohibit the assessment of collection fees. As an example, see the [North Carolina Department of Insurance memo](#).*

**Another consideration:**

Coast's general counsel recommends including an acceleration clause in the agreement which states that, in the event of default, the institution has the ability to declare all payments are then due and owing.

This allows the referral of the full balance for collection or litigation. Otherwise, litigation may be limited only to the payment amounts due under the agreement up to the date of litigation or collection agency referral.



# Collection Agency Fees

- FDCPA requires collection fees be included in the instrument creating the debt or in state statute in order to pass them on to the consumer
- Percentage based fees must be specified in the language of the agreement or statute
- Borrower must agree to pay prior to adding the fees on to an outstanding balance
- The distinction of who charges or adds the fees is moot



# The issues:

- The CFPB has stated that original creditors must, at minimum, adhere to the FDCPA to avoid UDAAPs
- It is a violation of the FDCPA to attempt to collect more than is permitted under the agreement (i.e. late fees, other penalties, collection fees, attorney fees, court costs, etc.)
- The 11<sup>th</sup> Circuit Court of Appeals ruled “collection costs” or “cost of collections” as problematic language
- Financial Responsibility Agreement must be signed prior to the consumer incurring any charges
- Reference to handbook or disclosures on the web site are not sufficient to prove acceptance of the terms and conditions



# “Safe Harbor” Language

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You agree to reimburse us the fees of any collection agency, which may be based on a percentage at a maximum of 33% of the debt, and all costs and expenses, including reasonable attorneys' fees we incur in such collection efforts.

# Bankruptcy

- a. Notify the student that the account cannot be discharged in bankruptcy (if applicable).
- b. Are certain charges considered non-dischargeable in bankruptcy (tuition, room & board, etc.)?
- c. Reference bankruptcy code if appropriate (US Bankruptcy Code 11 USC 523(a)(8)).
- d. Legal counsel will need to be consulted to see if this area should be included in your agreement.
- e. What actions will the institution take if the student is enrolled or is a former student?
  - i. Current students cannot seek new lines of credit or choose who to pay or not pay, unless authorized by the court, while in bankruptcy proceedings.



***In Advisory Report 2015-1, NACUBO provided the following sample verbiage:***

I further understand and agree that my registration and acceptance of these terms constitutes a promissory note agreement (i.e., a financial obligation in the form of an educational loan as defined by the U.S. Bankruptcy Code at 11 U.S.C. §523(a)(8)) in which {Institution Name} is providing me educational services, deferring some or all of my payment obligation for those services, and I promise to pay for all assessed tuition, fees and other associated costs by the published or assigned due date.

Please note that even if a debt is not dischargeable, the automatic stay that is in place while the consumer is inside the bankruptcy prevents ANY collection efforts, including the withholding of transcripts, while the bankruptcy is active.



# 11 U.S.C. §523(a)(\*8)

- Exceptions to discharge:
  - ❖ (A)(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or
  - ❖ (B) any other educational loan that is a **qualified education loan**, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual.”
- Qualified Higher Education Expense (Internal Revenue Code § 221(d)(2)
  - ❖ “the cost of attendance (as defined in section 472 of the Higher Education Act of 1965 as in effect on the day before the date of enactment of this Act) as an eligible educational institution...”



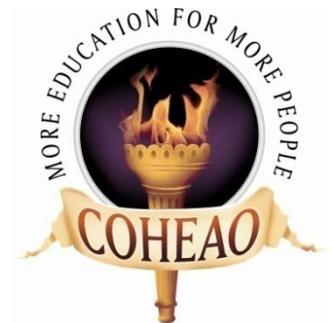
# Section 472 of the HEA

## 20 U.S.C. 1087II

Cost of Attendance =

- ❖ Tuition/Fees normally assessed a student including materials and equipment for students in the same course of study.
- ❖ Books/Supplies/Misc. Personal Expenses
- ❖ Room & Board

It is important to understand that this slide does NOT mean these things are nondischargeable. It does mean that “student loans” used for these things are not subject to discharge.



# Choice of Law/Governing Law

- a. If the institution chooses to use their state court system to remedy a defaulted account, that language must be included.
- b. May or may not want to include this section depending on your state laws. Some state laws are more restrictive on institutions/creditors than others. Should check with your legal counsel.

***In Advisory Report 2015-1, NACUBO provided the following guidance for consideration:***

**Governing Law.** The reference to state law should not be a default provision. This provision should be considered carefully depending on whether the institution is located in a consumer friendly or creditor friendly state.



# From The Institution's Perspective

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How to implement the agreement, best practices for use and content, how agreements impact recovery and litigation efforts

# Sample Student Checklist

<http://nau.edu/sdas/>

## ✓ Your Student Account Checklist for Success

- ▶ [Set up your Parent/Guardian as an "Authorized User"](#)
- ▶ [Read about the Family Educational Rights and Privacy Act \(FERPA\)](#)
- ▶ [Sign up for Direct Deposit](#)
- ▶ [Mark payment due dates on your calendar](#)
- ▶ [If you don't plan on paying tuition in full by the due date, enroll in our Tuition Payment Plan](#)
- ▶ [Put a reminder on your calendar to check your student account balance each month](#)
- ▶ [Contact the Office of Scholarships and Financial Aid if you are unsure that your financial aid documentation has been completed](#)
- ▶ [Review all To-Do List items, including the Financial Aid Title IV Authorization](#)
- ▶ [Remember to opt into the electronic 1098-T form \(used for educational tax credits\), so that it will be available to you online](#)
- ▶ [Remember to read your NAU email on a regular basis, this is how all NAU departments will communicate with you.](#)



### Withdrawal checklist

If you are withdrawing from the university, make sure you cover all your bases with [this checklist](#).



### Past Due Accounts

Past due charges may affect services on campus. Contact your [Account Representative](#) to discuss your options.



### Communication policy

How will you be notified of any updates on your accounts? We will contact you via our [preferred method](#).



# Other Considerations

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The changing landscape of collection of student debt and of debt collection in general

# Statute of Limitations

Statute of Limitations is the legally prescribed time period in which a lawsuit may be filed.

- Based on borrower's state of residence
- Choice of Laws or Governing Law may not protect the institution
- Payment does not automatically revive a debt or extend the SOL period
- Signed agreements may extend or restart SOL period
- Some states prohibit or restrict the attempt to collect past statute debts



# The issues:

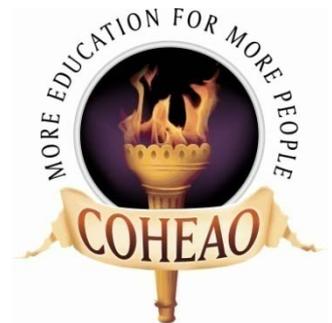
- The Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC) filed amicus briefs in the Sixth and Seventh Circuit Courts of Appeals in 2014 stating that “actual or threatened litigation is not a predicate for an FDCPA violation in the context of time barred debt.”
- Providing the dates of service, delinquency and last payment are critical in determining the correct expiration of the SOL period.
- Past statute debt is becoming increasingly difficult to collect due to increasing regulatory requirements.



# The Consumer Financial Protection Bureau (CFPB)

Congress established the CFPB in July, 2011 to protect consumers by carrying out federal consumer financial laws.

- Unprecedented scope of regulating authority with ability to impose fines
- Expanded to regulate non-banks that provide financial services
- Transfer of authority to promulgate regulations from other agencies





Consumer Financial  
Protection Bureau

Contact us **(855) 411-2372**

- HOME
- INSIDE THE CFPB
- GET ASSISTANCE
- PARTICIPATE
- LAW & REGULATION
- SUBMIT A COMPLAINT

## New tools to combat harmful debt collection practices

We're putting companies on notice about harmful debt collection practices. Today we also published consumer "action letters" and are now accepting debt collection complaints. [Learn more about our work on debt collection.](#)



<http://www.consumerfinance.gov/>

